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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 428/2011

DELHI JAL BOARD CONTRACTORS WELFARE ASSOCIATION ..... Petitioner

Through: Mr. J.K. Mittal & Mr. Rajveer Singh, Advocates

versus

UOI AND ORS ..... Respondents

Through: Mr. Amit Bansal & Mr. Rishab Gulati, Advocates

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

O R D E R

% **15.10.2018**

Learned counsel for the petitioner has handed over written submissions in the Court today.

2. The present writ petition by the petitioner association stated to be representing 119 contractors working with the Delhi Jal Board, impugns and seeks quashing of Notification No.12/2003-ST dated 20.6.2003 and Notification No.19/2003-ST dated 21.8.2003 along with Column No.5 of Notification No.1/2006-ST dated 1.3.2006 and Circular No.62/11/2003-ST dated 21.8.2003 and Instruction No.137/73/07-CX4 dated 12.11.2007 as ultra vires provisions of sub-clause (zzd) of Clause 105, read with Clause (39a) of Chapter-V of the Finance Act, 1994. In alternative, the petitioner has prayed for quashing of Section 65(105) (zzd) and 65(39a) of the Finance Act, 1994 as being against constitutional scheme of the legislation for levy of service tax in India.

3. Our earlier orders dated 4.9.2018 and 10.9.2018 record the

contention of the petitioner association that the issue raised is covered in their favour vide decision of the Supreme Court in ***Commissioner, Central Excise and Customs, Kerala vs. Larsen and Toubro Limited***,*(2016) 1 SCC 170*.

4. In ***Larsen and Toubro Limited*** (supra), the Supreme Court had decided the question of levy of service tax on indivisible works contracts prior to introduction of the Finance Act, 2007. Thereupon, the Supreme Court had in paragraphs 23 and 29 opined as under:

> *"23. A close look at the Finance Act, 1994 would show that the five taxable services referred to in the charging Section 65(105) would refer only to service contracts simpliciter and not to composite works contracts. This is clear from the very language of Section 65(105) which defines "taxable service" as "any service provided". All the services referred to in the said sub-clauses are service contracts simpliciter without any other element in them, such as for example, a service contract which is a commissioning and installation, or erection, commissioning and installation contract. Further, under Section 67, as has been pointed out above, the value of a taxable service is the gross amount charged by the service provider for such service rendered by him. This would unmistakably show that what is referred to in the charging provision is the taxation of service contracts simpliciter and not composite works contracts, such as are contained on the facts of the present cases. It will also be noticed that no attempt to remove the non-service elements from the composite works contracts has been made by any of the aforesaid Sections by deducting from the gross value of the works contract the value of property in goods transferred in the execution of a works contract."*
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> *xxxx*
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> *29. In the aforesaid judgment, it was held that the levy of service tax in Section 65(105)(g), (zzd), (zzh), (zzq) and*

> *(zzzh) is good enough to tax indivisible composite works contracts. Various judgments were referred to which have no direct bearing on the point at issue. In paragraph 23 of this judgment, the second Gannon Dunkerley judgment is referred to in passing without noticing any of the key paragraphs set out hereinabove in our judgment. Also, we find that the judgment in G.D. Builders (supra) went on to quote from the judgment in Mahim Patram Private Ltd. V. Union of India, 2007 (3) SCC 668, to arrive at the proposition that even when rules are not framed for computation of tax, tax would be leviable."*

5. In ***Larsen and Toubro Limited*** (supra), the Supreme Court had also held:-

> *"41. We need only state that in view of our finding that the said Finance Act lays down no charge or machinery to levy and assess service tax on indivisible composite works contracts, such argument must fail. This is also for the simple reason that there is no subterfuge in entering into composite works contracts containing elements both of transfer of property in goods as well as labour and services."*

6. With reference to Notification Nos.1/2006-ST and 19/2003-ST, the Supreme Court had observed:

> *"42. We have been informed by counsel for the revenue that several exemption notifications have been granted qua service tax "levied" by the 1994 Finance Act. We may only state that whichever judgments which are in appeal before us and have referred to and dealt with such notifications will have to be disregarded. Since the levy itself of service tax has been found to be non-existent, no question of any exemption would arise. With these observations, these appeals are disposed of."*

7. Learned counsel for the respondents' authorities accepts and

admits that the aforesaid ratio would govern and apply. He, however, states that the law has undergone a change with the enactment of sub-clause (zzzza) to Section 65(105) of the Finance Act, 1994. Learned counsel for the petitioner submits that the present writ petition does not relate to interpretation of sub-clause (zzzza) to Section 65(105) of the Finance Act, 1994.

8. The law declared and ratio enunciated by the Supreme Court is binding precedent as per Article 142 of the Constitution of India and would accordingly apply and bind the respondents' authorities. We would allow the present writ petition in terms of the judgment of the Supreme Court in ***Larsen and Toubro Limited*** (supra) and hold that the impugned circulars and instructions to the contrary would have to be disregarded.

Similarly, instructions/letter dated 24.11.2010 by the respondents' authorities would be disregarded in terms of the decision and ratio in ***Larsen and Toubro Limited*** (supra).

9. Learned counsel for the petitioner states that the respondents' authorities are not abiding and applying the ratio inspite of specific directions given in ***Larsen and Toubro Limited*** (supra). Learned counsel for the respondents disputes the said position and states that there is no such averment and assertion in the writ petition.

10. The respondents are bound to follow the ratio of the decision in ***Larsen and Toubro Limited*** (supra).

11. It is open to the members of the petitioner association to refer and rely upon the ratio in ***Larsen and Toubro Limited*** (supra). In case

any member of the petitioner association is still aggrieved, it may initiate appropriate proceedings in accordance with law.

12. Recording the aforesaid, the writ petition is allowed in terms of the decision in ***Larsen and Toubro Limited*** (supra) as stated in paragraphs 7 and 8 above.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

OCTOBER 15, 2018/tp