CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

SERVICE TAX APPEAL NO. 50375 OF 2018
WITH
SERVICE TAX MISCELLANEOUS APPLICATION NO. 50120 OF 2021

[Arising out of Order-in-Original No. DLI-SVTAX-002-COM-001-17-18 dated 2.5.2017 passed by the Commissioner, Service Tax Commissionerate, Delhi-II]

M/s Sconce Global Private Limited **Appellant**
K-57, Sarita Vihar,
New Delhi – 110076.

Versus

Commissioner of Service Tax, New Delhi **Respondent**

AND
SERVICE TAX APPEAL NO. 50395 OF 2021

[Arising out of Order-in-Original No. 36/TPS/PC/CGST/DSC/2020-21 dated 24.11.2020 passed by the Principal Commissioner, Central Goods And Service Tax, New Delhi]

M/s Sconce Global Private Limited **Appellant**
K-57, Sarita Vihar,
New Delhi – 110076.

Versus

Commissioner of Service Tax, New Delhi **Respondent**

APPEARANCE:

Shri A.K. Sood & Ms. Madhumita, Advocates - for the Appellant

Dr. Radhe Tallo, Authorised Representative for the Respondent

CORAM:

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

DATE OF HEARING: 21.07.2022
DATE OF DECISION: 27.07.2022

FINAL ORDER NOs. 50654-50655/2022

P. V. Subba Rao

These two appeals are filed on the same issue and hence are being disposed of together. Miscellaneous application No. 50120 of

2021 appears to have been wrongly filed in ST/50375/2018 as it refers to impugned order in ST/50395/2021. Nevertheless, the prayer in the Miscellaneous application is to link and hear both these appeals together which we accept.

2. We have heard learned Counsel for the appellant and learned Authorised Representative for the Revenue.

3. The facts of the case, in brief, are that the appellant is engaged in the business of setting up stalls for various companies at exhibitions. Photographs of some stalls such as Korea Pavilion 2014 World Food of India, Mumbai, Bharat Electronics Stall, 2011, ABB Stall at ACREX, 2008, Bengaluru ABB Stall at Elecrama, 2012, Bengaluru were produced by the learned Counsel for the appellant in the synopsis. The appellant had classified its services under the head of erection, commissioning and installation service and commercial or industrial construction service prior to June 01, 2007 and it has classified them as "works contract service" after June 01, 2007 when Section 65(105)(zzzza) was introduced as a separate taxable service in the Finance Act, 1994. Show cause notices dated 20.04.2012, 12.12.2012, 2.5.2014, 23.4.2015, 5.5.2016 and 18.4.2018 were issued by the Revenue covering the period 2006-2007, 2016-2017. The first five show cause notices were disposed of by order in original dated 2.5.2017 which has been assailed in ST/50375/2018. Show cause notice dated 18.4.2018 was decided by order in original dated 24.11.2020 which is impugned in Appeal ST/50395/2021. All the show cause notices proposed classifying the appellant's service under the head "Pandal and Shamiana" services and recover differential duty from the appellant. The

impugned orders have demanded and confirmed recovery of differential duty aggregating to Rs. 16.75 crores. Further penalties were imposed under Sections 75, 77 and 78 of Finance Act, 1994 are imposed upon the appellant. The details of the show cause notices are as follows:

Sr. No.	Show Cause Notice No. and date	Period Involved	Service Tax demanded	Remarks
1.	15/Audit/2012-13 dated 20.04.2012	2006-07 to 2010-11	Rs.5,31,12,526/-	SCN I
2.	688/2012-13 dated 20.12.2012	2011-12	Rs.1,21,28,612/-	SCM 2
3.	833 dated 12.05.2014	2012-13	Rs.2,41,57,580/-	SCN 3
4.	1140 dated 23.04.2015	2013-14	Rs.2,78,06,531/-	SCN 4
5.	16/Div-X/2016-17 dated 05.05.2016	2014-15	Rs.1,09,08,289/--	SCN 5
	Grand Total		**Rs.12,81,13,538/-**	

4. Learned Counsel for the appellant submits that the appellant provides "works contract service" by designing and constructing office interiors, customized exhibitions booths/stalls, television studios and retail fit outs. Its services include (a) lay out and designing of exhibition or interior space as per client's design and (b) fabricating and installing interior projects as per client's design.

5. The clients of the appellant are corporations, multinational companies, Government agencies, different trading associations, etc. who set up stalls and pavilions at exhibitions to promote their own activities. The appellant plans architectural lay out and designs in 2D/3D according to the clients' requirements and once the layout is approved, the appellant prepared detailed specifications and bills of quantity as per the approved design and submits cost proposal to the client on turnkey project basis that includes, designing, purchase, procurement, fabrication and installation, etc. Thereafter, it renders the services. The appellant

has been discharging its VAT liability at the applicable rates on these works contracts. Therefore, the services can only be treated as "works contract services" and not as services simplicitor.

6. Further, the differential duty confirmed by the Commissioner the impugned order has not even appropriated the amount of service tax already paid. It has further been submitted by the learned Counsel that while passing the impugned order no efforts have been made to reconcile the information provided by the appellant i.e., copies of ST-3 returns, details of turnover, service tax paid which are otherwise available with the Department also. He further submitted that till May 2007, the appellant classified its services under the category of "commercial or industrial construction service" and was discharging service tax liability after availing abatement of 67% under Notification No. 1/2006-ST dated 1.3.2006. From 1.6.2007 it has classified its services under the category of works contract service and discharged liability under works contract (Composition Scheme for payment of Service Tax) Rules, 2007 as applicable from time to tome and had filed returns with the Department which were accepted without any objection.

7. Notwithstanding the above submissions, learned Counsel for the appellant submits that it is undisputed that all these contracts involved both providing the service and using the materials in providing them. Such composite works contract can only be classified under the head "works contract service" as per the judgment of Supreme Court in **Commissioner of Central Excise**

& Customs Vs. Larsen and Toubro Ltd.[1]. Therefore, the entire demand is not sustainable. Consequently, the penalties imposed also need to be set aside.

8. Learned Authorised Representative reiterates the findings of the impugned order. He does not dispute the facts submitted by the learned Counsel with respect to the appellant's activities.

9. We have considered the submissions made by both sides. It is undisputed that the services provided by the appellant were on turnkey basis and a composite amount is charged by the appellant for its services and for the goods used in providing them. It is undisputed that the appellant treated this as works contract services and paid VAT to the respective State Governments as appropriate. The appellant had classified these services with effect from 1.6.2007 under the head "works contract service" and had classified them under the heads of "commercial or industrial construction service" and "erection commissioning or installation service" prior to this date and paid service tax. Even while paying service tax under these heads before 1.6.2007 the appellant had claimed abatement as available under various notifications.

10. It has been settled by the Supreme Court in the case of **Larsen & Toubro** that composite works contract services involving supply of goods/deemed supply of goods and rendering services are a separate species of contract known to commerce and must be treated as works contract services only. Such services become taxable under the head of works contract service under Section 65(105)(zzzza) of the Finance Act, 1994 with effect from 1.6.2007.

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1 **2015 (39) STR 913 (SC)**

Prior to this there was no charge of service tax on works contract services. Therefore, there was no levy of service tax on such composite services under any other head before 1.6.2007. Relevant portions of the judgment are as below:

> **"17. We find that the assessees are correct in their submission that a works contract is a separate species of contract distinct from contracts for services simpliciter recognized by the world of commerce and law as such, and has to be taxed separately as such**. In *Gannon Dunkerley*, 1959 SCR 379, this Court recognized works contracts as a separate species of contract as follows :-
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> > "To avoid misconception, it must be stated that the above conclusion has reference to works contracts, which are entire and indivisible, as the contracts of the respondents have been held by the learned Judges of the Court below to be. The several forms which such kinds of contracts can assume are set out in Hudson on Building Contracts, at p. 165. It is possible that the parties might enter into distinct and separate contracts, one for the transfer of materials for money consideration, and the other for payment of remuneration for services and for work done. In such a case, there are really two agreements, though there is a single instrument embodying them, and the power of the State to separate the agreement to sell, from the agreement to do work and render service and to impose a tax thereon cannot be questioned, and will stand untouched by the present judgment." (at page 427)
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> **18.** Similarly, in *Kone Elevator India (P) Ltd.* v. *State of T.N.* - (2014) 7 SCC 1 = 2014 (34) S.T.R. 641 (S.C.) = 2014 (304) E.L.T. 3 (S.C.), this Court held :-
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> > "Coming to the stand and stance of the State of Haryana, as put forth by Mr. Mishra, the same suffers from two basic fallacies, first, the supply and installation of lift treating it as a contract for sale on the basis of the overwhelming component test, because there is a stipulation in the contract that the customer is obliged to undertake the work of civil construction and the bulk of the material used in construction belongs to the manufacturer, is not correct, as the subsequent discussion would show; and second, the Notification dated 17-5-2010 issued by the Government of Haryana, Excise and Taxation Department, whereby certain rules of the Haryana Value Added Tax Rules, 2003 have been amended and a table has been annexed providing for "Percentages for Works Contract and Job Works" under the heading "Labour, service and other like charges as percentage of total value of the contract" specifying 15% for fabrication and installation of elevators (lifts) and escalators, is self-contradictory, for once it is treated as a composite contract invoking labour and service, as a natural corollary, it would be works contract and not a contract for sale. To elaborate, the submission that the element of labour and service can be deducted from the total contract value without

> treating the composite contract as a works contract is absolutely fallacious. In fact, it is an innovative subterfuge. We are inclined to think so as it would be frustrating the constitutional provision and, accordingly, we unhesitatingly repel the same." (at para 60)

19. In *Larsen & Toubro Ltd.* v. *State of Karnataka*, (2014) 1 SCC 708 = 2014 (34) S.T.R. 481 (S.C.) = 2014 (303) E.L.T. 3 (S.C.), this Court stated :-

> "In our opinion, the term "works contract" in Article 366(29-A)(b) is amply wide and cannot be confined to a particular understanding of the term or to a particular form. The term encompasses a wide range and many varieties of contract. Parliament had such wide meaning of "works contract" in its view at the time of the Forty-sixth Amendment. The object of insertion of clause (29-A) in Article 366 was to enlarge the scope of the expression "tax on sale or purchase of goods" and overcome Gannon Dunkerley (1) [*State of Madras* v. *Gannon Dunkerley and Co. (Madras) Ltd.*, AIR 1958 SC 560 : 1959 SCR 379]. Seen thus, even if in a contract, besides the obligations of supply of goods and materials and performance of labour and services, some additional obligations are imposed, such contract does not cease to be works contract. The additional obligations in the contract would not alter the nature of contract so long as the contract provides for a contract for works and satisfies the primary description of works contract. Once the characteristics or elements of works contract are satisfied in a contract then irrespective of additional obligations, such contract would be covered by the term "works contract". Nothing in Article 366(29-A)(b) limits the term "works contract" to contract for labour and service only. The learned Advocate General for Maharashtra was right in his submission that the term "works contract" cannot be confined to a contract to provide labour and services but is a contract for undertaking or bringing into existence some "works". We are also in agreement with the submission of Mr. K.N. Bhat that the term "works contract" in Article 366(29-A)(b) takes within its fold all genre of works contract and is not restricted to one specie of contract to provide for labour and services alone. Parliament had all genre of works contract in view when clause (29-A) was inserted in Article 366." (at para 72)

42. It remains to consider the argument of Shri Radhakrishnan that post 1994 all indivisible works contracts would be contrary to public policy, being hit by Section 23 of the Indian Contract Act, and hit by *Mcdowell's* case.

43. 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.

44. 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.

45. We, therefore, allow all the appeals of the assessees before us and dismiss all the appeals of the revenue."

(emphasis supplied)

11. Since it is undisputed that the appellant's contract involved provisions of services as well as supply/deemed supply of goods they can only be classified under the head "works contract services" as per the law laid down in Supreme Court in **Larsen & Toubro**. Such services could not have been charged with service tax under any other head either before or after 1.6.2007. The show cause notices demanding service tax under the head "Pandal and Shamiana services" from the appellant, therefore, cannot be sustained. Consequently, the impugned orders need to be set aside.

12. The impugned orders are set aside and the appeals are allowed with consequential relief, if any to the appellant. The Miscellaneous application stands disposed of.

(Pronounced in open Court on 27.07.2022)

(Justice Dilip Gupta)
President

(P.V. Subba Rao)
Member (Technical)

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