

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Division Bench

Court – I

Service Tax Appeal No. 20158 of 2015

(Arising out of OIO No. HYD-EXCUS-003-COM-033-14-15 dt.30.10.2014 passed by
Commissioner of Customs, Central Excise & Service Tax, Hyderabad-III)

Kasukurthi Sujatha

Kakatiya Nagar, Street No.1,
Habsiguda, Hyderabad – 500 007

.....Appellant

VERSUS

**Commissioner of Central Tax
Secunderabad**

LB Stadium Road, Basheerbagh,
Hyderabad, Telangana – 500 004

.....Respondent

Appearance

Shri Y. Sreenivasa Reddy, Advocate for the Appellant.
Shri B. Sangameshwar Rao, AR for the Respondent.

Coram:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30184/2024

Date of Hearing: 07.09.2023

Date of Decision: 06.03.2024

[Order per: A.K. JYOTISHI]

The Appellant has filed this Appeal against the demand of service tax of Rs.1,55,11,659/- under Sec 73 and Rs.4,39,515/- under Sec 73A of the Finance Act, 1994, for the period 2005-06 to 2009-10 under the categories of "Commercial or Industrial Construction service" (CICS), "Works Contract service" (WCS) & "Site Formation and Clearance service". The Appellants as a works contractor was engaged in laying of optical fiber cables and gas pipe lines for GAIL, construction of reservoirs etc., as main contractor and also as a sub-contractor. This is the second round of litigation.

2. In the first round of Appeal, the matter came up before the Tribunal, in cross appeals, remanded the matter back to the Original Adjudicating Authority

for the denovo proceedings, as the Original Authority had dropped certain parts of demand and also confirmed certain portions of demand.

3. The Brief facts are that the Appellant is a works contractor and mainly engages in laying of optical fibre lines, gas pipelines for GAIL, construction of reservoir, etc., either as main contractor or subcontractor. They were not paying service tax on these activities as all these activities are either for government authority or for Government Company. In the 2nd round, the demand has been confirmed as follows:–

S.No.	Service	Amount demanded (Rs.)	Period
1	Commercial or Industrial Construction Service (CICS)/ Works Contract	1,53,48,874	2005-06 to 2009-10
2	Site Formation and Clearance service	66,327	2005-06
3	73A demand (optical fibre work)	4,39,514	-

4. In the denovo order, the adjudicating authority confirmed part of the demand and have dropped a part of the demand, observing as follows: –

- The CBEC Circular dt.24.05.2010 clarifies that laying of electrical cables is only liable to service tax and not the laying of optical fibre cable.
- The Appellant had collected service tax of Rs.4,39,514/- in respect of certain optical fibre cable laying jobs and is liable to pay the same.
- Laying of water pipelines and gas pipelines for government companies is not exempt since it is for commercial purpose.
- Abatement of 67% for material component, of the value is not allowed since the Appellant had received free supply of material from the client.
- Further held that contention of Appellant that since, subcontractor had paid service tax, they are not required to pay the same, is not acceptable.
- Further returns were filed belatedly and as it did not contain all the details, extended period is invokable.

5. They are mainly relying on the Hon'ble Supreme Court's judgment in the case of Larsen & Toubro Ltd [2015 (39) STR 913 (SC)], in support that demand will not sustain prior to 01.06.2007. Similarly, for the optical fiber cables laying under CICS up to 01.06.2007, and thereafter under Works Contract. In view of CBEC Circular No. 123/5/2010-TRU dt.24.05.2010, the same is not liable to service tax and the matter is no longer res integra in view of the judgment in the case of HM Satyanarayan vs CCE, Nagpur [2016 (42) STR 397 (Tri-Mumbai) and CCE, Jaipur-II vs Rishab Telelinks [2017 (49) STR 71 (Tri-Delhi)]. They

have also submitted that WCS provided to railways is outside the definition of WCS itself, and therefore, not liable to service tax. Further, denial of abatement of 67% as provided under Notification No.01/2006 dt.01.03.2006 on the grounds that they have received certain free material, is not correct and is also against the settled legal position, in view of the following judgments:

- a) Bhayana Builders Pvt Ltd vs CST, Delhi [2013 (32) STR 49 (Tri-LB)] upheld by Hon'ble Supreme Court [2018 (10) GSTL 118 (SC)].
- b) CCE, Bhopal vs Sonali India [2014 (34) STR 47 (Tri-Delhi)]
- c) Ahluwalia Contracts India Ltd vs CST, New Delhi [2015 (38) STR 38 (Tri-Delhi)]

6. They have also submitted that demand of service tax, which has already been paid by sub-contractor, who executed the contract on back-to-back basis, and deducted from the bills of the Appellant, is also not correct, since the service tax is on service provided and same service cannot be charged to tax twice. The sub-contractor has paid service tax and deducted it from the bills of the Appellant. Also refers to sample bill(s) annexed to appeal file.

7. They have also submitted that liability on construction of reservoir has not been discussed in the Impugned Order, and that atmost, the net tax liability on laying of gas pipe lines would be Rs.34,71,933/- only, whereas, the Appellant had already paid an amount of Rs.42,00,000/- along with interest of Rs.27,13,129/-.

8. Further, that the demand is time barred on the ground that they were under bonafide belief, that there was no liability to pay service tax on laying of gas pipe lines for GAIL and that they have been paying service tax and filing returns.

9. For the sake of clarity, the demand of duty has been made in respect of following services:

- a) Laying of pipelines under WCS/CICS – Rs.1,41,82,336/-
- b) Construction of reservoirs, CNG stations and fire stations etc. – Rs.11,66,538/-
- c) Demand under Business Auxiliary service – Rs.96,458/- (not disputed)
- d) Site preparation service – Rs.66,327/- (not disputed)
- e) Laying of Optical Fiber Cables – Rs.4,39,514/- (not disputed)

10. The learned AR for revenue relies on the impugned order.

11. Having considered the rival contentions and on perusal of record, the Counsel for the Appellant has not contested the demand for Rs.66,327/- for the period 2005-06 under Site Formation and Clearance service on the ground that the said amount of taxes were already paid and they are not disputing it. So far the demand of Rs.4,39,514/- for laying of optical fibre cables, the same is not being contested as the Appellant has collected the tax and deposited the same.

12. So far the work of laying pipelines under the head 'works contract service' done for Gas Authority of India Ltd (as the subcontractor) is concerned, we hold that the amount received prior to 01.06.2007 is not taxable. Further, the Appellant is entitled to abatement of 67% from the gross value towards material component. Further, the Appellant has demonstrated that the main contractor has adjusted the amount of service tax from the bill(s) of the Appellant – subcontractor. Thus, we hold that the Appellant is entitled to set-off of the tax deposited by the main contractor and admittedly adjusted from their bills. We also hold that the Appellant is entitled to pay tax under the composition scheme and the same cannot be denied for having not opted for.

13. So far the demand of Rs.11,66,538/- for construction of the reservoirs, CNG stations and fire stations is concerned, we similarly hold the activity of construction of fire stations is of non-commercial nature and hence the same is held as exempt. So far the activity of construction of reservoirs and CNG stations is concerned, we hold that demand is bad for the period prior to 01.06.2007. After 01.06.2007, Appellant shall be entitled to abatement of 67% of the gross value and also be entitled to the benefit of paying tax under the composition scheme.

14. We also hold that free supply of material, if any, from the service receiver cannot be added to the gross turnover of the Appellant, as held by the Apex Court in the case of Bhayana Builders (supra).

15. The Appellant is also not contesting the demand of Rs.96,458/- under the head BAS.

16. We further find that the Appellant was registered with the department and have been filing the returns regularly and also maintains proper records of the transactions. The issue involved is wholly attributable to interpretation of the tax provisions. Accordingly, we hold that the extended period of limitation is not available to revenue.

17. In view of the aforementioned observations and findings, we allow this appeal and set aside the impugned order. The tax liability shall be recalculated, in view of the findings and observations recorded hereinabove.

18. Appeal allowed.

(Pronounced in the Open Court on 06.03.2024)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

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