IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.06.2025

THE HON'BLE DR.JUSTICE ANITA SUMANTH
AND
THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

W.P.No.27790 of 2010 &
W.P.Nos.10525 & 10526 of 2011
and MP.Nos.1 of 2010, 1 & 1 of 2011

WP.No.27790 of 2010

M/s.Larsen & Toubro Limited,
Engineering Construction & Contract Division,
P B No.979
Mount Poonamallee Road
Manapakkam
Chennai 600 089.
rep. by its Head-Corporate Indirect Taxes ... Petitioner

Vs.

1.Union of India rep. by its Secretary
Ministry of Finance
Department of Revenue
Government of India
North Block
New Delhi – 110 001.

2.Central Board of Excise & Customs
North Block
New Delhi – 110 001.

3.The Commissioner of Service Tax
MHU Complex,
692, Anna Salai, Nandanam,
Chennai – 600 035.

4.Directorate General of Central Excise Intelligence,
Rajaji Bhavan, Beasant Nagar,
Chennai 600 090. ... Respondents

Prayer in WP.No.27790 of 2010: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Declaration to declare Explanation (a) to Rule 3(1) of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 introduced by Notification No.23/2009 dated 07.07.2009 and Circular letter D.O.F.No.334/13/2009-TRU dated 06.07.2009 as the same as being ultra vires Section 65(105)(zzzza), Section 66 and Section 67 of the Finance Act, 1994; Rule 2A of Service Tax (Determination of Value) Rules, 2006; Entry 54, List-II, Seventh Schedule; Entry 83 and 92A, List-I, Seventh Schedule; and Article 14 and Article 265 of the Constitution of India insofar as the Petitioner is concerned.

AND

WP.No.10525 of 2011

M/s.URC Construction (P) Limited
119, Power House Road
Erode – 638 001. ... Petitioner

Vs.

1.Union of India rep. by its Secretary
Ministry of Finance
Department of Revenue
Government of India
North Block
New Delhi – 110 001.

2.Central Board of Excise & Customs
North Block
New Delhi – 110 001.

3.The Commissioner of Central Excise
and Service Tax,
Salem Commissionerate
Salem. ... Respondents

Prayer in WP.No.10525 of 2011: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Declaration to declare Explanation (a) to Rule 3(1) of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 introduced by Notification No.23/2009 dated 07.07.2009 and Circular letter D.O.F.No.334/13/2009-TRU dated 06.07.2009 as the same as being ultra vires Section 65(105)(zzzza), Section 66 and Section 67 of the Finance Act, 1994; Rule 2A of Service Tax (Determination of Value) Rules, 2006; Entry 54, List-II, Seventh Schedule; Entry 83 and 92A, List-I, Seventh Schedule; and Article 14 and Article 265 of the Constitution of India insofar as the Petitioner is concerned.

AND

WP.No.10526 of 2011

M/s.Bharathi Constructions
63, Perianna Street,
Erode – 638 001. ... Petitioner

Vs.

1.Union of India rep. by its Secretary
Ministry of Finance
Department of Revenue
Government of India
North Block
New Delhi – 110 001.

2.Central Board of Excise & Customs
North Block
New Delhi – 110 001.

3.The Commissioner of Central Excise
and Service Tax,
Salem Commissionerate
Salem. ... Respondents

Prayer in WP.No.10526 of 2011: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Declaration to declare Explanation (a) to Rule 3(1) of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 introduced by Notification No.23/2009 dated 07.07.2009 and Circular letter D.O.F.No.334/13/2009-TRU dated 06.07.2009 as the same as being ultra vires Section 65(105)(zzzza), Section 66 and Section 67 of the Finance Act, 1994; Rule 2A of Service Tax (Determination of Value) Rules, 2006; Entry 54, List-II, Seventh Schedule; Entry 83 and 92A, List-I, Seventh Schedule; and Article 14 and Article 265 of the Constitution of India insofar as the Petitioner is concerned.

Case Nos.	For Petitioners	For Respondents
WP.No.27790 of 2010	Ms.Radhika Chandra Sekhar	Mr.M.Santhanaraman, Senior Standing Counsel
WP.Nos.10525 & 10526 of 2011	Ms.Radhika Chandra Sekhar	Mr.R.P.Pragadish, Senior Standing Counsel

<u>COMMON ORDER</u>

[Made by ***Dr.ANITA SUMANTH, J.***]

The prayer in these three writ petitions is for a declaration to the effect that Explanation (a) to Rule 3(1) of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 introduced *vide* Notification No. 23/2009 dated 07.07.2009 and Circular Letter D.O.F.No.334/13/2009-TRI dated 06.07.2009 are ultra vires various provisions of the Finance Act, 1994, Rule 2A of the Service Tax (Determination of Value) Rules, 2006, and the Constitution of India.

2. We have heard Ms.Radhika Chandrasekar, learned counsel, appearing for the petitioner and Mr.M.Santhanaraman, learned Senior Standing Counsel and Mr.R.P.Pragadish, learned Senior Standing Counsel, appearing for the Department.

3. The issue that arises for consideration is covered by a judgment of the Supreme Court in the case of *Commissioner of Service Tax v Bhayana Builders (P) Ltd*[1]. The question that arose for determination in that matter was as to whether goods/materials supplied free of cost by a service recipient that are utilized for provision of taxable services of construction of industrial complex, would be liable to included within the ambit of 'gross amount' in determination of service tax. The question was answered in favour of the assessee and we extract paragraph 16 of the judgment:-

> *"16) In fact, the definition of "gross amount charged" given in Explanation (c) to Section 67 only provides for the modes of the payment or book adjustments by which the consideration can be discharged by the service recipient to the service provider. It does not expand the meaning of the term "gross amount charged" to enable the Department to ignore the contract value or the amount actually*

[1] 2018 (10) GSTL 118 (SC)

charged by the service provider to the service recipient for the service rendered. The fact that it is an inclusive definition and may not be exhaustive also does not lead to the conclusion that the contract value can be ignored and the value of free supply goods can be added over and above the contract value to arrive at the value of taxable services. The value of taxable services cannot be dependent on the value of goods supplied free of cost by the service recipient. The service recipient can use any quality of goods and the value of such goods can vary significantly. Such a value, has no bearing on the value of services provided by the service recipient. Thus, on first principle itself, a value which is not part of the contract between the service provider and the service recipient has no relevance in the determination of the value of taxable services provided by the service provider."

4. Applying the ratio of the aforesaid judgment and on first principles above, value of goods that are not part of the contract inter se the parties would have no relevance in the determination of value of taxable services provided by the service provider. The declaration as sought for is thus liable to be granted.

5. We may point out at this juncture that this question is academic as far as these assessees are concerned as the learned counsel

for petitioner has not brought to our notice any assessments where the impugned provisions have been brought to play.

6. These writ petitions are allowed in terms of this order. No costs. Connected miscellaneous petitions are closed.

[A.S.M., J] [N.S., J]
11.06.2025

Index:Yes/No
Neutral Citation:Yes
ssm
To

1.The Secretary,
Ministry of Finance, Department of Revenue, Government of India,
North Block, New Delhi – 110 001.

2.The Central Board of Excise & Customs,
North Block, New Delhi – 110 001.

3.The Commissioner of Service Tax
MHU Complex,692, Anna Salai, Nandanam,
Chennai – 600 035.

4.The Directorate General of Central Excise Intelligence,
Rajaji Bhavan, Beasant Nagar,
Chennai 600 090.

5.The Commissioner of Central Excise and Service Tax,
Salem Commissionerate, Salem.

Dr.ANITA SUMANTH,J.
AND
N.SENTHILKUMAR,J.

ssm

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