205 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CWP-20584-2008 (O&M)
Date of Decision: 07.05.2024.

M/s S.S. Construction …Petitioner

Vs.

Union of India and others …Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present Ms. Radhika Suri, Sr. Advocate with
Mr. Abhinav Narang, Advocate for the petitioner.

Mr. Anshuman Chopra, Sr. Standing Counsel with
Mr. Deepesh Kakkar, Advocate for the respondents.

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SANJEEV PRAKASH SHARMA, J.(Oral)

1. Learned counsel for the petitioner as well as respondents are *ad-idem* that the issue raised in the present petition stands finally adjudicated by Hon'ble the Supreme Court in Commissioner, Central Excise and Customs, Kerla vs. M/s Larsen and Toubro Ltd. (2016) 1 SCC 170 and subsequent judgment in Commissioner of Service Tax vs. Bhayana Builders (P) Ltd. 2018 (1) G.S.T.L. 118 (S.C.), wherein, Hon'ble the Supreme Court by relying on the judgment in M/s Larsen and Toubro Ltd.'s case (supra) observed as under:-

> "19. Matter can be looked into from another angle as well. In the case of Commissioner, Central Excise and Customs, Kerala v. M/s. Larsen & Toubro Ltd. This Court was concerned with exemption notifications which were issued in respect of 'taxable

services' covered by sub-clause (zzq) of clause (105) read with clause (25b) and sub-clause (zzzh) of clause (105) read with 1 (2016) 1 SCC 170 clause (30a) and (91a) of Section 65 of Chapter V of the Act. This Court in the aforesaid judgment in respect of five 'taxable services' [viz. Section 65(105)(g), (zzd), (zzh), (zzq) and (zzzh)] has held as under:

"23. A close look at the Finance Act, 1994 would show that the five fixed 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'.

Further, while referring to exemption notifications, it observed:

"42. ...Since the levy itself of service tax has been found to be non-existent, no question of any exemption would arise."

It is clear from the above that the service tax is to be levied in respect of 'taxable services' and for the purpose of arriving at 33% of the gross amount charged, unless value of some goods/materials is specifically included by the Legislature, that cannot be added.

20. It is to be borne in mind that the notifications in questions are exemption notifications which have been issued under

Section 93 of the Act. As per Section 93, the Central Government is empowered to grant exemption from the levy of service tax either wholly or partially, which is leviable on any 'taxable service' defined in any of sub-clauses of clause (105) of Section 65. Thus, exemption under Section 93 can only be granted in respect of those activities which the Parliament is competent to levy service tax and covered by sub-clause (zzq) of clause (105) and sub-clause (zzzh) of clause (105) of Section 65 of Chapter V of the Act under which such notifications were issued.

2. Learned counsel for the petitioner has taken this Court to the exemption notification dated 01.03.2006 to point out that the explanation and conditions laid down in column No.7 of the notification relating to the commercial or industrial construction service goes contrary to the law laid down by Hon'ble the Supreme Court in M/s Larsen and Toubro Ltd.'s and Bhayana Builders (P) Ltd.'s case (supra). She has also submitted that on account of the aforesaid explanation show cause notice was issued on the basis of audit report, which reads as under:-

M/s S.S. Construction, Chandigarh are engaged in providing the service of industrial and commercial construction for which they are registered under the Service Tax Act. They are also availing the benefit of 67% abatement of the value of the service under notification No.1/2006 ST. dated 01.03.2006 as amended and earlier notification No.15/2004/ST and are discharging their tax liability on 33%. However, the explanation appended to S. 2007 of the said notification requires that the gross amount charged *shall include the value of the materials supplied or provided or used by the service provider of the construction service for providing such service. The definition of 'gross amount charged' under Section 67(4)(c) is an inclusive definition and stipulated that gross amount charged among other things includes payments received by various modes and is not restricted to payments received only. It is further for the position as given under the above explanation appended to S. No.7 of the notification No.2006-ST that the value of the materials supplied or provided is also to be included in the gross amount charged for the purpose of discharge service tax. By virtue of this provision, the amount was required tin include the value of material supplied or provided to them by the party whose construction work was being carried out or otherwise the material used for the service for the purpose of availing abatement and discharge service tax on the balance 33%.*

3. Learned counsel submits that in view of settled law as above, the show cause notice issued by the respondents deserved to be quashed and the condition laid down in notification dated 01.03.2006 also should be treated as deleted in terms of the judgment of Hon'ble the Supreme Court in M/s Larsen and Toubro Ltd.'s and Bhayana Builders (P) Ltd.'s case (supra).

4. Learned counsel for the revenue fairly states that conditions go contrary to the settled law as laid down by Hon'ble the Supreme Court in M/s Larsen and Toubro Ltd.'s and Bhayana Builders (P) Ltd.'s case (supra).

5. Having noticed the judgments passed by the Hon'ble Apex Court, we are satisfied that so far as the contractor engages in commercial or

industrial construction service, would not be required to include the gross amount charged relating to goods and material supplied for providing such services and, therefore, the explanation mentioned in notification dated 01.03.2006, would stand deleted and accordingly the show cause notice issued to the petitioner dated 03.11.2008, could not be substantiated in law.

6. In view thereof, the writ petition deserves to be allowed and is accordingly allowed.

7. All pending misc. application(s) also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

07.05.2024.
rajesh

1. Whether speaking/reasoned? : Yes/No
2. Whether reportable? : Yes/No