Commissioner of Service Tax, Chennai Vs. M/s. Diebold Systems Pvt. Ltd.

Civil Appeal Nos. 4708-4711 of 2008 · Supreme Court of India · 2026-08-06 · Prashant Kumar Mishra · Shree Chandrashekhar · F2J-C-1030

Full judgment text

Commissioner of Service Tax, Chennai Vs. M/s. Diebold Systems Pvt. Ltd.

[Civil Appeal Nos. 4708-4711 of 2008]

Prashant Kumar Mishra, J.

1. The present Appeals lay challenge against the final order dated 28.11.2007 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai1, whereby the CESTAT, by common order, allowed the appeals preferred by the respondent-assessee, M/s Diebold Systems Pvt. Ltd., set aside the Orders-in-Original passed by the Commissioner of Service Tax, Chennai, and consequently dismissed the appeal preferred by the Revenue. The impugned order arose out of Order-in- Original Nos. 03/2005 and 04/2005, both dated 23.12.2005, and Order-in- Original No. 04/2007 dated 23.02.2007 passed by the Commissioner of Service Tax, Chennai.

FACTUAL MATRIX

2. The respondent-assessee is engaged in the business of supplying Automated Teller Machines (ATMs) to various banks. Pursuant to contracts awarded by different banks, the respondent-assessee undertook the supply, installation and commissioning of ATMs at the sites identified by the respective banks. The contracts were executed on a turnkey basis under which the respondent-assessee was responsible not merely for supplying the ATMs but also for their installation and commissioning.

3. The controversy in the present Appeals relates to the levy of service tax on 33% of the gross consideration received by the respondent-assessee from the banks for the period from July 2003 to April 2006. According to the Revenue Department, the said component represented consideration attributable to installation and commissioning activities and was, therefore, liable to service tax under the taxable category of "commissioning or installation" under the Finance Act, 1994. The respondent-assessee, on the other hand, maintained that the contracts were indivisible turnkey contracts involving both the supply of goods and incidental installation and commissioning and that no part of the consideration could be segregated and subjected to service tax under the aforesaid taxable entry.

4. Proceeding on the basis that 33% of the gross consideration received by the respondent-assessee represented the value of installation and commissioning services, the Directorate General of Central Excise Intelligence, Chennai Zonal Unit, issued Show Cause Notice No. 6/2005 dated 14.02.2005 proposing recovery of service tax amounting to Rs. 3,37,39,404/- for the period from July 2003 to July 2004 together with interest and penalties. Upon adjudication, the Commissioner of Service Tax, Chennai, by Order-in-Original No. 03/2005 dated 23.12.2005, confirmed the entire demand of service tax along with the applicable interest but declined to impose penalties. While the respondent-assessee challenged the confirmation of the demand before the CESTAT, the Revenue preferred an appeal limited to the question of non-imposition of penalties.

5. While the above appeals were pending before CESTAT, a second Show Cause Notice No. 5/2005 dated 21.10.2005 was thereafter issued in respect of the subsequent period from 01.08.2004 to 31.07.2005 proposing recovery of service tax and education cess aggregating to Rs. 4,68,22,103/- together with interest and penalties. By Order-in-Original No. 04/2005 dated 23.12.2005, the Commissioner of Service Tax, Chennai confirmed service tax and education cess to the extent of Rs. 4,27,95,344/-, directed payment of interest under Section 75 of the Finance Act, 1994 and imposed penalty under Section 76 thereof. The respondent-assessee questioned the said adjudication order by preferring an appeal before the CESTAT.

6. The Revenue subsequently issued a third Show Cause Notice No. 52/2006 to respondent-assessee dated 17.10.2006 covering the period from 01.08.2005 to 30.04.2006 proposing recovery of service

tax and education cess amounting to Rs. 2,96,02,757/- together with interest and penalties. By Order-in-Original No. 04/2007 dated 23.02.2007, the Commissioner of Service Tax, Chennai confirmed the proposed demand, together with the applicable interest and penalties, whereupon the respondent-assessee preferred a further appeal before the CESTAT challenging the said adjudication order.

7. Since all the appeals arose out of a common controversy concerning the leviability of service tax on the activities undertaken by the respondent-assessee under the turnkey contracts for supply, installation and commissioning of ATMs, the CESTAT heard them together and disposed of them by the impugned final order dated 28.11.2007.

Upon an examination of the terms and conditions governing the contracts entered into between the respondent-assessee and the various banks, the CESTAT held that the contracts were in the nature of indivisible turnkey contracts in which the dominant object was the supply of ATMs, while installation and commissioning constituted obligations merely incidental to the execution of the contracts. The CESTAT observed that the contracts envisaged a single, composite consideration for the execution of the entire work and did not contemplate a separate or independent consideration for installation and commissioning so as to render those activities exigible to service tax in isolation.

8. Referring to the statutory scheme governing the levy of service tax during the relevant period and placing reliance upon the principle enunciated in its earlier decision of Daelim Industrial Co. Ltd. vs. Commissioner of Central Excise, Vadodara2, the CESTAT took the view that, in the absence of an express charging mechanism under the Finance Act, 1994 authorising the vivisection of such indivisible contracts, no part of the composite consideration could be artificially segregated and brought to tax under the taxable category of "commissioning or installation". The CESTAT held that the activities undertaken by the respondent-assessee in executing the turnkey contracts were inextricably connected with, and incidental to, the supply of the ATMs and, therefore, could not be treated as constituting an independent taxable service.

9. On the aforesaid reasoning, the CESTAT set aside Order-in-Original Nos. 03/2005 and 04/2005, both dated 23.12.2005, and Order-in-Original No. 04/2007 dated 23.02.2007 passed by the Commissioner of Service Tax, Chennai, allowed the appeals preferred by the respondent-assessee and, as a necessary consequence, dismissed the Revenue's appeal questioning the Commissioner's decision not to impose penalties.

10. It is the correctness of the aforesaid view taken by the CESTAT that falls for consideration in the present Appeals.

SUBMISSIONS OF PARTIES

11. Learned counsel for the appellant-Revenue argues that CESTAT has committed a manifest error in holding that respondent-assessee was not liable to service tax under the taxable category of "commissioning or installation" under Section 65(105)(zzd) of the Finance Act, 1994. According to the learned counsel, the contracts entered into between the respondent-assessee and various banks unmistakably involved the rendering of installation and commissioning services in addition to the supply of ATMs. The mere circumstance that the contracts were executed on a turnkey basis or that a composite consideration was stipulated thereunder could not efface the independent taxable character of the installation and commissioning activities undertaken by the respondent.

12. Learned counsel for the appellant-Revenue contended that the Finance Act, 1994 envisaged taxation of specified services irrespective of the form in which the contract was structured. The installation and commissioning activities undertaken by the respondent-assessee squarely fell within the statutory definition of "commissioning or installation" and were, therefore, independently exigible to service tax. It was urged that the appellant-Revenue had rightly subjected only 33% of the gross contractual consideration to service tax, representing the value attributable to the installation and commissioning component.

13. Lastly, learned counsel further submitted that the CESTAT erred in placing reliance upon the decision in Daelim Industrial Co. Ltd. (supra) and in applying the ratio thereof to the facts of the present case. According to the learned counsel for the appellant, the said decision was distinguishable on facts and did not lay down an absolute proposition that every turnkey contract was immune from service tax.

14. Per contra, learned counsel for respondent-assessee supported the impugned order of CESTAT, arguing that that the contracts entered into with the various banks were indivisible turnkey contracts for the supply, installation and commissioning of ATMs, executed for a single consolidated consideration. The installation and commissioning activities were merely incidental to, and inseparable from, the principal obligation of supplying fully functional ATMs and did not constitute an independent taxable service.

15. Learned counsel for respondent-assessee further submitted that during the relevant period from July 2003 to April 2006, the Finance Act, 1994 did not contain any charging provision authorising the vivisection of an indivisible composite contract so as to isolate and tax the service element embedded therein. Therefore, according to learned counsel, the Revenue's attempt to levy service tax on an assumed 33% of the composite consideration was, therefore, wholly without statutory authority.

16. Learned counsel for the respondent-assessee also pointed out that it had discharged sales tax/Value Added Tax on the entire value of the contracts and that no separate consideration had ever been stipulated or received towards installation and commissioning.

17. Lastly, learned counsel for respondent-assessee submits that CESTAT correctly relied upon principles laid down in Daelim Industrial Co. Ltd. (supra) and had rightly concluded that, in the absence of any statutory provision authorising the artificial splitting of composite contracts, no service tax could be levied under the taxable category of "commissioning or installation" under Section 65(105)(zzd) of the Finance Act, 1994.

ANALYSIS

18. In the backdrop of the aforesaid facts and the rival contentions urged on behalf of the parties, the following questions arise for the consideration of this Court: a) Whether the turnkey contracts entered into by the respondent-assessee with various banks for the supply, installation and commissioning of ATMs constitute indivisible composite contracts which, during the relevant period, were incapable of being vivisected for the purpose of levying service tax under the taxable category of "commissioning or installation" under the provisions of the Finance Act, 1994? b) Whether the CESTAT was justified in holding that no part of the composite consideration received by the respondent-assessee under the aforesaid turnkey contracts could be subjected to service tax as consideration for "commissioning or installation"?

19. The controversy arising in the present Appeals lies within a narrow compass. The question is not whether the respondent-assessee undertook the installation and commissioning of ATMs pursuant to the contracts entered into with various banks. That factual position is undisputed. The controversy, rather, concerns the true nature of the contracts entered into by the respondent-assessee and whether, having regard to the provisions of the Finance Act, 1994 as they stood during the relevant period from July 2003 to April 2006, the Revenue was legally justified in artificially segregating a part of the composite consideration received under such contracts and subjecting the same to service tax under the taxable category of "commissioning or installation".

20. The answer to the aforesaid question, in our considered view, must necessarily be found in the statutory framework governing the levy of service tax during the relevant period. It is a settled principle of fiscal jurisprudence that the liability to tax must flow from the charging statute itself. A taxing statute admits of neither intendment nor equity. The existence, extent and incidence of a tax must be discernible from the language employed by the legislature, and no tax can be imposed by implication or by an expansive construction of the charging provision. Equally well settled is the principle that machinery or valuation provisions facilitate the computation of a tax validly imposed and they do not create or enlarge the charge itself. The charging provision and the machinery provisions must therefore be construed harmoniously, but the latter cannot be employed to supply what the former does not enact. [See: Shiv Steels vs. State of Assam and Others3]

21. At the relevant time, service tax was levied under Section 66 of the Finance Act, 1994 on the value of taxable services referred to in Section 65(105) of the Act. The expression "taxable service" was exhaustively defined by the legislature by enumerating distinct taxable entries under Section 65(105) of the Act. One such entry was "commissioning or installation", which contemplated the rendition of a taxable service of "commissioning or installation" as defined under the Finance Act, 1994. Section 67 prescribed the manner in which the value of such taxable service was to be determined. A plain reading of the statutory scheme thus discloses that the levy under Section 66 was attracted only

where the activity in question answered the description of a taxable service under Section 65(105), whereafter Section 67 operated only to determine the measure of tax.

22. The legislative distinction between the charging provision and the machinery for valuation assumes particular significance in the context of composite commercial transactions involving both the transfer of property in goods and the rendition of services. While the Finance Act, 1994 undoubtedly authorised the levy of service tax on specified taxable services, the statute, during the period relevant to the present appeal, did not contain any express provision authorising the dissection or vivisection of an indivisible composite turnkey contract so as to extract and tax one of its constituent elements in isolation. Unless the charging provisions themselves contemplated such an exercise, the Revenue could not, by adopting a method of valuation or by attributing a notional percentage of the total consideration to a particular activity, create a taxable event which the statute itself had not recognised.

23. It is in the aforesaid statutory backdrop that the nature of the contracts executed by the respondent-assessee assumes determinative significance. The factual findings recorded by the CESTAT, upon an examination of the contractual terms, reveal that the respondent-assessee was entrusted with turnkey contracts for the supply, installation and commissioning of ATMs. The contracts envisaged a single commercial objective, namely, the delivery of fully functional ATMs at the designated sites of the banks.

The obligations undertaken by the respondent-assessee including procurement, supply, transportation, installation, testing and commissioning were all integral components of the execution of that singular contractual obligation. The consideration stipulated under the contracts was likewise composite in nature and was payable for the execution of the turnkey project as a whole. There was no separate bargain for installation or commissioning independent of the supply of the ATMs, nor was there any distinct consideration earmarked for such activities.

24. The Revenue nevertheless sought to subject 33% of the gross consideration received by the respondent-assessee to service tax by treating that portion as representing the value of "commissioning or installation". The very premise underlying the Revenue's case is that the contracts, though admittedly composite in character, were capable of being split into separate components for the purpose of taxation. It is, therefore, this assumption of statutory authority to vivisect an indivisible turnkey contract which falls for our examination.

25. Before adverting to the rival submissions on the merits of the controversy, it would be apposite to notice the legal principles governing the taxation of composite contracts under the constitutional and statutory framework. The controversy in the present appeal cannot be resolved merely by reference to the nomenclature of the taxable entry or the activities actually undertaken by the respondent-assessee. Rather, the issue must be examined in the light of the nature of the transaction sought to be taxed, the scope of the charging provisions under the Finance Act, 1994 and the constitutional limitations governing the taxation of composite contracts.

26. The jurisprudence relating to composite contracts traces its origin to the decision of the Constitution Bench in State of Madras vs. Gannon Dunkerley & Co. (Madras) Ltd.4, wherein this Court held that a building or works contract, in its classical form, is one entire and indivisible contract comprising multiple obligations, including the supply of goods, labour and services. Such a contract was held not to amount to a contract of sale in the conventional legal sense, since there existed neither an agreement to sell the materials as such nor a transfer of property in goods independent of the execution of the works contract.

Consequently, it was held that, under the constitutional scheme then prevailing, the State Legislature lacked competence to isolate the value of materials incorporated in the execution of an indivisible works contract and subject the same to sales tax as though it constituted a separate contract of sale. This principle formed the bedrock of the law governing composite contracts and recognised the essential unity and indivisibility of such transactions.

27. The constitutional position was subsequently altered by the Constitution (Forty-sixth Amendment) Act, 1982, whereby Article 366(29A) was inserted in the Constitution to enlarge the legislative competence of the States in respect of specified composite transactions, including the transfer of property in goods involved in the execution of works contracts. By creating a legal fiction, Article 366(29A)(b) enabled the value of goods involved in an indivisible works contract to be treated as a

deemed sale and thereby brought within the taxing power of the States. Significantly, however, the constitutional amendment did not convert an indivisible works contract into separate and independent contracts in law. It merely authorised the segregation of the goods component for the limited purpose of imposing sales tax or value added tax, leaving the composite nature of the contract otherwise remained intact.

28. The above constitutional position assumes considerable significance while construing the provisions of the Finance Act, 1994. Unlike the constitutional amendment empowering the States to tax the deemed sale element in a composite works contract, the Finance Act, 1994, during the period relevant to the present appeal, contained no corresponding provision authorising the Revenue to segregate and tax the service element of an indivisible composite contract under the existing taxable entries.

The charging provision under Section 66 of the Finance Act, 1994 merely levied service tax on the taxable services enumerated under Section 65(105). Equally, Section 67 prescribed only the mode for determining the value of a taxable service once the charge itself was attracted. Neither provision, either expressly or by necessary implication, authorised the vivisection of an indivisible turnkey contract for the purpose of identifying and taxing one of its constituent elements in isolation.

29. It is in this context that the distinction between a contract for the rendition of a taxable service simpliciter and an indivisible composite contract assumes decisive importance. A contract whose dominant object is the provision of a taxable service may undoubtedly attract service tax even though certain goods or materials are consumed or incidentally supplied in the course of its performance.

Equally, where the statute specifically provides for the taxation of composite contracts and prescribes an appropriate machinery for determining the service component, the levy may validly operate upon such transactions. However, where the contract is one entire and indivisible, embodying obligations relating to the transfer of property in goods together with labour and services for a single consolidated consideration, the Revenue cannot, in the absence of statutory authority, artificially split the transaction into separate taxable components merely because one part of the contractual obligations answers the description of an existing taxable service.

30. The aforesaid principle has now received authoritative recognition in Commissioner, Central Excise and Customs, Kerala vs. Larsen and Toubro Limited5, wherein a Division Bench of this Court after undertaking an exhaustive examination of the constitutional history, the scheme of the Finance Act, 1994 and the evolution of service tax legislation, held that the taxable entries existing prior to the introduction of "works contract service" with effect from 01.06.2007 (via Finance Act, 2007) contemplated only service contracts simpliciter and not indivisible composite works contracts.

It was categorically held that the Finance Act, 1994, as it stood prior to the introduction of the specific taxable entry (in form of Section 65(105)(zzzza)) relating to works contracts, contained neither the charging provision nor the machinery necessary to levy and assess service tax on indivisible composite works contracts. Consequently, this Court held that such contracts could not be vivisected and subjected to service tax under pre-existing taxable categories merely because they incidentally involved the rendition of one or more services.6

31. Of equal significance is the reasoning adopted by this Court in Larsen and Toubro Limited (supra) that the subsequent introduction of a distinct taxable entry relating to "works contract service" with effect from 01.06.2007 (via Finance Act, 2007) constitutes a clear legislative recognition that the existing taxable entries were insufficient to encompass indivisible composite works contracts. The introduction of a specific charging provision (in form of Section 65(105)(zzzza)), accompanied by a detailed valuation mechanism for determining the service element of such contracts, was not merely clarificatory in nature but represented a substantive legislative measure to bring within the service tax net a class of transactions which had hitherto remained outside the scope of the charging provisions. This legislative development reinforces the conclusion that, during the period with which the present appeal is concerned, no authority existed in law to vivisect an indivisible turnkey contract and levy service tax upon a notional portion thereof.

32. Applying the aforesaid principles to the facts of the present case, we find ourselves in agreement with the ultimate conclusion reached by the CESTAT. The contracts entered into by the respondent-assessee with various banks were, in substance and in form, turnkey contracts for the supply, installation and commissioning of ATMs. The contractual obligations undertaken by the

respondent-assessee were not divisible into independent promises giving rise to separate and distinct commercial transactions.

The installation and commissioning of the ATMs did not constitute an end in themselves but were integral incidents of the respondent's overarching obligation to supply fully functional ATMs at the designated sites of the respective banks. The consideration stipulated under the contracts was likewise composite and payable for the execution of the turnkey project as a whole. Neither the contractual terms nor the manner in which the parties conducted themselves indicates that the installation and commissioning activities were separately contracted for or separately remunerated.

33. The Revenue, however, seeks to sustain the levy by contending that notwithstanding the composite character of the contracts, the respondent-assessee rendered a taxable service of "commissioning or installation" within the meaning of Section 65(105)(zzd) of the Finance Act, 1994 and that 33% of the gross consideration received under the contracts represented the value attributable to such service. We are unable to accept the said submission. The argument advanced on behalf of the Revenue, if accepted, necessarily presupposes that the Finance Act, 1994 authorised the Revenue to first split an indivisible turnkey contract into its constituent elements, identify a notional service component therefrom and thereafter levy service tax upon such component under the existing taxable entry.

As noticed hereinabove, neither the charging provisions contained in Sections 65 and 66 nor the valuation provisions contained in Section 67 of the Finance Act, 1994 conferred any such authority during the relevant period. The assumption that an indivisible contract could first be vivisected and only thereafter subjected to service tax begs the very question which the statute required to be answered. In the absence of an express legislative mandate permitting such segregation under the Finance Act, 1994, the Revenue could not, by a process of administrative attribution or notional apportionment, create a taxable event where none existed under the charging provisions of the Act during the relevant period.

34. We also find no statutory foundation for the Revenue's attribution of 33% of the gross contractual consideration as representing the value of "commissioning or installation". The determination of such percentage does not emerge from the charging provisions of the Finance Act, 1994. Nor does the statute, as it stood during the relevant period, prescribe any machinery for isolating the service element of an indivisible turnkey contract by allocating a fixed percentage of the composite consideration thereto. The absence of a legislatively sanctioned mechanism for such segregation assumes particular significance in the field of taxation, where both the charge and the measure of tax must have clear statutory authority. A fiscal liability as held in Shiv Steels (supra) cannot rest upon a notional or assumed apportionment unsupported by the charging enactment.

Unless the Finance Act, 1994 authorised the segregation of the service element embedded in an indivisible composite contract, no percentage, however scientifically determined, could confer jurisdiction upon the Revenue to levy service tax. The existence of a valid charging provision must precede the determination of value and it cannot be derived from the valuation exercise itself. In this regard, the observations of this Court in Larsen and Toubro Limited (supra) that the Finance Act, 1994, prior to 01.06.2007, contained neither the charge nor the machinery to levy and assess service tax on indivisible composite works contracts apply with full force to the controversy before us.

35. Equally unpersuasive is the contention that because the respondent-assessee in fact undertook installation and commissioning activities, the contracts must necessarily fall within the taxable category of "commissioning or installation" under Section 65(105)(zzd) of Finance Act, 1994. Such an approach isolates one facet of a composite commercial transaction while disregarding the legal character of the transaction as a whole.

As this Court has explained in Larsen and Toubro Limited (supra), the taxable entries existing prior to 01.06.2007 contemplated service contracts simpliciter and not indivisible composite contracts embodying elements of both transfer of property in goods and rendition of services. The mere circumstance that one of the obligations undertaken under a composite contract answers the description of an existing taxable service cannot, in the absence of statutory authority, justify the fragmentation of the contract and the taxation of that obligation in isolation.

36. The legislative developments subsequent to the period in question furnish further support to the above conclusion. Parliament, by introducing a distinct taxable entry (in form of Section

65(105)(zzzza)) relating to "works contract service" with effect from 01.06.2007 (via Finance Act, 2007), simultaneously enacted an appropriate valuation mechanism and composition scheme specifically designed to ascertain and tax only the service element embedded in composite works contracts.

As explained in Larsen and Toubro Limited (supra), this legislative intervention was not an idle exercise, rather it reflected a conscious recognition that the existing taxable entries (under the Finance Act, 1994) did not themselves provide either the charge or the machinery necessary for taxing indivisible composite contracts. Had the Revenue's interpretation been correct, the introduction of a separate taxable category together with an elaborate statutory machinery for valuation would have been largely otiose.

37. We are, therefore, of the considered view that the contracts executed by the respondent-assessee cannot be artificially disintegrated so as to subject a notional portion of the composite consideration to service tax under the taxable category of "commissioning or installation". During the period from July 2003 to April 2006, the Finance Act, 1994 did not authorise the vivisection of such indivisible turnkey contracts, nor did it provide the machinery necessary for identifying and assessing the service element embedded therein. Such authorisation came to be only introduced on 01.06.2007 (via Finance Act, 2007) in form of Section 65(105)(zzzza). Therefore, we are of the view that the demand raised by the Revenue proceeds on a legal premise which is inconsistent with the statutory framework as subsequently explained and authoritatively settled by this Court in Larsen and Toubro Limited (supra).

38. The conclusion reached by us also finds reflection in the reasoning adopted by the CESTAT in the impugned order. The CESTAT correctly appreciated that the contracts executed by the respondent-assessee were indivisible turnkey contracts providing for a composite consideration and that the installation and commissioning obligations were merely integral incidents of the execution of the contracts as a whole. In arriving at the said conclusion, CESTAT drew support from the principle enunciated by it in Daelim Industrial Co. Ltd. (supra) namely, that in the absence of statutory authority an indivisible turnkey contract could not be artificially vivisected for the purpose of levying service tax under the taxable entries then in force.

Proceeding on that basis, CESTAT held that no part of the consideration received under such composite contracts could be subjected to service tax under the taxable category of "commissioning or installation". Though rendered prior to the authoritative pronouncement of this Court in Larsen and Toubro Limited (supra), CESTAT's approach is entirely consistent with the legal position subsequently declared by this Court, namely, that the Finance Act, 1994, prior to the introduction of "works contract service" with effect from 01.06.2007, contemplated taxation only of service contracts simpliciter and not indivisible composite works contracts. The impugned order of CESTAT, therefore, warrants affirmation on this independent legal basis.

39. The Revenue has consistently urged that since the respondent-assessee admittedly undertook the installation and commissioning of ATMs, the contracts necessarily fall within the taxable category of "commissioning or installation". We are unable to accede to the said submission. The controversy does not turn upon the mere existence of installation and commissioning activities. Rather, the determinative question is whether such activities were rendered as an independent taxable service under a separate service contract or merely constituted integral and inseparable obligations undertaken in the course of executing an indivisible turnkey contract.

Once it is found, as we have held, that the respondent's contracts were indivisible composite contracts executed for a single consolidated consideration, the Revenue cannot isolate one constituent obligation thereof and subject it to service tax in the absence of a charging provision authorising such vivisection. This conclusion is wholly consistent with the law declared by this Court in Larsen and Toubro Limited (supra), which held that the pre-01.06.2007 taxable entries contemplated service contracts simpliciter and not indivisible composite works contracts.

40. Tested on the touchstone of the aforesaid principles, we are satisfied that the CESTAT committed no error in setting aside the demands confirmed by the Commissioner of Service Tax, Chennai. The respondent-assessee executed indivisible turnkey contracts involving the supply, installation and commissioning of ATMs for a composite consideration. During the period from July 2003 to April 2006, the Finance Act, 1994 did not authorise the vivisection of such contracts so as to isolate and tax the installation and commissioning component under the taxable category of "commissioning or

installation".

In the absence of any statutory authority permitting the artificial segregation of the installation and commissioning component from the composite transaction, the Revenue was not entitled to levy service tax by attributing a notional percentage of the total contractual consideration to the taxable category of "commissioning or installation" under Section 65(105)(zzd) of Finance Act, 1994. The conclusion reached by the CESTAT is thus in consonance with the statutory scheme of the Finance Act, 1994 and the law subsequently declared by this Court in Larsen and Toubro Limited (supra).

CONCLUSION

41. In light of our aforesaid discussion and for the reasons above, the impugned order dated 28.11.2007 passed by the CESTAT calls for no interference. Consequently, the Appeals are dismissed.

................J. (Prashant Kumar Mishra)

................J. (Shree Chandrashekhar)

New Delhi;

August 06, 2026.

1 For short, 'CESTAT'

2 2003 SCC OnLine CESTAT 418 (Upheld by the Supreme Court in Commnr. of Central Excise, Vadodara vs. M/S Daelim Industrial Co. Ltd, SLP(C) No. 24294/2003 by order dated 02.08.2004)

3 2025 SCC OnLine SC 2006 at Para 14

4 1958 SCC OnLine SC 100

5 (2016) 1 SCC 170

6 Ibid at Para 42.