

## **'Works Contract' taxable pre-2007: CESTAT 5 Member Bench**

**March 24, 2015**

### **Key Takeaways**

One of the most important judgments on 'works contract' taxability pre-2007 has been pronounced by a [5 Member Larger Bench of Delhi CESTAT](#) on March 19, 2015. We bring you the key takeaways from the LB ruling:

- CESTAT Larger Bench rules on taxability of 'Works Contract' prior to June 2007 by 3:2 majority.
- Members (Technical) held that service elements in a composite contract could be subject to service tax prior to June 1, 2007 as well, if these are classifiable under "Commercial or Industrial Construction" (CICS), "Construction of Complex" (COCS) or "Erection Commissioning or Installation" (ECIS).
- On the other hand, CESTAT President and Judicial Member concluded that a composite contract cannot be vivisected pre-2007 and 'works contract' would be taxable only under 'Works Contract Service' u/s 65(105)(zzzza) of the Finance Act, 1994.
- Members (Technical) held that calling G.D. Builder's ratio to be concession would amount to 'mockery' as Delhi HC in said case had examined issue at great length, therefore same would not be called as bad in law.
- Members (Technical) observed that Sec 67 of Finance Act itself provides for measure of levy, and several exemption Notifications such as 12/2003-ST, 15/2004-ST and 1/2006-ST which provided for an alternative / optional / hassle free method of quantification of tax liability.
- Members (Technical) observed merely because CICS, COCS and ECIS has become classifiable under "Works Contract Service" w.e.f. June 2007 does not imply that these services were not taxable earlier.

- However, CESTAT President & Member (Judicial) dissented with Members (Technical) and observed that pre-2007, “composite
- *contract, involving transfer of property in goods and rendition of services, cannot be vivisected...service components in works contract are taxable only under Works Contract Service defined and enumerated in Section 65(105)(zzzza) of the Finance Act, 1994”.*
- CESTAT President & Member (Judicial) rejected Revenue's contention that exemption / composition / abatement Notifications issued u/s 93 of Finance Act, are species of delegated / subordinate legislation as they are subject to Parliamentary oversight qua mandated procedure.
- CESTAT President & Member (Judicial) further observed that Union's legislative intention, to levy tax only on labour/service elements must therefore be categorically expressed in the charging provision per se.
- CESTAT President & Member (Judicial) noted that neither the exclusionary clauses under Explanation 1 to Sec 67 (prior to amendment in 2006), nor exemption Notifications or CBEC / TRU Circular provide for exclusion of value of goods sold / deemed to have been sold in execution of a works contract.

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