Supreme Court of India

JUSTICE B.V. NAGARATHNA JUSTICE M.R. SHAH

M/s. Total Environment Building Systems Pvt. Ltd. v. The Deputy Commissioner of Commercial Taxes & Ors.

CIVIL APPEAL NOS. 8673-8684 OF 2013

2nd August 2022

Finance Act, 1994 – S.65(105)(zzzza), S.66, S.67, Central Sales Tax Act, 1956 – S.9(2), S.13(3)

Cases Cited :

1. *Paras 3, 7, 13, 18, 21: G.D. Builders Vs. Union of India, (2013) 32 STR 673 (Delhi)*
2. *Paras 3, 5, 17: Commissioner, Central Excise and Customs, Kerala Vs. Larsen and Toubro Limited, (2016) 1 SCC 170*
3. *Para 6: State of Madras Vs. Gannon Dunkerley & Co., (Madras) Ltd., (1959) SCR 379*
4. *Paras 6, 7, 10, 12, 13, 14, 17, 18, 19, 21, 22, 24, 25, 27: Larsen and Toubro Limited and Anr. Vs. State of Karnataka and Anr., (2014) 1 SCC 708*
5. *Paras 6, 20: Nagarjuna Construction Company Limited Vs. Union of India and Anr., (2013) 1 SCC 721*
6. *Paras 6, 20: Imagic Creative (P) Ltd. Vs. Commissioner of Commercial Taxes and Ors., (2008) 2 SCC 614*
7. *Paras 6, 20: T.N. Kalyana Mandapam Assn. Vs. Union of India and Ors., (2004) 5 SCC 632*
8. *Para 7: Commissioner of Service Tax and Ors. Vs. Bhayana Builders Private Limited and Ors., (2018) 3 SCC 782*
9. *Para 10: Dr. Jaishri Laxmanrao Patil Vs. Chief Minister and Ors., (2021) 8 SCC 1*
10. *Paras 10, 12: Keshav Mills Co. Ltd. Vs. Commissioner of Income Tax, Bombay North, Ahmedabad, AIR 1965 SC 1636 : (1965) 2 SCR 908*
11. *Para 10: Jarnail Singh Vs. Lachhmi Narain Gupta [(2018) 10 SCC 396]*
12. *Para 10: Dr. Shah Faesal and Ors. Vs. Union of India and Anr., (2020) 4 SCC 1*
13. *Para 10: Chandra Prakash and Ors. Vs. State of U.P. and Anr., (2002) 4 SCC 234*
14. *Para 10: M. Nagaraj Vs. Union of India, (2006) 8 SCC 212*
15. *Para 10: State of Gujarat Vs. Mirzapur Moti Kureshi Kassab Jamat, [(2005) 8 SCC 534]*
16. *Paras 10, 12: Indra Sawhney Vs. Union of India, 1992 Supp (3) SCC 217*
17. *Para 11: Government of Andhra Pradesh Vs. A.P. Jaswal, (2001) 1 SCC 748*
18. *Para 11: Union of India Vs. Raghubir Singh (Dead) by LRs. etc., (1989) 2 SCC 754*
19. *Para 11: K. Ajit Babu and Ors. Vs. Union of India and Ors., (1997) 6 SCC 473*
20. *Para 11: Sundarjas Kanyalal Bhatija and Ors. Vs. Collector Thane, Maharashtra and Ors., (1989) 3 SCC 396*
21. *Para 11: Saurashtra Cement & Chemical Industries Ltd. and another Vs. Union of India and others, (2001) 1 SCC 91*
22. *Para 11: Medley Pharmaceuticals Limited Vs. Commissioner of Central Excise and*

Customs, Daman, (2011) 2 SCC 6014

23. *Para 11: Waman Rao Vs. Union of India, (1981) 2 SCC 362*
24. *Para 11: State of Madhya Pradesh Vs. Mahalaxmi Fabric Mills Ltd., 1995 Supp (1) SCC 642*
25. *Para 19: Gannon Dunkerley (I) – State of Madras Vs. Gannon Dunkerley and Co. (Madras) Ltd., [AIR 1958 SC 560]; [1959 SCR 379]*
26. *Paras 19, 21: Gannon Dunkerley (II) ¬ Gannon Dunkerley and Co. Vs. State of Rajasthan, [1993 (1) SCC 364]*
27. *Para 19: Builders Association of India Vs. Union of India, [(1989) 2 SCC 645]*
28. *Paras 19, 21, 22: Kone Elevator India Pvt. Ltd. Vs. State of Tamil Nadu, [(2014) 7 SCC 1]*
29. *Para 19: Bharat Sanchar Nigam Ltd. Vs. Union of India, [2006] 145 STC 91 (SC)*
30. *Para 19: Commissioner of Sales Tax Vs. Purshottam Premji, [(1970) 2 SCC 287]*
31. *Para 19: State of AP v. Kone Elevators [(2005) 3 SCC 389]*
32. *Para 21: Mahim Patram (P) Ltd. Vs. Union of India,, [(2007) 3 SCC 668]*
33. *Para 21: Delhi Tribunal in Larsen & Toubro Ltd. Vs. CST, (in ST Appeal No.58658 of 2013, decided on 19.03.2015)*
34. *Para 25: Commissioner of Service Tax and Others Vs. Bhayana Builders Private Limited and Others, [(2018) 3 SCC 782]*
35. *Para 25: Bhayana Builders (P) Ltd. Vs. CST, [(2013) SCC OnLine CESTAT 1951]*

Petitioner Counsel: PRAVEEN KUMAR, Respondent Counsel: V. N. RAGHUPATHY

JUDGEMENT

M.R. SHAH, J.

1. As common question of law and facts arise in this group of appeals, they are being decided and disposed of by this common judgment and order.

2. The issue involved in the present group of appeals is, “whether, service tax could be levied on Composite Works Contracts prior to the introduction of the Finance Act, 2007, by which the Finance Act, 1994 came to be amended to introduce Section 65(105)(zzzza) pertaining to Works Contracts?”

3. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 07.10.2009 passed by the High Court of Karnataka at Bengaluru in Writ Appeal Nos. 3481-3492 of 2009 by which the Division Bench of the High Court has dismissed the said writ appeals and has confirmed the judgment and order passed by the learned Single Judge dismissing the writ petitions in which the appellant challenged the assessment orders levying service tax, on the ground of alternative remedy available by way of statutory appeal, assessee – M/s. Total Environment Building Systems Pvt. Ltd. has preferred the present appeals – Civil Appeal Nos. 8673-8684 of 2013.

3.1 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Delhi at New Delhi in Writ Petition No. 1342 of 2008 by which, relying upon the decision of the Delhi High Court in the case of G.D. Builders Vs. Union of India,

(2013) 32 STR 673 (Delhi), which is the subject matter before this Court by way of Civil Appeal No. 6523 of 2014, the Division Bench has dismissed the said writ petition and has held that it is only the service element, which is to be taxed, the original writ petitioner – assessee – YFC Projects Pvt. Ltd. has preferred the present Civil Appeal No. 6525 of 2014.

3.2 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the Division Bench of the High Court dated 13.11.2013 in Writ Petition (C) No. 4107 of 2008 by which the Division Bench of the High Court has dismissed the said writ petition, the assessee – G.D. Builders has preferred the present Civil Appeal No. 6523 of 2014.

At this stage, it is required to be noted that in the case of Commissioner, Central Excise and Customs, Kerala Vs. Larsen and Toubro Limited, (2016) 1 SCC 170, this Court has specifically overruled the judgment of the Delhi High Court in the case of G.D. Builders (supra) and has observed and held that the observations made by the Delhi High Court in paragraph 31 is wholly inaccurate in its conclusion that the Finance Act, 1994 contains both the charge and machinery for levy and assessment of service tax on indivisible works contracts.

At this stage, it is reported that as such Civil Appeal No. 6523 of 2014, now under consideration was also heard alongwith the group of appeals while deciding the case of Larsen and Toubro Limited (supra) and even the papers of Civil Appeal No. 6523 of 2014 were called for by the Bench concerned. However, it appears that by oversight and/or by inadvertence Civil Appeal No. 6523 of 2014 has not been decided and disposed of and therefore kept pending, which is now notified before this Court alongwith the other appeals.

3.3 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Delhi at New Delhi dated 09.01.2014 in Writ Petition (C) No. 6803 of 2013 by which the Division Bench of the High Court relying upon its earlier decision in the case of G.D. Builders (supra) has dismissed the said writ petition, the assessee – original writ petitioner – M/s. National Building Construction Corporation Ltd. (NBCC) has preferred the present Civil appeal No. 6526 of 2014.

3.4 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Delhi at New Delhi dated 13.11.2013 in Writ Petition No. 5046 of 2008 by which the Division Bench of the High Court has dismissed the said writ petition alongwith another writ petition in the case of G.D. Builders (supra), the assessee – M/s. Unitech Ltd. has preferred the present Civil Appeal No. 2666 of 2022 arising out of SLP (C) No. 36206 of 2014.

3.5 Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the Guwahati High Court dated 04.06.2012 passed in Writ Petition Nos. 5676 and 5678 of 2012, the original writ petitioner – assessee – NBCC has preferred the present Civil Appeal Nos. 4547-4548 of 2014.

3.6 Feeling aggrieved and dissatisfied with the impugned judgment and order dated 19.03.2015 passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) in Service Tax Stay No. 59278 of 2013 in S.T. Appeal No. 58658 of 2013, the assessee – M/s.

Larsen and Toubro Limited has preferred the present Civil Appeal No. 2667 of 2022 arising out of SLP (C) No. 21828 of 2015.

3.7 Feeling aggrieved and dissatisfied with the impugned judgment and order dated 10.03.2010 passed by the CESTAT, West Zonal Bench in Appeal No. ST/275 of 2006, the Revenue has preferred the present Civil Appeal No. 6792 of 2010.

3.8 Feeling aggrieved and dissatisfied with the impugned judgment and order dated 12.06.2015 passed by CESTAT, Mumbai in ST/Stay/3022/12-Mum in S.T. Appeal No. 873 of 2012, the assessee – M/s. L&T, Hydrocarbon Engineering Ltd. (previously known as Larsen & Toubro Ltd.) has preferred the present Civil Appeal No. 2668 of 2022 arising out of SLP (C) No. 32501 of 2015.

4. As observed hereinabove, the issue involved in the present appeals is, “whether service tax could be levied on Composite Works Contracts prior to the introduction of the Finance Act, 2007, by which the Finance Act, 1994 came to be amended to introduce Section 65(105) (zzzza) pertaining to Works Contracts?”

5. At the outset, it is required to be noted that the very issue had been considered by this Court in the case of Commissioner, Central Excise and Customs, Kerala Vs. Larsen and Toubro Limited, (2016) 1 SCC 170. In the aforesaid decision, after considering the entire scheme of levy of service tax pre-2007 and post-2007, this Court has specifically observed and held that on indivisible works contracts, for the period prior to introduction of Finance Act, 2007, service tax was not leviable under Finance Act, 1994. It is specifically observed and held that works contracts on which the service tax was levied under the Finance Act, 1994 is distinct from contracts of service.

6. Ms. Madhavi Divan, learned Additional Solicitor General, appearing on behalf of the Revenue, has not disputed that the issue involved in the present appeals is as such squarely covered by the decision of this Court in the case of Larsen and Toubro Limited (supra). However, according to Ms. Madhavi Divan, the decision of this Court in the above case, holding that there was no service tax leviable on works contracts prior to the amendment by the Finance Act, 2007 needs to be re-considered.

6.1 In support to her prayer to re-consider the decision of this Court in the case of Larsen and Toubro Limited (supra), Ms. Madhavi Divan, learned Additional Solicitor General has made a number of submissions and has taken us to the legislative history pertaining to the service tax. She has also taken us to the definition of the Works Contract and what can be said to be Works Contracts. She has also taken us through a number of other decisions of this Court including the decisions in the case of State of Madras Vs. Gannon Dunkerley & Co., (Madras) Ltd., (1959) SCR 379; Larsen and Toubro Limited and Anr. Vs. State of Karnataka and Anr., (2014) 1 SCC 708; Nagarjuna Construction Company Limited Vs. Union of India and Anr., (2013) 1 SCC 721; Imagic Creative (P) Ltd. Vs. Commissioner of Commercial Taxes and Ors., (2008) 2 SCC 614; and T.N. Kalyana Mandapam Assn. Vs. Union of India and Ors., (2004) 5 SCC 632.

6.2 It is vehemently submitted by Ms. Madhavi Divan, learned Additional Solicitor General

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 is the case on behalf of the Revenue that it cannot be said that there was no machinery provision to charge as such the service component in a Composite Works Contracts in order to make it excisable service tax. Therefore, it is the case on behalf of the Revenue that the observations and the findings recorded by this Court in the case of Larsen and Toubro Limited (supra) that there was no service tax leviable on Works Contracts prior to the amendment by the Finance Act, 2007 is fundamentally erroneous and contrary to, and in the teeth of the well settled principles laid down by previous judgments, including the judgments passed by Larger Benches of this Court referred to hereinabove. However, for the reasons stated hereinbelow, we do not propose to elaborately consider the submissions made by Ms. Madhavi Divan, learned Additional Solicitor General on merits and made in support of her request to re-consider the decision of this Court in the case of Larsen and Toubro Limited (supra).

7. On the other hand, Shri Arvind P. Datar, learned Senior Advocate, appearing on behalf of some of the assessees and other learned senior counsel appearing on behalf of the respective assessees have vehemently submitted that as such, the issue involved in the present appeals is squarely covered by the decision of this Court in the case of Larsen and Toubro Limited (supra). It is submitted that in most of the appeals, which are arising out of the judgments and orders passed by the High Court of Delhi, the High court has followed its decision in the case of G.D. Builders (supra). That the said decision of the Delhi High Court in the case of G.D. Builders (supra) has been held to be wholly incorrect by this Court in the case of Larsen and Toubro Limited (supra). He has taken us to the relevant observations made by this Court in the case of Larsen and Toubro Limited (supra) in paragraphs 28, 29, 30, 31, 32, 33, 38 and 39.

7.1 It is vehemently submitted by Shri Datar, learned Senior Advocate appearing on behalf of some of the assesses that in the case of Larsen and Toubro Limited (supra), it is specifically observed that a taxable service under the Finance Act, 1994 covers service contracts simpliciter and not the Composite Works Contracts (reliance is placed upon the observations made in paragraphs 23 and 29 of the said decision). It is contended that while referring to exemption notifications in paragraph 42, it has been specifically observed and held that since the levy of service tax has been found to be non-existent, no question of any exemption would arise. It is further urged by Shri Datar, learned Senior Advocate appearing on behalf of some of the assesses that the decision of this Court in the case of Larsen and Toubro Limited (supra) has been subsequently followed by this Court in the case of Commissioner of Service Tax and Ors. Vs. Bhayana Builders Private Limited and Ors., (2018) 3 SCC 782. That after following and considering the decision of this Court in the case of Larsen and Toubro Limited (supra), this Court dismissed the appeals preferred by the Revenue.

7.2 It is further submitted by Shri Datar, learned Senior Advocate appearing on behalf of some of the assesses that after 2015, the decision of this Court in the case of Larsen and Toubro Limited (supra) has been consistently followed by all the High Courts in the country and the various Tribunals. It is submitted that therefore, if after a period of six to seven

years, the decision of this Court in the case of Larsen and Toubro Limited (supra) is to be re-considered at the instance of the Revenue, it may upset the decisions already taken by the Tribunals and the various High Courts. It is submitted that therefore on the principle of stare decisis, this Court may not take a contrary view than the view taken by this Court in the case of Larsen and Toubro Limited (supra) and/or may not re-consider the same now at this length of time at the instance of the Revenue, more particularly, when the Revenue did not file any review application earlier to review the decision given by this Court in the case of Larsen and Toubro Limited (supra).

7.3 It is further submitted by Shri Datar, learned Senior Advocate appearing on behalf of some of the assesses that some of the appeals in the present case arise out of the interim orders passed by the Tribunals. That thereafter, final orders have been passed by the Tribunals by relying upon the decision of this Court in the case of Larsen and Toubro Limited (supra) and the Revenue has not challenged the final decision. Therefore, as such, the Revenue has accepted the decisions in almost all cases, which have already attained the finality.

7.4 Shri Datar, learned Senior Advocate appearing on behalf of some of the assesses has also made elaborate submissions on non-levy of service tax on the Composite Works Contracts prior to the Finance Act, 2007. He has also taken us through the speech made by the then Hon'ble Finance Minister while moving the amendment in the Parliament while introducing the Finance Act, 2007. It is submitted that for the first time, the service tax is levied on the Composite Works Contracts pursuant to the Finance Act amendment made vide Finance Act, 2007. However, for the reasons to be recorded hereinbelow, we do not propose to elaborately deal with and/or consider the elaborate submissions made on behalf of the respective parties on whether the service tax was leviable on Composite Works Contracts prior to Finance Act, 2007 or not and on whether the decision of this Court in the case of Larsen and Toubro Limited (supra) is required to be re-considered, as now submitted and/or prayed on behalf of the Revenue.

8. Heard, Ms. Madhavi Divan, learned ASG appearing on behalf of the Revenue and Shri Arvind Datar, learned Senior Advocate and other learned senior and other counsel appearing on behalf of the respective assessees.

9. The short question which is posed for consideration of this Court is, "whether for the period prior to introduction of the Finance Act, 2007, the service tax would be leviable on the Composite Works Contracts?"

10. At the outset, it is required to be noted that whether post-2007, the service tax was leviable on Composite Works Contracts is now no longer res integra in view of the direct decision of this Court in the case of Larsen and Toubro Limited, (supra).

10.1 Ms. Divan, learned ASG is not disputing that in the case of Larsen and Toubro Limited (supra), this Court has specifically observed and held that the service tax was not leviable on the indivisible/Composite Works Contracts, post Finance Act, 2007. However, according to the learned ASG, the said decision requires re-consideration and therefore, the prayer is

made to refer the matter to the Larger Bench.

10.2 While appreciating the prayer/submission made on behalf of the Revenue to re-consider the binding decision of this Court in the case of Larsen and Toubro Limited (supra) and to refer the matter to the Larger Bench, few facts are required to be taken into consideration, which are as under:-

(i) The decision of this Court in the case of Larsen and Toubro Limited (supra) has been delivered/passed in the year 2015, in which, it is specifically observed and held that on indivisible works contracts for the period pre-Finance Act, 2007, the service tax was not leviable;

(ii) After considering the entire scheme and the levy of service tax pre-Finance Act, 2007 and after giving cogent reasons, a conscious decision has been taken by this Court holding that the service tax was not leviable pre-Finance Act, 2007 on indivisible/Composite Works Contracts;

(iii) While holding that for the period pre-Finance Act, 2007, on indivisible/Composite Works Contracts, the service tax is not leviable, number of decisions have been dealt with and considered by this Court in the aforesaid decision;

(iv) That subsequently, the decision of this court in the case of Larsen and Toubro Limited (supra) has been followed and considered by this Court in the case of Bhayana Builders Private Limited and Ors., (supra);

(v) That after the decision of this Court in the case of Larsen and Toubro Limited (supra) rendered in the year 2015, the said decision has been consistently followed by various High Courts and the Tribunals;

(vi) The decisions of the various High Courts and the Tribunals, which were passed after following the decision of this Court in the case of Larsen and Toubro Limited (supra) have attained finality and in many cases, the Revenue has not challenged the said decisions;

(vii) No efforts were made by the Revenue to file any review application to review and/or recall the judgment and order passed by this Court in the case of Larsen and Toubro Limited (supra). If the Revenue was so serious in their view that decision of this Court in the case of Larsen and Toubro Limited (supra) requires re-consideration, Revenue ought to have filed the review application at that stage and/or even thereafter. No such review application has been filed even as on today.

(viii) Merely because in the subsequent cases, the amount of tax involved may be higher, cannot be a ground to pray for re-consideration of the earlier binding decision, which has been consistently followed by various High Courts and the Tribunals in the entire country.

10.3 Keeping in mind the aforesaid factual aspects, the prayer made on behalf of Revenue to re-consider the decision of this Court in the case of Larsen and Toubro Limited (supra) and to refer the matter to the Larger Bench is required to be considered.

10.4 While considering the prayer made on behalf of the Revenue to review and/or revisit the earlier decision of this Court in the case of Larsen and Toubro Limited (supra), few decisions on the principle of stare decisis are required to be referred to and considered.

10.5 In the case of Dr. Jaishri Laxmanrao Patil Vs. Chief Minister and Ors., (2021) 8 SCC 1, after considering the earlier decision of the Seven Judge Constitution Bench in the case of Keshav Mills Co. Ltd. Vs. Commissioner of Income Tax, Bombay North, Ahmedabad, AIR 1965 SC 1636, it is observed and held that before reviewing and revising its earlier decision the Court must satisfy itself whether it is necessary to do so in the interest of public good or for any other compelling reason and the Court must endeavour to maintain certainty and continuity in the interpretation of the law in the country.

10.5.1 After discussing the law on the principle of stare decisis, it is observed and held that the relevance and significance of the principle of stare decisis have to be kept in mind and that in law, certainty, consistency and continuity are highly desirable features. While holding so, in paragraphs 453 to 456, it is observed and held as under:-

“453. The seven-Judge Constitution Bench judgment in Keshav Mills [Keshav Mills Co. Ltd. v. CIT, AIR 1965 SC 1636 : (1965) 2 SCR 908] has unanimously held that before reviewing and revising its earlier decision the Court must itself satisfy whether it is necessary to do so in the interest of public good or for any other compelling reason and the Court must endeavour to maintain a certainty and continuity in the interpretation of the law in the country.

454. In Jarnail Singh v. Lachhmi Narain Gupta [(2018) 10 SCC 396], the prayer to refer the Constitution Bench judgment in M. Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212] was rejected by the Constitution Bench relying on the law as laid down in Keshav Mills case [Keshav Mills Co. Ltd. v. CIT, AIR 1965 SC 1636 : (1965) 2 SCR 908]. In para 9 the following has been laid down : (Jarnail Singh case [Jarnail Singh v. Lachhmi Narain Gupta, (2018) 10 SCC 396], SCC pp. 410-11)

“9. Since we are asked to revisit a unanimous Constitution Bench judgment, it is important to bear in mind the admonition of the Constitution Bench judgment in Keshav Mills [Keshav Mills Co. Ltd. v. CIT, AIR 1965 SC 1636 : (1965) 2 SCR 908]. This Court said : (SCR pp. 921-22 : AIR p. 1644, para 23)

‘23. ... in reviewing and revising its earlier decision, this Court should ask itself whether in the interests of the public good or for any other valid and compulsive reasons, it is necessary that the earlier decision should be revised. When this Court decides questions of law, its decisions are, under Article 141, binding on all courts within the territory of India, and so, it must be the constant endeavour and concern of this Court to introduce and maintain an element of certainty and continuity in the interpretation of law in the country. Frequent exercise by this Court of its power to review its earlier decisions on the ground that the view pressed before it later appears to the Court to be more reasonable, may incidentally tend to make law uncertain and introduce confusion which must be consistently avoided. That is not to say that if on a subsequent occasion, the Court is satisfied that its

earlier decision was clearly erroneous, it should hesitate to correct the error; but before a previous decision is pronounced to be plainly erroneous, the Court must be satisfied with a fair amount of unanimity amongst its members that a revision of the said view is fully justified. It is not possible or desirable, and in any case it would be inexpedient to lay down any principles which should govern the approach of the Court in dealing with the question of reviewing and revising its earlier decisions. It would always depend upon several relevant considerations — What is the nature of the infirmity or error on which a plea for a review and revision of the earlier view is based? On the earlier occasion, did some patent aspects of the question remain unnoticed, or was the attention of the Court not drawn to any relevant and material statutory provision, or was any previous decision of this Court bearing on the point not noticed? Is the Court hearing such plea fairly unanimous that there is such an error in the earlier view? What would be the impact of the error on the general administration of law or on public good? Has the earlier decision been followed on subsequent occasions either by this Court or by the High Courts? And, would the reversal of the earlier decision lead to public inconvenience, hardship or mischief? These and other relevant considerations must be carefully borne in mind whenever this Court is called upon to exercise its jurisdiction to review and revise its earlier decisions. These considerations become still more significant when the earlier decision happens to be a unanimous decision of a Bench of five learned Judges of this Court.' "

455. The principle of stare decisis also commends us not to accept the submissions of Shri Rohatgi. the Constitution Bench of this Court in State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat [(2005) 8 SCC 534], explaining the principle of stare decisis laid down the following in paras 111 and 118 : (SCC pp. 589 & 591)

"111. Stare decisis is a Latin phrase which means 'to stand by decided cases; to uphold precedents; to maintain former adjudication'. This principle is expressed in the maxim "stare decisis et non quieta movere" which means to stand by decisions and not to disturb what is settled. This was aptly put by Lord Coke in his classic English version as 'Those things which have been so often adjudged ought to rest in peace'. However, according to Frankfurter, J., the doctrine of stare decisis is not "an imprisonment of reason" (Advanced Law Lexicon, P. Ramanatha Aiyer, 3rd Edn. 2005, Vol. 4, P. 4456). The underlying logic of the doctrine is to maintain consistency and avoid uncertainty. The guiding philosophy is that a view which has held the field for a long time should not be disturbed only because another view is possible.

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118. The doctrine of stare decisis is generally to be adhered to, because well-settled principles of law founded on a series of authoritative pronouncements ought to be followed. Yet, the demands of the changed facts and circumstances, dictated by forceful factors supported by logic, amply justify the need for a fresh look."

456. the Constitution Bench in Indra Sawhney [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217] speaking through B.P. Jeevan Reddy, J. has held that the relevance and significance of the principle of stare decisis have to be kept in mind. It was reiterated that

in law certainty, consistency and continuity are highly desirable features. Following are the exact words in para 683 : (SCC p. 657)

“683. … Though, we are sitting in a larger Bench, we have kept in mind the relevance and significance of the principle of stare decisis. We are conscious of the fact that in law certainty, consistency and continuity are highly desirable features. Where a decision has stood the test of time and has never been doubted, we have respected it … unless, of course, there are compelling and strong reasons to depart from it. Where, however, such uniformity is not found, we have tried to answer the question on principle keeping in mind the scheme and goal of our Constitution and the material placed before us.”

10.6 In the case of Dr. Shah Faesal and Ors. Vs. Union of India and Anr., (2020) 4 SCC 1, the Constitution Bench of this Court had occasion to consider the principle of stare decisis and the law of precedents/re21 consideration/review of earlier decision. After considering the decision of this Court in the case of Chandra Prakash and Ors. Vs. State of U.P. and Anr., (2002) 4 SCC 234 (paragraph 22), it is observed and held by this Court that doctrines of precedents and stare decisis are the core values of our legal system. They form the tools which further the goal of certainty, stability and continuity in our legal system. When a decision is rendered by this Court, it acquires a reliance interest and the society organises itself based on the present legal order. By observing and holding so, it is observed in paragraphs 17 to 19 as under:-

“17. This Court’s jurisprudence has shown that usually the courts do not overrule the established precedents unless there is a social, constitutional or economic change mandating such a development. The numbers themselves speak of restraint and the value this Court attaches to the doctrine of precedent. This Court regards the use of precedent as indispensable bedrock upon which this Court renders justice. The use of such precedents, to some extent, creates certainty upon which individuals can rely and conduct their affairs. It also creates a basis for the development of the rule of law. As the Chief Justice of the Supreme Court of the United States, John Roberts observed during his Senate confirmation hearing, “It is a jolt to the legal system when you overrule a precedent. Precedent plays an important role in promoting stability and even-handedness”. [Congressional Record—Senate, Vol. 156, Pt. 7, 10018 (7-6-2010).]

18. Doctrines of precedents and stare decisis are the core values of our legal system. They form the tools which further the goal of certainty, stability and continuity in our legal system. Arguably, Judges owe a duty to the concept of certainty of law, therefore they often justify their holdings by relying upon the established tenets of law.

19. When a decision is rendered by this Court, it acquires a reliance interest and the society organises itself based on the present legal order. When substantial judicial time and resources are spent on references, the same should not be made in a casual or cavalier manner. It is only when a proposition is contradicted by a subsequent judgment of the same Bench, or it is shown that the proposition laid down has become unworkable or contrary to a well-established principle, that a reference will be made to a larger Bench. In this context, a five-Judge Bench of this Court in Chandra Prakash v. State of U.P. [(2002) 4

SCC 234], after considering series of earlier rulings reiterated that : (SCC p. 245, para 22)

“22. … The doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in the enunciation of legal principles in the decisions of this Court.”

(emphasis supplied)”

10.7 It is observed and held in the aforesaid decision that even the rule of overruling the judgments should be applied with great caution, and only when the previous decision is manifestly wrong, as, for instance, if it proceeded upon a mistaken assumption of the continuance of a repealed or expired Statute, or is contrary to a decision of another court which the court is bound to follow; not, upon a mere suggestion, that some or all of the members of the court might later arrive at a different conclusion if the matter was res integra. It is further observed that otherwise there would be great danger of want of continuity in the interpretation of law. It is further observed and held that 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 unless it is shown to be per incuriam.

11. At this stage, a few decisions of this Court on consistency, certainty and uniformity also deserve consideration, which are as under:-

11.1 This Court in Government of Andhra Pradesh Vs. A.P. Jaswal, (2001) 1 SCC 748 has observed as under:-

“Consistency is the cornerstone of the administration of justice. It is consistency which creates confidence in the system and this consistency can never be achieved without respect to the rule of finality. It is with a view to achieve consistency in judicial pronouncements, the courts have evolved the rule of precedents, principle of stare decisis etc. These rules and principles are based on public policy……..”

The aforesaid observations are equally, if not more meaningful and relevant to tax matters.

11.2 This Court, in the Constitution Bench judgment in Union of India Vs. Raghubir Singh (Dead) by LRs. etc., (1989) 2 SCC 754, on the question of the merit of promoting certainty and consistency in judicial decisions, had observed that this enables an organic development of law, besides assuring the individuals as to the consequences of transactions forming part of his daily affairs, and, therefore, there is a need for clear and consistent enunciation of legal principles in the decision of a court.

11.3 In K. Ajit Babu and Ors. Vs. Union of India and Ors., (1997) 6 SCC 473, this Court again emphasized on the aspect of consistency, certainty and uniformity in the field of judicial decisions as it sets a pattern upon which future conduct may be based. One of the basic principles of the administration of justice is that identical/similar cases should be decided alike. This is the foundation of the doctrine of precedent, which has considerable benefits

and advantages. Emphasis on the law of precedent, which promotes certainty and consistency, was also noticed in Sundarjas Kanyalal Bhatija and Ors. Vs. Collector Thane, Maharashtra and Ors., (1989) 3 SCC 396, by emphasizing that it is the duty of the courts to make the law more predictable. Law must be made more effective as a guide to behaviour, otherwise, the lawyers or, for that matter, laymen would be in a predicament and would not know how to advise or conduct themselves. The general public should not be in a dilemma to obey or not to obey such law.

11.4 In Medley Pharmaceuticals Limited v. Commissioner of Central Excise and Customs, Daman, (2011) 2 SCC 6014, the question before this Court was whether, “physicians’ samples” are excisable goods considering that they are prohibited from being sold under the Drugs and Cosmetics Act, 1940. Observing that since this Court has consistently held that the medical supplies supplied to the doctors are liable to excise duty, the issue involved in this case was no longer res integra. Relying on the Constitutional Bench decision in Waman Rao v. Union of India, (1981) 2 SCC 362, it was held:

43. It is settled law that this Court should follow an earlier decision that has withstood the changes in time, irrespective of the rationale of the view taken. It was held by a Constitution Bench in Waman Rao v. Union of India [(1981) 2 SCC 362]: (SCC p. 393, para 40)

40. It is also true to say that for the application of the rule of stare decisis, it is not necessary that the earlier decision or decisions of longstanding should have considered and either accepted or rejected the particular argument which is advanced in the case on hand. Were it so, the previous decisions could more easily be treated as binding by applying the law of precedent and it will be unnecessary to take resort to the principle of stare decisis. It is, therefore, sufficient for invoking the rule of stare decisis that a certain decision was arrived at on a question which arose or was argued, no matter on what reason the decision rests or what is the basis of the decision. In other words, for the purpose of applying the rule of stare decisis, it is unnecessary to enquire or determine as to what was the rationale of the earlier decision which is said to operate as stare decisis.”

11.5 In Saurashtra Cement & Chemical Industries Ltd. and another Vs. Union of India and others, (2001) 1 SCC 91 this Court refused to indulge on the question of delegated legislation in taxing statute since the authority of the legislature in introducing the statute in question, i.e., Mines and Minerals (Regulation and Development) Act, 1957 could not be doubted and in any event, was a settled proposition of law for more than a decade. Applying the doctrine of stare decisis, the Court rejected the plea to reconsider the decision in State of Madhya Pradesh v. Mahalaxmi Fabric Mills Ltd., 1995 Supp (1) SCC 642 in the following words:-

“35. In the wake of the aforesaid, we do feel it expedient to record that taking recourse to the doctrine as above would be an imperative necessity, so as to avoid uncertainty and confusion, since the basic feature of law is its certainty and in the event of any departure therefrom the society would be in utter confusion and the resultant effect of which would be legal anarchy and judicial indiscipline-a situation which always ought to be avoided. The

Central Legislature introduced the legislation (MMRD Act) in the year 1957 and several hundreds and thousands of cases have already been dealt with on the basis thereof and the effect of a declaration of a contra law would be totally disastrous affecting the very basics of the revenue jurisprudence. It is true that the doctrine has no statutory sanction but it is a rule of convenience, expediency, prudence and above all the public policy. It is to be observed in its observance rather than in its breach to serve the people and subserve the ends of justice."

12. What was said by the Constitution Bench in Indra Sawhney Vs. Union of India, 1992 Supp (3) SCC 217 and Keshav Mills Co. Ltd. Vs. Commissioner of Income Tax, Bombay North, Ahmedabad, AIR 1965 SC 1636, on the principle of stare decisis clearly bind us. The judgment of this Court in the case of Larsen and Toubro Limited (supra) has stood the test of time and has never been doubted earlier. As observed hereinabove, the said decision has been followed consistently by this Court as well as by various High Courts and the Tribunals. Therefore, if the prayer made on behalf of the Revenue to re-consider and/or review the judgment of this Court in the case of Larsen and Toubro Limited (supra) is accepted, in that case, it will affect so many other assesses in whose favour the decisions have already been taken relying upon and/or following the decision of this Court in the case of Larsen and Toubro Limited (supra) and It may unsettle the law, which has been consistently followed since 2015 onwards. There are all possibilities of contradictory orders. Therefore, on the principle of stare decisis, we are of the firm view that the judgment of this Court in the case of Larsen and Toubro Limited (supra), neither needs to be revisited, nor referred to a Larger Bench of this Court as prayed, i.e., after a period of almost seven years and as observed hereinabove when no efforts were made to file any review application requesting to review the judgment on the grounds, which are now canvassed before this Court.

13. At this stage, it is required to be noted that one of the appeals being Civil Appeal No. 6523 of 2014 filed by M/s. G.D. Builders is against the decision of the Delhi High Court in the case of G.D. Builders Vs. Union of India reported in (2013) 32 STR 673 (Delhi). It is to be noted that the said decision of the Delhi High Court in the case of G.D. Builders (supra) has been specifically overruled by this court in the case of Larsen and Toubro Limited (supra). The decision of the Delhi High Court in the case of G.D. Builders (supra) has been considered by this Court in the case of Larsen and Toubro Limited (supra) in paragraphs 28, 29, 30, 32, 33, 38 and 39 and ultimately, this Court opined that the decision of the Delhi High Court in the case of G.D. Builders (supra) is in fact contrary to a long line of decisions. It is further specifically observed and held that the decision of the Delhi High Court in the case of G.D. Builders (supra) is wholly incorrect in its conclusion that the Finance Act, 1994 contains both the charge and machinery for levy and assessment of service tax on indivisible works contracts. It is reported that while deciding the group of matters in the case of Larsen and Toubro Limited (supra), the papers of the appeal filed by M/s. G.D. Builders being Civil Appeal No. 6523 of 2014 were also called and the learned counsel appearing on behalf of the G.D. Builders was also heard. It appears that, however, the Civil Appeal No. 6523 of 2014 filed by M/s. G.D. Builders against the decision of the Delhi High Court has not been specifically disposed of. Therefore, once the decision of the Delhi High Court in the case of G.D. Builders (supra), which is the subject matter of Civil Appeal No.

6523 of 2014 has been held to be wholly incorrect, Civil Appeal No. 6523 of 2014 filed by M/s. G.D. Builders has to be allowed and the judgment and order passed by the Delhi High Court has to be quashed and set aside.

13.1 Now, so far as Civil Appeal No. 6525 of 2014, Civil Appeal No. 6526 of 2014 and Civil Appeal No. 2666 of 2022 are concerned, the High Court has dismissed the said writ petitions preferred by the respective assesses relying upon its earlier decision in the case of G.D. Builders (supra). Once the decision of the Delhi High Court in the case of G.D. Builders (supra) is held to be wholly incorrect by this Court in the case of Larsen and Toubro Limited (supra), Civil Appeal No. 6525 of 2014, Civil Appeal No. 6526 of 2014 and Civil Appeal No. 2666 of 2022 are also to be allowed.

13.2 So far as Civil Appeal Nos. 8673-8684 of 2013 preferred by the assessee – M/s. Total Environment Building Systems Pvt. Ltd. are concerned, the same are against the judgment and order passed by the High Court of Karnataka in Writ Appeal Nos. 3481-3492 of 2009 by which the Division Bench of the High Court has dismissed the said writ appeals and has confirmed the judgment and order passed by the learned Single Judge dismissing the writ petitions in which the appellant – assessee challenged the assessment orders levying Service Tax, on the ground of alternative remedy available by way of statutory appeal. However, in view of the binding decision of this Court in the case of Larsen and Toubro Limited (supra), the assessee is not liable to pay the service tax till the date of amendment of the provision on the indivisible/composite works contracts and therefore, the said appeals also deserve to be allowed and the assessment orders levying the service tax are to be set aside.

13.3 Following the binding decision of this Court in the case of Larsen and Toubro Limited (supra), taking the view that for the period pre-Finance Act, 2007, service tax was not leviable on the indivisible/composite works contracts, the Civil Appeal Nos. 4547-4548 of 2014, Civil Appeal No. 2667 of 2022 and Civil Appeal No. 2668 of 2022 arising out of the common judgment and order passed by the Guwahati High Court and the respective decisions of the CESTAT passed against the respective assesses are also to be allowed.

13.4 Now, so far as Civil Appeal No. 6792 of 2010 preferred by the Revenue against the judgment and order passed by the CESTAT, West Zonal Bench in Appeal No. ST/275 of 2006 is concerned, in view of the binding decision of this Court in the case of Larsen and Toubro Limited (supra), the same deserves to be dismissed.

14. In view of the above and for the reasons stated above, Civil Appeal Nos. 8673-8684 of 2013, Civil Appeal No. 6525 of 2014, Civil Appeal No. 6523 of 2014, Civil Appeal No. 6526 of 2014, Civil Appeal No. 2666 of 2022, Civil Appeal Nos. 4547-4548 of 2014, Civil Appeal No. 2667 of 2022 and Civil Appeal No. 2668 of 2022 are hereby allowed and impugned judgments and orders passed by the respective High Courts/Tribunals taking the view that for the period pre-Finance Act, 2007, the respective assesses are/were liable to pay the service tax on indivisible/composite works contracts are hereby quashed and set aside. Consequently, the respective assessment orders/orders in originals levying the service tax on the respective assesses on the indivisible/Composite Works Contracts for the period

prior to pre-2007 are hereby quashed and set aside. Necessary consequences shall follow.

Civil Appeal No. 6792 of 2010 is hereby dismissed.

In the facts and circumstances of the case, there shall be no order as to costs.

Note :- I have had the advantage of perusing the supplementary judgment and order proposed by my learned Sister, B.V. Nagarathna, J. As such, Her Ladyship has agreed with the conclusions arrived at by me in the present judgment and order, however, has thought it fit to give additional reasons for the conclusions and has dealt with the submissions made by Ms. Madhavi Divan on merits. However, for the reasons stated above as this Court has not agreed with the prayer made by Ms. Divan, learned ASG to reconsider the decision in the case of Larsen and Toubro Limited (supra) on the principle of stare decisis and on the principle of consistency, I deem it proper not to deliberate further on merits, as observed above, the issue involved is squarely covered by the decision of this Court in the case of Larsen and Toubro Limited (supra), which has been subsequently followed by this Court as well as by various High Courts and Tribunals.

15. I have had the advantage of perusing the judgment proposed by His Lordship M.R. Shah J. While I agree with the conclusions arrived at by him, I wish to supplement the reasons for the conclusions.

16. As already stated, the issue in these appeals relates to the levy of service tax on composite works contract prior to the amendment made to the Finance Act, 1994 in the year 2007 by which Section 65(105) (zzzza) was introduced which gives the definition to the expression “works contract.”

17. While it is not essential to narrate the details of each of the cases under consideration as it has been made in the judgment proposed by M.R. Shah J., it is however necessary to answer the principal submission made by Ms. Madhavi Diwan, learned Additional Solicitor General appearing for the revenue with a detailed reasoning. She contended that the judgment of this Court in Commissioner, Central Excise and Customs, Kerala vs. Larsen and Toubro Ltd. [(2016) 1 SCC 170] (hereinafter referred as “Larsen & Toubro Ltd.”) requires reconsideration as in the said case it was held that service tax on composite works contract was not leviable prior to the amendment made to the Finance Act, 1994, in the year 2007, whereas according to her, in fact, it was leviable even prior thereto and the amendment made to the Finance Act, 1994, in the year 2007 by insertion of Section 65(105)(zzzza) is only clarificatory in nature. Hence, the judgment in Larsen and Toubro Ltd. (supra) holding otherwise calls for reconsideration.

18. Per contra, Sri Arvind P. Datar learned senior advocate appearing on behalf of some of the assesses and other learned senior counsel contended that the judgment in Larsen and Toubro Ltd. (supra) does not call for reconsideration. Further, in the said case the judgment of the Delhi High Court in G.D. Builders vs. Union of India [(2013) 32 STR 673] has been held to be not correctly decided and was therefore overruled.

19. Before proceeding to consider the aforesaid rival contentions, it would be useful to

discuss the evolution, meaning and content of the expression works contract in the context of sales tax law and as well as under the service tax regime. This is, having regard to the definition of works contract being inserted w.e.f. 1st June, 2007 to the Finance Act, 1994 which seeks to impose service tax on the service aspect of a works contract. The reason for this exercise is because works contract by itself is not taxable. A works contract as defined by the amendment has two components, namely, a sale component and a service component. It is only when both the components are satisfied and co-exist that a contract becomes a works contract as defined. Further, it is only on the service component of the works contract that the service tax is leviable w.e.f. 1st June, 2007. As far as the sale component in a works contract is concerned, the Sales Tax laws of the respective States would apply. It is also necessary to state that after the enforcement of the Central Goods and Services Tax Act (CGST), 2017 regime the matter is covered under that Act. Therefore, it is necessary to gather the meaning of works contract from judicial precedent in order to answer the rival submissions in the instant case.

Section 65(105)(zzzza) of the Finance Act, 1994 as amended by the Finance Act, 2007 which defines work contract, has been extracted as under, for ease of reference:

" 'Works contract' means a contract wherein,¬

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) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre¬fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air¬conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or

(b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or

(c) construction of a new residential complex or a part thereof; or

(d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or

(e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects."

A reading of the aforesaid definition would indicate that two requisites must be satisfied before service tax on works contract could be levied. In other words, a contract in order to be works contract must involve:

“(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) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre¬fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air¬conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or

(b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or

(c) construction of a new residential complex or a part thereof; or

(d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or

(e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects.”

Thus, works contract has two essential components: firstly, sale of goods involved in the execution of such contracts which would attract Sales Tax or Value Added Tax (VAT) as the case may be, i.e., prior to the enforcement of the Goods and Services Tax regime and secondly, a service component which is specified in clause (ii)(a)¬(e) of the definition of works contract which would attract Service Tax under the provisions of the Finance Act, 1994 as amended in the year 2007. If both the above requisites are present, then Service Tax on works contract is leviable on the service component. This is clear from the use of the word “and” between components (i) and (ii) of the definition of works contract under Clause (zzzza) of Section 65 of the Finance Act, 1994 which is as per the amendment in the year 2007. Thus, the definition speaks of a composite works contract comprising of an element of sale and an element of service.

Having regard to the specific definition of works contract introduced in the Finance Act, 1994, w.e.f. 1st June, 2007 and bearing in mind that both clauses (i) as well as (ii) of the definition have to be satisfied before the levy of service tax on the service component of a works contract, it is necessary to understand the scope and ambit of the expression “transfer of property in goods” in clause (i) of the definition of works contract from various judgments of this Court. Further, sales tax/VAT could also be levied on such transfer of goods involved in the execution of such contracts and a service tax on as specified in clause (ii) of the definition of works contract.

The evolution of the concept of works contract is noted as under as it is on the service component of such contract that service tax is leviable. The reference to judgments on works contract under Sales Tax law would be pertinent.

A. Prior to the 46th Amendment of the Constitution, levy of sales tax on sale of goods involved in the execution of a works contract was held to be unconstitutional in Gannon Dunkerley (I) – State of Madras vs. Gannon Dunkerley and Co. (Madras) Ltd. [AIR 1958 SC 560]; [1959 SCR 379]. A Constitution Bench of this Court held that in a building contract where the agreement between the parties was that the contractor should construct the building according to the specifications contained in the agreement and in consideration, received payment as provided therein, there was neither a contract to sell the materials used in the construction nor the property passed therein as movables. It was held that in the building contract which was one (entire and indivisible), there was no sale of goods and it was not within the competence of the concerned provincial State Legislature (Madras Legislature) to impose tax on the supply of the materials used in such a contract treating it as a sale. Consequently, it was held that in a building contract which was one, entirely indivisible, there was no sale of goods and it was not within the competence of the Provincial State Legislature to impose tax on the supply of materials used in such a contract treating it as a sale. This was on the premise that the works contract was a composite contract which is inseparable and indivisible.

B. As a result of this dictum, the Law Commission of India in its 61st Report specifically examined the taxability of works contract and examined the particular question whether the power to tax indivisible contract of works should be conferred on the States. This led to insertion of Clause (29¬A) to Article 366 of the Constitution. For ease of reference, the same is extracted as under:

“Article 366. Definitions. ¬ In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say –

[(29¬A) “tax on the sale or purchase of goods” includes –

(a) X¬X¬X¬X¬X

(b) A tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;”

C. In Gannon Dunkerley (II) ¬ Gannon Dunkerley and Co. vs. State of Rajasthan [1993 (1) SCC 364], the Constitution Bench of this Court explained the effect of the legal fiction introduced by sub¬ clause (b) of Clause (29¬A) of Article 366 of the Constitution. The following principles were enunciated, to outline the operation of sub¬ clause (b) of Clause (29¬A) of Article 366:

a) That by virtue of the legal fiction in Clause 29¬A, even in a single indivisible works contract, there is a deemed sale of goods and such sale has all the incidents of ‘sale of goods.’

b) That the value of goods involved in the execution of a works contract may be determined by taking into account the value of the entire works contract and deducting therefrom, the charges towards labour and services.

c) That the following charges towards labour and services were to be excluded in determining the value of goods sold in executing a works contract:

i) Labour charges for execution of the works;

ii) Amount paid to a sub¬contractor for labour and services;

iii) Charges for planning, designing and architect's fees;

iv) Charges for obtaining on hire or otherwise machinery and tools used for the execution of the works contract;

v) Cost of consumables such as water, electricity, fuel, etc. used in the execution of the works contract the property in which is not transferred in the course of execution of a works contract; and

vi) Cost of establishment of the contractor to the extent it is relatable to supply of labour and services;

vii) Other similar expenses relatable to supply of labour and services;

viii) Profit earned by the contractor to the extent it is relatable to supply of labour and services.

D. Therefore, under the regime that existed prior to the amendment and insertion of Clause (29A) to Article 366 of the Constitution, a typical works contract would not involve sale of goods and no sales tax was leviable on such works contract. However, subsequently, by way of the Constitution (Forty¬sixth Amendment) Act, 1982, Clause (29¬A) came to be inserted into Article 366 of the Constitution of India, providing for an inclusive definition of the expression "tax on the sale or purchase of goods" in relation to various transactions and dealings including "tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract."

E. Following the introduction of the said clause, most States amended their Sales Tax statutes to cover 'works contract.' The Constitutional validity of the aforementioned provisions by which the legislatures of the States were empowered to levy sales tax on certain transactions described in sub¬clauses (a) to (f) of Clause (29¬A) of Article 366 of the Constitution as also the question, whether, the power of the State legislature to levy tax on the transfer of property in goods involved in the execution of works contract is subject to the restrictions and conditions contained in Article 286 of the Constitution, were considered by a Constitution Bench of this Court in Builders Association of India vs. Union of India [(1989) 2 SCC 645]. Therein, while upholding the constitutional validity of the aforementioned provisions, the Constitution Bench explained the unique features of a composite contract relating to work and materials and expounded on the meaning, effect and amplitude as also contours of the provisions pertaining to the taxing power of the States in relation to works contract particularly in paragraphs 38¬40 of the judgment.

F. In light of the said discussion, this Court concluded that the transfer of any goods in Sub¬clauses (a) to (f) of Clause (29A) of Article 366 of the Constitution is by way of a deeming provision i.e., a deemed sale. This Court however, cautioned that the levy of sales tax after the 46th Amendment to the Constitution of India has to still comply with the restrictions imposed under Articles 286 and 269 of the Constitution.

G. Later a three¬judge bench of this Court in State of AP v. Kone Elevators [(2005) 3 SCC 389] had taken the view that a contract for manufacture, supply and installation of lifts is a "sale" and the entire value of the consideration can therefore be taxed under the sales tax law. However, the matter was subsequently referred to a larger Bench to review the issue afresh. This Court, on re¬hearing the matter referred to it, in Kone Elevator India Pvt. Ltd. vs. State of Tamil Nadu [(2014) 7 SCC 1], observed that the installation obligation in a contract for manufacture, supply and installation of lift is not merely incidental, but was a profound part of the entire contract. That various components were assembled together and installed at site as a permanent fixture to the building. The goods, skill and labour elements are intimately connected with one another and the contract is not divisible. Therefore, this Court concluded that a contract for manufacture, supply and installation of lifts was a works contract. It was also observed that even after the 46th Amendment, if Article 366 (29A)(b) is to be invoked, as a necessary concomitant, it must be shown that the terms of the contract would lead to a conclusion that it is a 'Works Contract'. In other words, unless a contract is proved to be a 'Works Contract' by virtue of the terms agreed to as between the parties, invocation of Article 366 (29A)(b) of the Constitution, cannot be made. That in circumstances when no definite conclusion can be made to the effect that a given contract is a works contract, the same will have to be declared as a 'sale' attracting the provisions of the relevant sales tax enactments.

H. In the case of Bharat Sanchar Nigam Ltd. vs. Union of India [2006] 145 STC 91 (SC), the question that came up for decision before this Court was with regard to the nature of the transaction by which mobile phone connections were obtained, as to, whether, it is a sale or a service or both. This Court held that providing a telephone connection which operates by transmission of electromagnetic waves or radio frequencies are not 'goods' for the purpose of Article 366(29A) of the Constitution and that the goods in telecommunication are limited to the handsets supplied by the service provider and as far as the SIM cards are concerned, the issue was left for determination by the assessing authorities.

I. Subsequently, in Larsen and Toubro Limited and Another vs. State of Karnataka and Another [(2014) (1) SCC 708], this Court deciphered the meaning of the works contract from the earlier judgments and in para 72 opined as under:¬

"72. 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.”

(underlining by me)

J. Further, the difference between a contract for work (or service) and a contract for sale (of goods) was considered and by placing reliance on Commissioner of Sales Tax vs. Purshottam Premji [(1970) 2 SCC 287], it was observed that the primary difference between a contract for work (or service) and a contract for sale of goods is that, in the former, there is in the person performing work or rendering service no property in the thing produced as a whole, notwithstanding that a part or even the whole of the materials used by him may have been his property. In the case of a contract for sale, the thing produced as a whole has individual existence as a sole property of the party who produced it, at some time before delivery, and the property therein passes only under the contract relating thereto to other party for a price. It was also observed that the factors highlighted to distinguish a contract for work from a contract for sale are relevant but not exhaustive.

K. In paragraph 89 of the Larsen and Toubro Limited and Another (supra) this Court observed that three conditions must be fulfilled to sustain the levy of tax on the goods deemed to have been sold in execution of the works contract, namely, (i) there must be a works contract, (ii) the goods should have been involved in the execution of the works contract, and (iii) the property in those goods must be transferred to a third party either as goods or in some other form. In a building contract or any contract to do construction, the above three things are fully met. In a contract to build up a flat there will necessarily be a sale of goods element. Works contract also includes building contracts and, therefore, it can be stated that building contracts are a species of works contract.

L. With reference to the aspect theory, it was held that though the State Legislature does not have the power to tax services by including the cost of such service in the value of goods but that does not detract the State to tax the sale of goods element involved in the execution of works contract in a composite contract like contract for construction of building and sale of a flat therein. In light of the above discussion, the legal proposition was summarised in paragraph 97 of the judgment.

Evolution of the practice in relation to the levy of service tax on works contract:

20. Service tax was introduced in India vide the Finance Act, 1994. Service tax is legislated by Parliament under the residuary entry i.e. Entry 97 of List I of the Seventh Schedule of the Constitution of India read with Article 248 of the Constitution. The service tax provisions have the following basic scheme:

(i) Section 65 of the Act provides for taxable services;

(ii) Section 66 of the Act provides for the charge of service tax by the person designated as "the person responsible for collecting the service tax" for the Government;

(iii) Section 67 of the Act provides for the value of taxable service which is to be subjected to 5% service tax; and

(iv) Section 68 of the Act provides for the collection and payment mechanism for service tax.

It is necessary to trace the evolution of charging service tax on works contract as discerned by this Court in the aforesaid judgments. While considering the rival contentions of the parties, it is also necessary to examine the issue of levying service tax on contracts said to be in the nature of works contract, both prior to, and following the introduction of an express charging provision to impose tax on works contract although we are concerned with the period prior to the definition of works contract w.e.f. 1st June, 2007 to Finance Act, 1994. This is with reference to the following judgments:

a) In Tamil Nadu Kalyana Mandapam Association vs. Union of India [(2004) 5 SCC 632], this Court examined the question, whether, the inclusion of taxation on kalyana mandapams, within the tax net of Section 66 and 67 of the Finance Act, 1994 as amended in the year 1996 was unconstitutional. It was held that a tax on services rendered by mandap¬keepers and outdoor caterers is in pith and substance, a tax on services and not a tax on sale of goods or on hire-purchase activities. The nature and character of this service tax is evident from the fact that the transaction between a mandap-keeper and his customer is definitely not in the nature of a sale or hire¬purchase of goods. It is essentially that of providing a service. The manner of service provided assumes predominance over the providing of food in such situations which is a definite indicator of the supremacy of the service aspect. The legislature in its wisdom noticed the said supremacy and identified the same as a potential region to collect indirect tax.

b) The question, whether, the charges collected towards the services for evolution of prototype conceptual designs, on which service tax had been paid under the Finance Act, 1994 as amended from time to time, were also liable to tax under the Karnataka Value Added Tax Act, 2003, (KVAT) for the sale of advertisement material following the creation of the designconcept, was considered by this Court in Imagic Creative Pvt. Ltd. vs. The Commissioner of Commercial Taxes and Ors. [(2008) 2 SCC 614]. This Court observed that payments of service tax as also of KVAT are mutually exclusive. That they should be held to be applicable having regard to the respective parameters of service tax and the sales tax

as envisaged in a composite contract as contradistinguished from an indivisible contract. Thus, a distinction was made between an indivisible contract and a composite contract. In doing so, it was held that a composite contract, would have to be construed such that the legal fiction in Article 366 (29A) allowing tax on the sale element of a works contract would have to be applied only to the extent for which it was enacted, i.e., to the extent of the value of the sale component of the contract and should not be applied in relation to the service element of the transaction. That taxes, in the nature of a service tax could be applied in relation only to the service element.

c) In Nagarjuna Construction Company Ltd. vs. Government of India and Ors. [(2013) 1 SCC 721], this Court discussed the effect of introduction of an express charging provision to impose tax on works contract, w.e.f. 01st June, 2007, on works contract which were entered into prior to 01st June, 2007. In the said case, the appellant therein was said to be in the business of carrying out composite construction contracts. The appellant¬assessee had paid sales¬tax/VAT on those contracts under the Andhra Pradesh General Sales Tax Act, 1957, Andhra Pradesh Value Added Tax Act, 2005 and other State enactments. Prior to 01st June, 2007, the assessee had paid service¬tax under the category of 'erection, commissioning or installation service' as appearing under Section 65 (105) (zzd) of the Finance Act, 1994, or, as 'commercial or industrial construction service' under Section 65 (105) (zzq) and as 'construction of complex service' under Section 65 (105) (zzzh).

d) With effect from 01st June, 2007, the charging provision, Section 65 (105) (zzzza) was introduced by defining a works contract. The Central Government also introduced, w.e.f. 01st June, 2007 the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 (hereinafter referred to as 'the 2007 Rules'). Under this scheme, an option of composition was offered @ 2% of the gross amount charged on the works contract. Prior to the composition, the effective tax rate under the other category of services would work out to be approximately 3.96% of the gross amount.

e) The appellant in Nagarjuna Construction Company Ltd. (supra) sought to claim benefit of the Composition Scheme under the 2007 Rules, however, the assessee was disabled to do so because of a clause in Circular No. 98/1/2008¬ST, dated 4th January, 2008 which provided that a taxable service, once classified under the old regime, could not be classified differently, post 01st June, 2007 simply because the consideration, or a part thereof, was received post 01st June, 2007. The vires of Circular No. 98/1/2008¬ST was challenged before this Court. In upholding the validity of the said Circular, this Court held that the appellant, who had paid service tax prior to 1st June, 2007 for the taxable services, was not entitled to change the classification of the single composite service for the purpose of payment of service tax on or after 1st June, 2007 and hence, was not entitled to avail of the Composition Scheme. It was observed that the appellant-assessee had already paid service tax on the basis of classification of service contract which was in force prior to 1st June, 2007 and the said contract could not be classified differently following the introduction of Section 65 (105) (zzzza) and the 2007 Rules.

f) Thus, Works Contract Services were brought under the service tax net as per an amendment to of the Finance Act, 1994 by introduction of Clause (zzzza) to Section

65(105). The said introduction was made pursuant to the Finance Act, 2007, which expressly made the service component in such works contract liable to service tax w.e.f. 1st June, 2007. The amendment was made to the said section of the Finance Act, 1994 by which works contract which were indivisible and composite could be split so that only the labour and service element of such contracts would be taxed as service tax.

21. Having noted the above developments, it is necessary to discuss the judgment in Larsen and Toubro Ltd. (supra) in detail as learned ASG, Ms. Divan has vehemently submitted that the said judgment requires reconsideration. It may be noted that this judgment concerned the position of law prior to the amendment made to the Finance Act, 1994, w.e.f. 1st June, 2007, incorporating the definition of works contract as under:

a) In the aforesaid case, this Court traced the historical setting within which the controversy leading up to the 46th amendment in the context of levy of sales tax on works contract progressed. Taking up the question as to whether service tax could be levied on the service element of a works contract, it was observed that service tax was introduced by the Finance Act, 1994 and various services were set out in Section 65 thereof as being amenable to tax. The legislative competence of such tax is traceable to Article 248 read with Schedule VII List I Entry 97 to the Constitution of India. The controversy in the said case was with regard to the period prior to the 2007 Amendment made to the Finance Act, 1994 in the year 2007 which introduced the definition and concept of works contract as being a separate subject¬matter of taxation. By the said amendment works contract, which were indivisible and composite were split so that only the labour and service element of such contracts would be taxed under the heading service tax. Thus, the tax was not on works contract as such. In the said case, the Revenue raised four arguments to assail the judgments of various Tribunals and High Courts which had decided against the Revenue on the point. By contrast, the assesses assailed the judgments of the Tribunal and the High Courts against them, in particular the judgment in G.D. Builders vs. Union of India [(2013) 32 STR 673], of the Delhi High Court. According to the assesses there was no service tax leviable on service element of works contract prior to amendment being made in the year 2007, insofar as the indivisible works contract were concerned and what was taxable under the Finance Act, 1994 was only cases of pure service in which there was no goods element involved. It was urged that the judgment of the Delhi High Court in G.D. Builders (supra) was wholly incorrect and the minority judgment of the judicial members of a Larger Bench of the Delhi Tribunal in Larsen & Toubro Ltd. vs. CST (in ST Appeal No.58658 of 2013, decided on 19.03.2015), had comprehensively discussed all the authorities that were relevant to the issue and arrived at the correct conclusion. Thus, the assesses assailed the judgment of the Delhi High Court in G.D. Builders (supra) and considered along with Larsen & Toubro Ltd. vs. CST (supra).

b) Considering the definition of ‘taxable service’ in sub-Section 105 of Section 65 of the Finance Act, 1994 and the relevant clauses therein, namely, (g), (zzd), (zzh), (zzq) and (zzzh); Charge of service tax in Section 66; valuation of taxable services for charging service tax [Section 67 and Section 65(105)(zzzza)] as well as the Rule 2¬A of Service Tax Act (determination of value) Rules 2006, this Court observed that crucial to the understanding and determination of the issue at hand was the second Gannon Dunkerley

and Co. vs. State of Rajasthan [(1993) 1 SCC 364] (Gannon Dunkerley II) (supra) . That in the said judgment the modalities of taxing composite indivisible works contract was gone into which has been referred to above. It was observed that the value of the goods involved in the execution of the works contract will have to be determined by taking into account the value of entire works contract and deducting therefrom the charges towards labour and services which would cover –

“(a) labour charges for execution of the works;

(b) amount paid to a sub¬contractor for labour and services;

(c) charges for planning, designing and architect’s fees;

(d) charges for obtaining on hire or otherwise machinery and tools used for the execution of the works contract;

(e) cost of consumables such as water, electricity, fuel, etc. used in the execution of the works contract the property in which is not transferred in the course of execution of a works contract; and

(f) cost of establishment of the contractor to the extent it is relatable to supply of labour and services;

(g) other similar expenses relatable to supply of labour and services;

(h) profit earned by the contractor to the extent it is relatable to supply of labour and services.”

For the purposes of arriving at the basis for the levy of sales tax on works contract, the amount deductible under the aforesaid heads will have to be determined in light of the facts of a particular case and on the basis of the material produced by the contractor.

c) Referring to the aforesaid eight heads of deductions it was observed that in light of the judgment in Gannon Dunkerley II (supra) the same has to be indicated in the contractor’s account. However, if it is found that the Contractor has not maintained proper accounts or their accounts are found to be not worthy of credence, it is left to the legislature to prescribe a formula on the basis of a fixed percentage of the value of the entire works contract as relatable to the labour and service element of it. It was observed that “unless the splitting of an indivisible works contract is done taking into account the eight heads of deduction, the charge to tax that would be made would otherwise contain, apart from other things, the entire costs of establishment, other expenses and profits earned by the contractor and would transgress into forbidden territory, namely, into such portion of such cost, expenses and profit as would be attributable in the works contract to the transfer of property in goods in such contract.” Therefore, it was found that the assesses were right in contending that the service tax charging section itself must lay down with specificity the levy of service tax on the service element of a works contract, and the measure of tax can only be on that portion of works contract which contain a service element which is to be

derived from the gross amount charged for the works contract less the value of property in goods transferred in the execution of the works contract. Since this had not been done by the Finance Act, 1994, any charge to tax under the five heads in Section 65(105) would only be of service contracts simpliciter and not composite indivisible works contract. Those five heads for ease of reference are noted as under:

"(g) to a client, by a consulting engineer in relation to advice, consultancy or technical assistance in any manner in one or more disciplines of engineering but not in the discipline of computer hardware engineering or computer software engineering;

* * *

(zzd) to a customer, by a commissioning and installation agency in relation to erection, commissioning or installation;

* * *

(zzh) to any person, by a technical testing and analysis agency, in relation to technical testing and analysis;

* * *

(zzq) to any person, by a commercial concern, in relation to construction service;

* * *

(zzzh) to any person, by any other person, in relation to construction of a complex;

Explanation : For the purposes of this sub¬clause, construction of a complex which is intended for sale, wholly or partly, by a builder or any person authorized by the builder before, during or after construction (except in cases for which no sum is received from or on behalf of the prospective buyer by the builder or a person authorized by the builder before the grant of completion certificate by the authority competent to issue such certificate under any law for the time being in force) shall be deemed to be service provided by the builder to the buyer;"

d) Speaking about the mutually exclusive taxation and powers of the Centre and the State, the dichotomy between the sales tax leviable by the State and service tax leviable by the Centre was emphasised by this Court in the aforesaid judgment. In the context of composite indivisible works contract, only Parliament can tax the service element contained in these contracts and State only can tax the transfer of property in goods element contained in these contracts. Thus, it is important to segregate the two elements completely for the purpose of taxation. Hence, it was held that works contract is a separate species of contract distinct from contracts for service simpliciter recognised in the world of commerce and law as such and has to be taxed separately as such. Referring to the decision of works contract in Gannon Dunkerley I, (supra) Kone Elevator India (P) Limited (supra), Larsen & Toubro Ltd. and others vs. State of Karnataka (supra) all arising under the

Sales Tax law, it was emphasised that there was no charging section to tax works contract in the Finance Act, 1994 i.e. until the amendment made with the insertion of sub¬clause (zzzza) to clause 105 of Section 65 of the Finance Act, 1994. Ultimately, in para 23 it was observed as under:¬

“23. A close look at the Finance Act, 1994 would show that the five 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”. All the services referred to in the said sub-clauses are service contracts simpliciter without any other element in them, such as for example, a service contract which is a commissioning and installation, or erection, commissioning and installation contract. Further, under Section 67, as has been pointed out above, the value of a taxable service is the gross amount charged by the service provider for such service rendered by him. This would unmistakably show that what is referred to in the charging provision is the taxation of service contracts simpliciter and not composite works contracts, such as are contained on the facts of the present cases. It will also be noticed that no attempt to remove the non63 service elements from the composite works contracts has been made by any of the aforesaid sections by deducting from the gross value of the works contract the value of property in goods transferred in the execution of a works contract.”

It was also observed that while introducing the concept of service tax on service element of indivisible works contract various exclusions are also made, such as, works contract in respect of roads, airport, airways transport, bridges, tunnels and dams, possibly in the national interest. The implication of the exclusion means that such contracts were never intended to be the subject¬matter of the service tax.

e) Further, in Larsen & Toubro Ltd. (supra) the correctness of the judgment in G.D. Builders vs. Union of India [(2013) 32 STR 673] was also considered. In the said case, it was held by the Delhi High Court that Section 65(105)(g), (zzd), (zzh), (zzq) and (zzzh) were good enough to tax indivisible composite works contract and that even when rules are yet to be framed for computation of taxes, taxes would be leviable. This proposition was based on the judgment in Mahim Patram (P) Ltd. vs. Union of India [(2007) 3 SCC 668]. It was observed that in G.D. Builders (supra) there was a misreading of Mahim Patram (supra) which was a case related to tax under the Central Sales Tax Act; that in Mahim Patram (supra), it was observed that under Section 9(2) of the Central Sales Tax Act power is conferred on officers of various States to utilise the machinery provided under the provisions of the States’ sales tax statutes for the purposes of levy and assessment of Central Sales Tax under the Central Act. That Rules could also be made in exercise of power under Section 13(3) of the Central Sales Tax Act as a result of which the necessary machinery for the assessment of Central Sales Tax was found to be there. Therefore, even in the absence of Rules made under the Central Sale Tax Act the machinery provided under the State Sales Tax statute for the purpose of levy and assessment Central Sales tax under the Central Act could be utilized and the same is different from saying that no Rules being framed at all under the Central Sale Tax Act. Merely because no rules were framed for computation under the Central sales tax Act it did not follow that no tax was leviable under

the said Act. Hence, the observations of the Delhi High Court in G.D. Builders were not approved.

f) With specific reference to para 51 of the judgment of the Delhi High Court in G.D. Builders case (supra), it was observed that the said judgment had ignored the decision by this Court in Gannon Dunkerley II (supra) inasmuch as the manner of bifurcation of the service element from a composite works contract was delineated in the said case. That the service element had to be deducted from the gross amount charged thereof and not the gross amount of the works contract as a whole from which various deductions have to be made to arrive at the service element in the said contract. Therefore, it was held that G.D. Builders (supra) was not correctly decided by observing in paragraph 39 as under after quoting paragraph 31 of the judgment of Delhi High Court in G.D. Builders:

“We are afraid that there are several errors in this paragraph. The High Court first correctly holds that in the case of composite works contracts, the service elements should be bifurcated, ascertained and then taxed. The finding that this has, in fact, been done by the Finance Act, 1994 Act is wholly incorrect as it ignores the second Gannon Dunkerley [(1993) 1 SCC 364] decision of this Court. Further, the finding that Section 67 of the Finance Act, which speaks of “gross amount charged”, only speaks of the “gross amount charged” for service provided and not the gross amount of the works contract as a whole from which various deductions have to be made to arrive at the service element in the said contract. We find therefore that this judgment is wholly incorrect in its conclusion that the Finance Act, 1994 contains both the charge and machinery for levy and assessment of service tax on indivisible works contracts.”

It was categorically observed that since the Finance Act, 1994 lays down no charge or machinery to levy and assess service tax on indivisible composite works contract, therefore, service tax was not existent at all under the Act and hence any exemption qua service tax “levied” did not arise at all.

22. As already noted, the definition of works contract was brought under the service tax net as per Section 65(105)(zzzza) of the Finance Act, 1994 by the insertion of the said definition. The said introduction was made pursuant to the Finance Act, 2007, which expressly made the service element in such works contract liable to service tax w.e.f. 1st June, 2007. By the said amendment, works contract which were indivisible and composite could be split so that only the labour and service element of such contracts would be taxed under the heading “Service Tax”.

23. It is in the above backdrop that the definition of Works contract inserted for the first time by virtue of Section 65(105)(zzzza) under the Finance Act, 2007 assumes significance and has to be applied w.e.f. 1st June, 2007. Thus, on and from the enforcement of the amendment in the Financial Year 2007, i.e. 1st June, 2007 the tax on the service component of works contract became leviable. Therefore, till then it was not so leviable as there was no concept of works contract under the said Act.

24. Recognising this aspect of the matter in Larsen and Toubro Ltd. (supra), this Court held

that Service Tax on works contract was not leviable, meaning thereby, that such tax on the service component of works contract as defined above did not attract Service Tax prior to the amendment.

25. Further, in Commissioner of Service Tax and Others vs. Bhayana Builders Private Limited and Others [(2018) 3 SCC 782], this Court considered the correctness of the judgment of the Larger Bench of Customs, Excise and Service Tax Appellate Tribunal (for short, “CESTAT”) dated 06.09.2013 in the case of Bhayana Builders (P) Ltd. vs. CST [(2013) SCC OnLine CESTAT 1951]. In the said case, reliance was placed on Larsen and Toubro Ltd. (supra) and it was held that when there was no levy of service tax on works contract, no question of any exemption would arise. It was further held that the Central Government is empowered to grant exemption from the levy of service tax either wholly or partially, only when there is any “taxable service” as defined in sub¬clauses of clause (105) of Section 65 of the Finance Act, 1994 and not otherwise. This Court agreed with the view taken by the Full Bench of the CESTAT in the judgment dated 06.09.2013 and dismissed the appeals of the Revenue.

26. Therefore, reliance placed by the assesses in the present case on the aforesaid judgments is just and proper. On the other hand, the contention of Ms. Diwan, learned ASG to the effect that even prior to the aforesaid amendment being made to the Finance Act, 1994 service tax on works contract was leviable is not correct. It was being levied on purely service contract and not on service element of works contract as there was no definition of a works contract till then. Hence, the amendment made to the Finance Act, 1994 by insertion of the definition of works contract as under clause (zzzza) is not clarificatory in nature. Having found that the Service Tax was not at all leviable on service element of a works contract, Parliament felt the need for the amendment and was so incorporated by the Finance Act, 2007.

27. Thus, the judgment in Larsen and Toubro Ltd. (supra) has been correctly decided and does not call for a reconsideration insofar as the period prior to 1st June, 2007 is concerned. In view of the above discussion, I agree with the result arrived at by His Lordship M.R. Shah J. vis¬à¬vis allowing all civil appeals under consideration except Civil Appeal no. 6792 of 2010 which is dismissed. No costs.