

## Service tax not leviable on indivisible works contract for the period prior to the introduction of the Finance Act, 2007 - SC

22 September 2022



## Summary

The Supreme Court (SC) has held that service tax is not leviable on the indivisible works contract for the period prior to the introduction of specific taxable entry, i.e., Section 65(105) (zzzza) pertaining to works contracts vide the Finance Act, 2007. The SC stated that the judgment in the case of Larsen and Toubro Limited (L&T) has been correctly decided and does not call for a reconsideration insofar as the period prior to 1 June 2007 is concerned and has stood the test of time and has never been doubted earlier.

The Revenue had argued that even prior to the Finance Act, 2007, there was an elaborate mechanism for segregating the value of the goods component and the service component in a works contract. It cannot be said that there was no machinery provision to charge the service component in a composite works contracts to make it exigible to service tax. Therefore, the Revenue stated that the decision in the case of L&T was fundamentally erroneous.

## Facts of the case

- The petitioner<sup>1</sup> had filed the present appeal challenging the impugned order levying service tax on composite works contract for the period prior to Finance Act, 2007.
- The revenue had submitted the present appeal with the prayer to reconsider the already passed decision of this court in the case of L&T.
- In case of L&T, this court has specifically observed and held that on indivisible works contract, for the period prior to introduction of Finance Act, 2007, service tax was not leviable under the Finance Act, 1994.
- The revenue submitted that the decision of court in L&T is fundamentally erroneous and hence it should be revisited.
- Further, the Revenue submitted that even prior to Finance Act, 2007, there was an elaborate mechanism for segregating the value of the goods component and the service component in a works contract. Therefore, it cannot be said that there was no provision to charge service tax on the service component of Composite Works Contracts.
- However, the appellant assessee submitted that in the case of L&T, it is specifically observed that a taxable service under the Finance Act, 1994 covers service contracts simpliciter and not the Composite Works Contracts.
- Further, the appellant submitted that various courts and Tribunals have based their decision on the judgement in case of L&T. So, upon revising this judgement it would upset the decisions already taken.
- The appellant contended that the Composite Work Contract was covered in the ambit of service tax for the first time post the amendment of Finance Act, 2007.

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<sup>1</sup> M/S Total Environment, M/s GD Builders, and others

## SC observations and ruling<sup>2</sup>

- **Principle of *stare decisis*:** The SC relied on various judgments and noted that the previous decisions can be revised only when they are proceeded upon a mistaken assumption or is contrary to a decision of another court, which the court is bound to follow. The decisions rendered by a coordinate bench is binding on the subsequent benches of equal or lesser strength and a coordinate bench of the same strength cannot take a contrary view than what has been held by another coordinate bench. Therefore, based on the principle of *stare decisis*, the SC held that the judgement in case of L&T neither needs to be revisited nor referred to a larger bench.
- **Doctrine of precedent:** The SC relied on judgement of K. Ajit Babu, which held that according to the doctrine of precedent, emphasis should be placed on consistency, certainty, and uniformity in field of judicial decisions. One of the basic principles of the administration of justice is that identical cases should be decided alike. There should not be any dilemma in minds of public to obey or not obey such laws.
- **Service tax was not applicable for the prior to amendment in the Finance**

**Act, 2007:** The SC held on all aforesaid submissions, that there lies no liability of service tax on indivisible /composite works contract for the period prior to the amendment in June 2007. Therefore, all such orders are quashed and set aside.

### Our comments

The issue of applicability of service tax on the composite works contract is no longer *res integra* in view of the SC's ruling in the case of L&T. The SC had held that the indivisible works contracts were not leviable to service tax for the period prior to the introduction of the Finance Act, 2007. It specifically observed and held that the works contracts on which service tax was levied under the Finance Act, 1994 is distinct from contracts of service.

This is a significant ruling and a classic example of the principle of *stare decisis* which means that when a court faces a legal argument, if a previous court has ruled on the same or a closely related issue, then the court will make their decision in alignment with the previous court's decision. Further, the ruling has reiterated that the service tax was levied on the composite works contracts for the first time pursuant to the amendment of the Finance Act, 1994 vide the Finance Act, 2007.

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<sup>2</sup> CIVIL APPEAL NOS. 6792 of 2010, 8673-8684 of 2013, 4547-4548, 6523, 6525, 6526 of 2014, 2666, 2667, 2668 of 2022 vide order dated 2 August 2022

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