

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH

SERVICE TAX APPEAL NO. 136 OF 2007

(Arising out of Order-in-Original No. COMMISSIONER/RPR/05/2007 dated 31.01.2007 passed by the Commissioner, Central Excise & Customs, Raipur (Chattisgarh))

M/s. SEPCO Electric Power Construction Corporation

...Appellant

BALCO Site Office
BALCO Township, Korba (C.G.)

versus

Commissioner of Central Excise & Customs,

...Respondent

Central Excise Building,
Dhamtari Road, Raipur- 492001
(Chattisgarh)

APPEARANCE:

Shri P.K. Sahu, Advocate for the Appellant
Shri Ravi Kapoor, Authorised Representative of the Respondent

CORAM:

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

**Date of Hearing: 22.08.2022
Date of Decision: 19.09.2022**

FINAL ORDER No. 50871/2022

JUSTICE DILIP GUPTA:

The order dated 31.01.2007 passed by the Commissioner of Central Excise and Customs Raipur¹ confirming the demand of service tax for the period August 2003 to November 2005 with penalty is sought to be assailed in this appeal.

2. This appeal was earlier decided by the Tribunal by order dated 04.12.2015 holding that the appellant during the relevant period,

1. the Commissioner

being a body corporate, was not covered under the definition of 'consulting engineer' defined in section 65(31) of the Finance Act 1994², and consequently the service rendered by the appellant could not have been confirmed under 'consulting engineer' service, as was done by the Commissioner.

3. This order dated 04.12.2015 of the Tribunal was assailed by the Department before the Supreme Court³. The Supreme Court held that the Tribunal was not justified in holding that the appellant was not covered under the definition of 'consulting engineer'. The order passed by the Tribunal was, therefore, set aside and the matter was remitted to the Tribunal to examine and decide the appeal on the other grounds raised in the appeal memo.

4. This is how the matter has again come up before the Tribunal.

5. The issue that has now been raised for consideration is as to whether the appellant had undertaken a composite engineering, procurement and construction⁴ contract on a turnkey basis, because if this is the case, then no part of the contract could have been separately subjected to levy of service tax by treating it to be a service rendered by a 'consulting engineer'.

6. To appreciate this issue, it would be necessary to refer to the contract entered into by the appellant with M/s Bharat Aluminium Co. Ltd., Korba⁵ for setting up a captive power plant at the site of BALCO. According to the appellant, the contractual liability is spread in the following five contracts to cater to operational convenience:

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- 2. the Finance Act
 - 3. Civil Appeal No. 4928 of 2018 Commissioner of Central Excise, Raipur vs. M/s. Sepco Electric Power Construction Corporation decided on 11.07.2022
 - 4. EPC
 - 5. BALCO

- (i) Guarantee Agreement for EPC contract on turnkey basis
- (ii) Project Contract No. BALCO-SEPCO-01-Offshore Supply Contract
- (iii) Project Contract No. BALCO-SEPCO-02-Contract for Offshore Engineering and Technical Services
- (iv) Project Contract No. BALCO-SEPCO-03-Onshore Supply Contract
- (v) Project Contract No. BALCO-SEPCO-04-Onshore Services & Construction Contract.

7. This appeal concerns the third project namely Contract for Off-Shore Engineering and Technical Services. It would be useful to refer to certain essential facts.

8. The Tender Enquiry contained in the communication dated 04.02.2002 shows that BALCO was desirous of installing a captive power plant at its site and the relevant portion is reproduced below:

"Bharat Aluminium Company Limited (BALCO) has commenced Project works for enhancing the capacity of their Smelter and Alumina Complex at Balconagar, District Korba in the State of Chattisgarh.

A Captive Power Plant (CPP) of 600 MW, comprising five units of 120 MW each, **will also be installed** along with the Smelter Expansion. Development Consultants Private Limited (DCPL) has been retained as Engineers for the CPP.

Detailed specification for the CPP is enclosed, with a request for your most competitive bid. The specification is based on Engineering, Procurement and Construction (EPC) basis for the complete 600 MW CPP."

(emphasis supplied)

9. Volume-I of the Bid Document submitted by the appellant contains, in clause 1, the **Scope of Works**. It shows that the appellant had offered bid for the EPC contract on turnkey basis.

Clause 2 deals with Price. The relevant portions of the Bid Document contained in clauses 1 and 2 are reproduced below:

"1. Scope of Works

The scope of Works of SEPCO, in accordance with the Specification for EPC Contract attached to the Notice Inviting Tender issued to SEPCO on 4th February, 2002, shall include planning, design, engineering, project management, manufacture & procurement, supply, ocean transportation including marine insurance, custom clearance, inland transportation including transit insurance, storage & handling, civil works, erection, testing, commissioning, insurance against Erection All Risks, training, trial operation and handing over of the complete equipment and works for 5x135 MW coal-fired power plant as described in the Volume II (Technical Proposal) and Volume III (Bid Proposal Sheets) **on turnkey basis. SEPCO** shall also be responsible for the successful execution of performance guarantees tests for the entire Plant."

(emphasis supplied)

2. Price:

SEPCO, as the EPC Contractor, hereby quote the price covering the works as described in Paragraph 1) on turnkey basis of USD228,923,000.00 (Say US Dollar two hundred and twenty-eight million nine hundred and twenty-three thousand only) and INR3,755,210,000.00 (Say Indian Rupees three thousand seven hundred and fifty-five million two hundred and ten thousand only) with detailed break-down as shown in Annexure I.

In order for convenience of bid evaluation and future tax clearance during the execution of Contract, the Bid Price will be broken down into following five portions:

Design & Engineering	USD12,082,000.00
Other Offshore Services	USD54,571,000.00
Offshore Supplies	USD162,270,000.00
Onshore Supplies	INR1,466,910,000.00

Onshore Services

INR2,288,300,000.00”
(emphasis supplied)

10. BALCO issued a Letter of Intent for the EPC contract and the relevant portions are as follows:

“We are pleased to issue this Letter of Intent for the EPC contract on behalf of Sterlite group, for design, engineering, manufacture, supply, transportation to project site, construction, erection, testing, commissioning, PG testing and associated services for 4 X 135MW captive power plant suitable for coal as specified in the technical specifications of tender. The principal terms and conditions shall be as under:

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5. Performance parameters:

You shall establish the following unit wise performance on sustained basis as per clause No. 10 (Schedule) for each unit separately. For entire station the above shall be within 4 months of provisional acceptance certificated of fourth unit.

S.No.	Parameters	Units	Value
1.	Guaranteed unit net electrical output	MW/unit	123.994
2.	Guaranteed Unit net heat rate with process steam	Kcal/kWh	2453.44(*)
3.	Guaranteed Net Station electrical	MW	494.8 MW
4.	Supply of Steam without affecting power output as mentioned above	T/Hr	30T/Hr/boiler Total 120T/Hr i) 135 Kg/Sq.Cm g)- 20T/Boiler ii) 7 Kg/Sq.Cm g)- 10T/Boiler

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7.1 Bank Guarantees

All Bank Guarantees furnished by SEPCO shall be unconditional and irrevocable and from mutually acceptable bank. In the event it is a Chinese/Foreign bank then the bank guarantee is to be confirmed by an Indian Bank acceptable to us. All the bank confirmation charges in India will be to our account.

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8. Price:

The following is the price break-up:

Offshore services:

a) Design and Engineering:	US\$	7,638,750-
b) Project Management:	US\$	30,009,375-
Offshore Supply	US\$	119,491,875-
SUB TOTAL	US\$	157,140,000

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9.1 Price basis:

Four separate contracts will be finalized - Offshore Services (including Design and Project Management), Offshore Supply, Onshore Supply and Onshore Services.

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10 **Schedule:**

- Unit one completion in 24 months from contract effective date.
- Unit two completion in 25 months from contract effective date.
- Unit three completion in 28 months from contract effective date
- Unit four completion in 31 months from contract effective date

11. It is on 26.04.2003 that the appellant entered into five agreements with BALCO. One such agreement is a Guarantee Agreement involving the four projects. The relevant portion of this Guarantee Agreement is reproduced below:

**Guarantee Agreement For
EPC Contract on Turnkey Basis
for the
BALCO Captive Power Plant Project**

WHEREAS:

A. The Owner/Purchaser is desirous of procuring, setting

up and bringing into commercial operation a 4 x 135 MW coal based captive power plant ("the Facility") at BALCO, Korba in the State of Chhattisgarh, India (hereinafter called "the Project").

- B. The Owner/Purchaser represents, warrants and declares that it has obtained and/or obligated to obtain all necessary statutory permissions/clearances required to be obtained by the Owner/Purchaser for setting up the Facility and will arrange all necessary finance in relation to the Project.
- C. The Guarantor represents, warrants and declares that it has in its possession necessary specialised knowledge and expertise for design, engineering, manufacture, supply, erection, commissioning of the Facility and for demonstration of Performance Guarantees thereof.
- D. On the basis of aforesaid representation, warranty and declaration the Owner/Purchaser has engaged the Guarantor to design, engineer, manufacture, supply, erect, commission and demonstrate the Performance Guarantees for the Facility on turnkey basis.**
- E. **For the sake of operational convenience, the Owner/Purchaser has concluded following 4 (four) separate contracts (hereinafter referred to as "the Project Contracts") directly with the Guarantor.** In all the above mentioned Project Contracts the Guarantor is referred to as the Contractors or Suppliers and are hereinafter collectively referred to as "the Project Contractors".
 - (i) An Offshore Supply Contract for manufacture, procurement and supply of Plant and Equipment and other goods on CFR Indian Sea Port basis;
 - (ii) **An Offshore Engineering & Technical Services Contract for design, engineering, project management, supervision and other technical services including demonstration of Performance Guarantees of the Facility outside India;**
 - (iii) An Onshore Supply Contract for manufacture,

procurement and supply of Plant and Equipment and other goods on FOR Project Site basis;

- (iv) An Onshore Services & Construction Contract for civil works, erection, testing and commissioning of Plant and Equipment, inland transportation, storage, comprehensive insurance and demonstration of Performance Guarantees of the Facility.

F. In consideration of the Owner/Purchaser awarding the Project Contracts to the Project Contractors, the Guarantor desires to irrevocably guarantee the Owner/Purchaser under this Agreement sole and exclusive responsibility and liability on behalf of the Project Contractors till all the obligations, duties and performance of the Project Contractors are duly fulfilled and discharged under the Project Contracts.

1. Scope of Work

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The Guarantor further undertakes that the scope of works under the Project Contracts in the aggregate shall be deemed to be the whole works, without any omission, gap or alteration due to interpretation of each individual definition of scope of works under each applicable Project Contract.

2. Guarantee

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2.1.2 Completion of the Facility within the stipulated time being the most important feature of the Project, the Project Contractors shall arrange to effect deliveries of the materials, Plant and Equipment in the manner and sequence so as to meet the Completion Schedule as specified in Schedule-3 of the Project Contracts.

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4. EFFECTIVENESS AND TERMINATION

This Guarantee shall come into force and effect upon the receipt of the Project Contractors of the Notices to Proceed under all the Project Contracts and shall remain in force till all the obligations, duties and performance of the Project Contractors are duly fulfilled and discharged under the Project Contracts or the earlier date of the termination of this Guarantee by mutual consents.

'If under any of the Project Contracts, the Project Contractor is entitled to an extension of the time of completion, such extension shall be granted for all the other Project Contracts.'

It is mutually acknowledged and agreed that the termination of any of the Project Contracts in accordance therewith by any of the Parties shall be deemed to be a termination of each of the other Project Contracts.

(emphasis supplied)

12. According to the appellant, it had offered the bid for composite EPC works contract on a turnkey basis but four separate project contracts were executed only for the sake of operational convenience, and the Guarantee Agreement also states that for the sake of operational convenience four separate contracts (called the Project Contracts) had been executed. As the Guarantee Agreement provides that the termination of any Project Contract shall be deemed to the termination of the other Project Contracts, the appellant believed that the project contract for Off-shore Engineering and Technical Services could not have been considered as an independent contract for levy of service tax.

13. A show cause notice dated 26.05.2006 was, however, issued to the appellant proposing to levy service tax on Off-shore Engineering and Technical services by treating it as an independent contract. The

appellant filed a reply reiterating that the Guarantee Agreement and the four project contracts constituted a single transaction of an EPC contract on a turnkey basis and no part of it could be subjected to service tax separately. The Commissioner, in the impugned order 31.01.2007, accepted the contention of the appellant that the Guarantee Agreement and the four project contracts are EPC contract on turnkey basis relating to the captive power project, but treated all the four contracts as separate contracts and, therefore, confirmed the demand of service tax on the Off-shore Engineering and Technical Services contract with penalty. The relevant portion of the order passed by the Commissioner is reproduced below:

6.5 on going through all the five contracts as referred to by the Noticee in their defence reply I find that the Guarantee Agreement for EPC Contract on Turnkey basis is the base contract for the other four contracts and the scope of the work in all the these four contracts are different for different contract prices; that the four contracts are independent of each other in so far as the scope of works and the contract prices are concerned; that the Noricee have entered into the said four contracts including the impugned contract with M/s. BALCO for different scope of works and activities as under:-

Contract No. BALCO-SEPCO-01:	Off shore Supply Contract for the BALCO Captive Power Plant Project.
Contract No. BALCO-SEPCO-02:	Contract for Off shore Engineering and Technical Services for the Captive Power Plant Project.
Contract No. BALCO-SEPCO-03:	On shore Supply contract for the Captive Power Plant Project.
Contract No. BALCO-SEPCO-04:	On shore Services & Construction Contract for the Captive Power Plant Project.

6.5.1 **On perusal of the above four contracts and Guarantee Agreement for EPC contract on Turnkey Basis relating to the Captive Power**

Plant Project it is observed that each of the contract has been executed for a different set of works and activities and for a specified contract price as mentioned in each of the contracts. It is thus apparent from the contracts themselves that all the four contracts under the EPC contract are separate contracts and these are segregated from one another in terms of scope of works and prices as well. The Noticee's contention that service tax cannot be levied on these activities by vivisecting the composite contract is therefore has no merit in view of the fact that the impugned contract is itself for 'engineering and technical services' for the Captive Power Plant Project for a specified contract price.

(emphasis added)

14. Shri P.K. Sahu, learned counsel appearing for the appellant made the following submissions:

- (i) A composite EPC works contract on turnkey basis had been executed. Though five contracts may have been executed for the sake of convenience but as the Guarantee Agreement involving the four projects contains a cross fall breach condition, the four project contracts are integral part of a single works contract transaction. In support of this contention reliance has been placed on the following decisions:

- (a) **BSES Ltd. (Now Reliance Energy Ltd.)**
versus **Fenner India Ltd. and Another**⁶;
- (b) **Indure Limited and Another** versus
Commercial Tax Officer and Others⁷;
- (c) **Commissioner of C. Ex. & Cus., Kerala**
versus **Larsen & Toubro Ltd.**⁸;

6. Civil Appeal No. 955 of 2006, decided on 03.02.2006
7. Civil Appeal No. 1123 of 2003, decided on 03.09.2006
8. 2015 (39) S.T.R. 913 (S.C.)

(d) **Commr. of C. Ex. & Customs, Vadodara**
versus **Larsen & Toubro Ltd.**⁹;

(e) **C.C.E., Vadodara** versus **Ishikawajima –**
Harima Heavy Ind. Co. Ltd.¹⁰; and

(f) **ABB Ltd.** versus **Commissioner of Service**
Tax, Bangalore¹¹;

(ii) The activities for the Off-shore services relating to the Off-shore Engineering and Technical Services contract took place in China and hence the same were not liable to be taxed in India. In support of this contention, reliance has been placed on the decision of the Supreme Court **All India Federation of Tax Practitioners vs. Union of India**¹²;

(iii) The extended period of limitation could not have been invoked in the facts and circumstances of the case; and

(iv) Penalty was not leviable.

15. Shri Ravi Kapoor, learned authorised representative appearing for the department, however, supported the impugned order and submitted that it does call for any interference in this appeal.

16. The submissions advanced by the learned counsel for the appellant and the learned authorized representatives appearing for the department have been considered.

17. According to the appellant, EPC contract on a turnkey basis was executed with BALCO to set up a captive a power plant, though for the sake of convenience the contractually liability was spread into five

9. 2006 (4) S.T.R. 63 (Tri.-Mumbai)
10. 2009 (13) S.T.R. 650 (Tri.- Ahmd.)
11. 2010 (20) S.T.R. 610 (Tri.-Bang.)
12. 2007 (7) S.T.R. 625 (S.C.)

contracts. To support this plea, the appellant has placed the relevant clauses of the Tender Enquiry which shows that BALCO desired to have a captive power plant installed on EPC basis. The Bid Document submitted by the appellant also shows that the appellant had offered a bid for the EPC contract. The Letter of Intent dated 24.01.2003 also shows that it was for EPC contract. According to the appellant, the cross fall breach condition in the Guarantee Agreement, which is to the effect that termination any of the four project contracts, would be deemed to be termination of all the project contracts would show that all the four projects are integral part of a single works contract and each contract could not have been subjected separately to service tax.

18. In order to appreciate this contention it would appropriate to refer to the provisions of section 65 (105)(zzzza) of the Finance Act that deal with levy of service tax on execution of works contract and the relevant portion is reproduced below:

"65(105)(zzzza):- "Taxable service" means any service provided or to be provided, to any person, by another person in relation to the execution of works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

Explanation- For the purposes of this sub-clause, "works-contract" means a contract wherein-

(i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and

(ii) such contract is for the purposes of carrying out,-

(a) xxxxxxxxx

(b) xxxxxxxxx

(c) xxxxxxxxx

(d) xxxxxxxxx

**(e) turnkey projects including engineering
procurement and construction or
commissioning (EPC) projects;
(emphasis supplied)**

19. It would, therefore, be seen that a works contract means a contract for the purpose of carrying out, amongst others, turnkey projects including EPC projects. The Commissioner did record a finding, after perusal of the five contracts, that the Guarantee Agreement for EPC contract on turnkey basis is the base contract for the other four contracts, but observed that since the scope of work in all these four contracts is different for different prices, the four contracts are independent of each other and, therefore, would individually be subjected to levy of service tax.

20. As noticed above, the Tender Enquiry shows that BALCO intended to have a captive power plant installed at its site and the specification was based on EPC basis. The Scope of Works, as mentioned in the Bid Document, shows that the appellant had offered a bid for EPC contract on turnkey basis and included planning, design, engineering, project management, manufacture & procurement, supply, ocean transportation including marine insurance, custom clearance, inland transportation including transit insurance, storage & handling, civil works, erection, testing, commissioning, insurance, training, trial operation and handing over of the complete equipment and works for 5x135 MW coal-fired power plant as described in the Volume II (Technical Proposal) and Volume III (Bid Proposal Sheets). SEPCO was also to be responsible for the successful execution of performance guarantees tests for the entire Plant.

21. The Price Clause contained in clause 2 of the Bid Document also shows that the price covering the aforesaid works described in clause 1 on turnkey basis was USD228,923,000.00 and only for the sake of convenience of bid evaluation and future tax clearance during the execution of the contract, the bid price was broken up into following five portions:

Design & Engineering	USD 12,082,000.00
Other Offshore Services	USD 54,571,000.00
Offshore Supplies	USD 162,270,000.00
Onshore Supplies	INR 1,466,910,000.00
Onshore Services	INR 2,288,300,000.00

22. The Letter of Intent issued by the BALCO also shows that it was for the EPC contract on behalf of Sterlite Group, for design, engineering, manufacture, supply, transportation to project site, construction, erection, testing, commissioning, PG testing and associated services for 4 X 135MW captive power plant as specified in the technical specifications of tender.

23. The price break-up for the Off-shore services was stated to be:

Off-shore services:

a)	Design and Engineering:	US\$	7,638,750-
b)	Project Management:	US\$	30,009,375-

Offshore Supply	US\$	119,491,875-
SUB TOTAL	US\$	157,140,000

24. The clauses of the Guarantee Agreement also shows that a 4X135 MW coal based captive power plant was to be set up for which purpose the Guarantor had been engaged to design, engineer, manufacture, supply, erect, commission and demonstrate the

performance guarantees for the facility on turnkey basis. Clause E of the Guarantee Agreement specifically states that the four separate contracts called the Project Contract had been executed for the sake of operational convenience only. It has also been stated that the Guarantor undertakes that the Scope of Works under the Project Contract in the aggregate shall be deemed to be the whole works and that the termination of any of the Project Contracts shall be deemed to be termination of each of other project contracts. There was only a single performance Bank Guarantee for all the four project contracts and the terms of the contracts of all the contracts also show that the whole arrangement was an EPC contract for construction of a power plant on turnkey basis. The aforesaid cross fall breach condition in the Guarantee Agreement makes it clear that separate project contracts are integral parts of a single works contract transaction.

25. In this connection, it would be useful to refer to the decision of the Supreme Court in **BSES**. The appellant had been awarded a contract for a captive power plant. The appellant, in turn, awarded a part of that work to M/s. Fenner India Ltd. and four work orders/purchase orders were issued. Clause 4 of the "wrap-around agreement" is as follows:

"In case of any material breach of any or all the contracts, BSES shall have the right to embark upon the retentions and encashment of bank guarantees of all the contracts."

26. The Supreme Court held that this was a composite contract executed on a turnkey basis and only for the sake of convenience it had been split up into four sub-contracts. The relevant portion of the judgment is reproduced below:

"22. Upon a careful reading of this agreement, we are satisfied that the contract though, for the sake of convenience, was split up into four subcontracts (viz. the four work/ purchase orders), was a composite contract executable on a turnkey basis. The terms of this turnkey contract were reduced into writing by the "wrap-around agreement" of 10.5.2000. We are of the definite view that under the "wrap-around agreement", the Appellant had the right to encash any or all of the guarantees for any breach in any of the terms of the four contracts."

27. In **Indure Limited** tenders were invited by NTPC for construction of ash handling plant package, for its Farakka Super Thermal Power Project on turnkey basis. The bidder was required to quote a lump sum price in its proposal for the entire scope of work covered under the bid documents. After the bidding, the total contract was agreed to be divided into two separate contracts, (i) supply contract, and (ii) erection contract, with the cross-fall breach clause wherein breach of either of the contracts would entitle the NTPC to cancel the other contract also. The Supreme Court treated supply contract and separate erection contract linked by cross-fall breach clause (i.e. default in one contract deemed to constitute default in the other) as one contract executed on turnkey basis. The observations of the Supreme Court are as follows:

"9. By way of Letter of Award dated 16.08.1988, N.T.P.C awarded two contracts to the Company for performing the work of erection of aforesaid plant on Turnkey Basis. Even though, two contracts were entered into between the parties but in nutshell it was only one contract for the simple reason that N.T.P.C kept a right with it with regard to cross fall breach clause meaning thereby that default in one contract would tantamount to default in another and whole contract was liable to be cancelled."

28. In **Larsen & Tourbo**, decided by the Tribunal, the appellant was awarded contract for residual process design, detailed engineering, procurement, supply, construction, fabrication, erection, installation, testing commissioning and mechanical guarantee of the plant. The lumpsum price for the turnkey project was divided as follows:

Sr. No.	Description	Price Contract No.	
		PROJ/SDU/DR/53 of	PROJ/HDT/DR/54 of
1.	Lump sum price for Residual Process Design and detailed Engineering	Rs.9,00,90,000/-	Rs. 8,31,60,000/-
2.	Lump sum price for supply portion	Rs. 51,54,16,100/-	Rs. 54,64,00,000/-
3.	Lump sum price for Construction installation portion	Rs. 38,36,24,000/-	Rs. 35,21,04,000/-

29. Service tax was demanded on the amount mentioned at Serial No. 1 under the category consulting engineer service. The Tribunal, relying on the decision of the Tribunal in **Daelim Industrial Co. Ltd.** versus **Commissioner of C. Ex., Vadodara**¹³, held that the contract was essentially for construction of a plant and the services formed integral part of the contract. The contract was executed on turnkey basis. A composite works contract cannot be vivisected and part of it subjected to service tax under the category of consulting engineer service. The Civil Appeal CA 4468/2006 filed by the department against this decision of the Tribunal was dismissed by the Supreme Court, which decision is reported in **Larsen and Toubro**.

30. Similar views were taken by the Tribunal in e **Ishikawajajima – Harima Heavy Ind.** and **ABB Ltd.**

13. 2003 (155) E.L.T. 457 (Tri.-Del.)

31. The Supreme Court in **Larsen and Toubro** held that works contract service became taxable w.e.f. 01.06.2007 and that any segment of works contract service was not taxable under a different category. The submission advanced by the Revenue that service tax was payable on the amount earmarked for drawing, design, etc., activities in a works contract under the category of consulting engineer service was repelled.

32. Such being the position, it would not be necessary to examine the remaining contentions advanced by learned counsel for the appellant that the Off-shore services could not have been taxed in India or that the extended period of limitation could not have been invoked.

33. Thus, for all the reasons stated above, the impugned order dated 31.01.2007 passed by the Commissioner cannot be sustained and is set aside. The appeal is, accordingly, allowed.

(Order Pronounced on **19.09.2022**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)