

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
HYDERABAD

REGIONAL BENCH - COURT NO. – I

Service Tax Appeal No. 21200 of 2014

(Arising out of Order-in-Original No.109/2013-Adjm (Commr) ST dated 29.11.2013  
passed by Principal Commissioner of Customs, Central Excise & Service Tax, Hyderabad-IV)

Progressive Constructions Ltd.,  
7<sup>th</sup> Floor, Raghava Ratna Towers,  
Chirag Ali Lane,  
Hyderabad,  
Telangana – 500 001.

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APPELLANT

VERSUS

Commissioner of Service Tax  
Hyderabad – Service Tax  
11-5-423/1/A,  
Sitaram Prasad Tower,  
Red Hills, Hyderabad,  
Telangana – 500 004.

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RESPONDENT

APPEARANCE:

Shri Y. Srinivasa Reddy, Advocate for the Appellant.  
Shri A V L N Chary, Authorised Representative for the Respondent.

CORAM: HON’BLE Mr. R.MURALIDHAR, MEMBER (JUDICIAL)  
HON’BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30077/2023

Date of Hearing:05.04.2023  
Date of Decision:25.04.2023

[ORDER PER: R. MURALIDHAR]

1. Appellant is an infrastructure company wherein they mostly provided the Works Contract services to various clients. Investigation was taken up on their activities and a Show Cause Notice was issued on account of demands on various counts. For the period 01.06.2007 to 13.09.2011 the demands were raised and confirmed under the following heads:

Sl.No	Subject	Period	Demand (Rs)
1	Construction of canals, water pipeline works etc., under EPC mode for state governments	1.6.2007 to 23.10.2009	11,29,88,318
2	Road works, earthwork and works to NTPC	Jan'11- May'11	Included the above
3	Goods Transport Agency (GTA) service	Oct'10- Sep'11	11,23,161
4	Interest on short paid GTA	Jan'2005- Sept'10	10,48,178

5	Renting of Immovable Property (RIPS)	1.6.2007 to 30.9.2011	2,19,513
6	Late fee for filing returns late		12,600

2. In respect of confirmed demand of Rs. 11,29,88,318/- the Learned Counsel appearing on behalf of the Appellant submits that this Appellant has provided the services for various irrigation projects in respect of 12 different projects. The projects pertains to construction of canals and water pipelines for the State of Andhra Pradesh. Apart from these 12 projects, in respect of one project given by NTPC Ltd., they have taken up work of construction of sewerage system for them. The details of the work undertaken by them for these 12 projects as well as the work undertaken for NTPC is as per the following table:

1	EluruPkg 7	Package no 7/kds/07-08, Modernization of Krishna delta system-Krishna District, Krishna Eluru Canal from km. 4.220 to km 48.720 and its distributories.
2	GNSS 11/06	Package No. 11/06-Investigation, Designs and formation of Sri Balaji reservoir near Karakambadi village, Renigunta(M) under GNSS in Chittoor District.
3	LMC-1	Conducting detailed investigations, design and estimation, excavation for main canal formation of banking and CC lining of Indira Sagar Project Left Main Canal from Km. 0.00 to 25.60 (Package -LMC-1)
4	RMC-2	Earth work excavation, forming embankment and construction of CM & CD works including investigation, designing and estimation of Polavaram Project Right main canal from Km. 14.80 to 38.199 (Package No. 2)
5	RMC-6	Earth work excavation, forming embankment and construction of CM & CD works including investigation, designing and estimation of Polavaram Project Right main canal from Km. 133.800 to km 156.500 (Package No. 6)

6	Pkg 17	Package No. 17/2006- Construction of SomasilaSwarnamukhi Link Canal from Km. 39.900 up to tail end (100.06 km tentatively) duly connecting to Mannasamudram tank through Merlapaka tank near Erpedu village including construction of CM & CD works together with raising standards of Devulapalli tank to 1.00 TMC capacity and improvements to pagur tank for stabilization of 84225 Acres of ayacut including investigation, Designs and Estimation in Nellore and Chittoor Districts.
7	GNSS – Pkg 7	Investigation, Designs and Earth work Excavation of GNSS main canal including construction of CM & CD works from Km. 203.850 to Km 240.000 and distributory system including Chitvel Branch Canal and field channels to irrigate an ayacut of 40,000 acres under GNSS Package-07/06 in Kadapa District.
8	PKg-16	Package no. 16/GDS/WG/2007-08 modernization of Godavari delta system, Godavari western main canal, eluru canal and junction canal and distributory system West Godavari district.
9	EluruPkg 8	Package no 8/kds/k/07-08 Modernization of Krishna Delta System- Krishna District, KrishnaEluru canal from Km 48.720 to km 65.072 km and its Distributory system- West Godavari Dt.
10	Ponnuru 27	Package no 27/kwds/G/07-08 Modernization of Krishna Western Delta system- Guntur District, Commamuru canal from Km 65.800 km to 112.450 and branches and its distributories.
11	PKG -26	Package no 26/kwds/G/07-08 Modernization of Krishna Western Delta system- Guntur District, Commamuru Canal from km 21.600 km to 65.800 and branches and its distributories.

12	NKG Infrastructure Ltd	GLIS- Phase-3, Pkg-1, issue of Work order for Earth work excavation, laying of 3000MM dia., Ms Pipes, jointing, Refilling of Trenches and Hydro testing.
13	M/s. NTPC Ltd	Site levelling by filling ash/earth for plant-all roads and drains in plant areas storm water pump house-sewerage system construction of offices and stores including internal electrification-boundary wall modification of existing boundary wall – open steel yard.

3. He submits that the issue as to whether the Works Contract undertaken for various infrastructure projects like canal and other pipeline works is no more *res integra* and covered by the decision of the Larger Bench of the Tribunal. The Larger Bench of Tribunal in the case of Lanco Infratech Ltd., Vs CC, CE & ST, [Hyderabad 2015 (38) STR 709 Tri-LB] has held that canal works and other works carried out for various Government projects, which are not commercial in nature are exempted from Service Tax payment. Relying on this Larger Bench decision the Hyderabad Tribunal has set aside the demands in the following cases:

2.2. Basing on the above decision, numerous demands were dropped the Tribunal including this Hon’ble Tribunal. Few decisions are cited below:

- (a) IVRCL-Navyuga-Sew Joint Venture vs. Commissioner of S.T., Hyderabad2020 (34) G.S.T.L. 468 (Tri. - Hyd.)
- (b) Vishwa Infrastructures and Services Pvt. Ltd. vs. CCE & S.T., Hyderabad-II 2019 (29) G.S.T.L. 352 (Tri. - Hyd.)

4. Accordingly, he prays that the confirmed demand of Rs. 11,29,88,318/- is required to be set aside. On a query as to whether NTPC would get categorised as Government Department since they are only a Corporation, the Learned Counsel admits that NTPC are not covered by exemption. The works carried out for NTPC could not directly get covered under exemption which is granted for Government Projects. However, he states that in the Show Cause Notice was issued, there was no bifurcation as to what was the amount of demand in respect of the 12 Government canal projects and what was the demand in respect of the works undertaken for

NTPC. Show Cause Notice was issued based on the yearly turnover of the Appellant considering their turnover for all these 13 projects together as can be seen from the Annexure to Show Cause Notice. Even in respect of NTPC, there are certain works which may get covered under the exemption. Therefore, he prays that after holding that no Service Tax is liable to be paid in respect of the 12 projects undertaken for Government of Andhra Pradesh the matter may be remanded to the Adjudicating Authority, in respect of the NTPC related demand only. He assures that the Appellant will be able to give all the details of the works undertaken for NTPC and if any exemption is available, they will claim the same and finally whatsoever amount is required to be paid for such transaction by NTPC, they will pay. Therefore, he prays that the matter may be remanded to the Adjudicating Authority for the limited purpose of ascertaining the proper quantification on account of NTPC transactions.

5. In respect of demand on GTA services, the demand of Rs. 11,23,161/- has been confirmed along with interest of Rs. 10,48,178/-. He submits that in many cases the services were received from Good Transport Operators who are not GTAs. He prays that an opportunity should be given to them to get the details of services rendered by GTO and claim the benefit of Service Tax on the same before the Adjudicating Authority. Therefore, he prays that even this matter may be remanded to the Adjudicating Authority.

6. In respect of the confirmed demand of Rs. 2,19,513/- in respect of immovable property, the Learned Counsel submits that the present Appellant had let out his property to a Diagnostic Centre/Hospital and he does not have full records to clarify as to whether the same was used as residential property or not. But he submits that the Show Cause Notice issued for the extended period is not legally sustainable. He submits that the definition of Renting of Immovable Property under Section 65(105)(zzzz) was amended on 08.05.2010 by Notification No. 08/2011 with retrospective effect from 01.06.2007. He relies on the case law of Tadi Satya Rama Linga Reddy Vs CCE, ST & CUS Visakhapatnam-II [2017 (4) GSTL 421 (TRI-HYD)]. In this case, it has been held that when an amendment has been carried out with retrospective effect, the Assessee cannot be fastened with the demand for the extended period. On this ground, the Counsel argues that in this present case the demand for the extended period is required to be set aside.

7. The Learned AR has submitted Synopsis towards his submissions. He submits that so far as the services rendered to the 12 projects involving canal and pipeline infrastructure for the Government of Andhra Pradesh is concerned, the facts are not in dispute. He reiterates the findings of the Adjudication Authority wherein it is held that the Appellant is not eligible for the exemption from Service Tax.

8. In respect of the confirmed demand on GTA, the Learned AR submits that the Appellant has not made any submission with regard to the exemption for certain types of services within the freight charges shown as expenditure in their Profit & Loss Account before the Adjudicating Authority. Therefore, he says that there is no need for the Tribunal to send the matter to the Adjudicating Authority.

9. In respect of the confirmed demand in NTPC transaction he has no objection if the matter is remanded to the Adjudication Authority for proper quantification.

10. In respect of the confirmed demand on account of Renting of Immovable Property, the Learned AR submits that the Agreement with the Lessee shows that it was used for commercial purpose only. Therefore on merits, the Appellant has no case. He submits that amendment which was brought into effect with retrospectively has no impact on the demand made on the Appellant. Therefore, he submits that extended period was correctly invoked. In view of these submissions, he prays that the Appellant's Appeal may be dismissed.

11. Heard both sides and perused the documents.

12. From the Table given in the Show Cause Notice and Order-in-Original, it is seen that in respect of the 12 projects, the works undertaken by the Appellant are on account of various canal and other pipeline projects undertaken by them by way of Tender and Contract awarded by the Government of Andhra Pradesh. There is no dispute that the works have been rendered only to the Government of Andhra Pradesh. The Larger Bench in the case of Lanco Infratech Ltd vs. CCE & ST, Hyderabad [2015 (38) S.T.R. 709 (Tri. - LB)] held as under:

21. In the light of the foregoing analyses, we record our conclusions on the several issues framed, as follows:

(a) Issue (A): Laying of pipelines/conduits for lift irrigation systems for transmission of water or for sewerage disposal, undertaken for Government/Government undertakings and involving associated activities like trenching, soil preparation and filling, supporting masonry work, jointing of pipes, electro-mechanical works or pumping stations and like activity, is classifiable only under Commercial or Industrial Construction Services (CICS) for the period upto 01.06.2007 and not under Erection, Commissioning or Installation Service (ECIS);

(b) Issues (B); (C) and (D):

(i) Construction of canals for irrigation or water supply; construction or laying of pipelines/ conduits for lift irrigation conceived and integrated into a dam project, must be classified as works contract “in respect of dam” and is thus excluded from the scope of “Works Contract Service” defined in Section 65(105)(zzzza) of the Act, in view of the exclusionary clause in the provision;

13. This Tribunal Tribunal in the case of Vishwa Infrastructure & Pvt Ltd.,Vs CCE& ST Hyd-II [2019 (229) GSTL 352 TRI-Hyd] has held as under:

5. We have examined the arguments on both sides and perused the records. We find that the decision of the Larger Bench in the case of Lanco Infratech Ltd., (supra) is identical to the dispute in hand. Respectfully, we follow the decision of the Larger Bench of the CESTAT and hold that the work done by the appellant in the nature of turnkey/EPC projects for Governments with respect to laying of pipes for water supply/sewerage is covered by explanation (ii)(b) of Section 65 (105) zzzza and is not exigible being not for commerce or industry. Consequently, the demand of interest and penalties are liable to be set aside and we do so. As far as the appeal of the Revenue is concerned, since, we find that the demand itself is not sustainable and the question of eligibility of the appellant for benefit of composition scheme becomes redundant. [emphasis supplied]

14. This Tribunal in the case of IVRCL- Navayuga – SEW Joint Venture Vs CST Hyd – 2020 (34) GSTL 468 TRI-HYD] has held as under:

5. On careful consideration of the submissions made and the perusal of records, we do find strong force in the contentions raised by the learned counsel that appellant’s appeal ST/918/2011 on the very same execution of the contract in respect of SRIPADA SAGAR PROJECT Phase-I was disposed of in favour of the appellant in Larger Bench decision of Lanco Infratech Ltd holding that these activities of appellant as per the contract are not liable for service tax and would

not fall within the ambit of clause (v), explanation (ii) of Sec.65 (105) (zzzza).

[emphasis supplied]

15. From the above cited case law, it gets clarified that the issue in the present Appeal is no more *res integra* and is fully covered by these decisions. Respectfully, following these decisions, we set aside confirmed demand, interest and penalty in respect of Service Tax demand on construction of canals and water pipelines works etc., carried out for the State Government along with interest and penalty thereof for the 12 projects cited in the Table above.

16. In respect of the works undertaken for NTPC, the Appellant should work out the value of services rendered along with the Service Tax demand thereon, based on all the documents available with them. After this, if they take the stand that Service Tax is not payable on any activity undertaken for NTPC, the same should be brought out along with documentary evidence supported by statutory provisions before the Adjudicating Authority. The confirmed demand in respect of NTPC transaction alone is remanded to the Adjudicating Authority to verify all the documentary evidence to be produced by the Appellant on the above counts. The final amount of demand on account of NTPC transaction will be arrived at by the Adjudicating Authority, which is required to be paid by the Appellant along with interest and penalty @ of 25% of the confirmed amount.

17. For the confirmed demand on account of GTA services, it is seen that when the opportunity was given to the Appellant at the Adjudication stage to come up with all their submissions along with documentary evidence, the Appellant has not done so. They should have produced the documentary evidence to the effect that some of the freight charges were incurred on account of GTO and as to how the same was exempted from Service Tax, if any. Instead of making such detailed submission along with documentary evidence, the Appellant was simply questioning the quantification which has been correctly done by the Department based on the Profit & Loss Account figures of the Appellant. The Appellant does not dispute the figures taken from the Profit & Loss Account. Therefore, we see no merits in the present Appeal with regard to the confirmed demand of Rs. 11,23,161/- on GTA Services. Therefore, the same is dismissed along with their Appeal for the interest of Rs. 10,48,178/- paid towards the GTA services.



18. In the absence of any evidence forthcoming that the property has been leased out for residential purpose, the Appellant is required to pay the Service Tax. The amendment carried out with retrospective effect from 01.06.2007 has no impact in the present case. Hence the case law of Thadi Satya Ramalinga Reddy cited by the Appellant is not relevant. The Appeal in respect of confirmed demand of Rs. 2,19,513/- towards Renting of Immovable Property is dismissed.

19. The Appellant Submits that late fee of Rs. 12,600/- has been and not being contested. Hence the Appeal on this issue stands dismissed.

20. To Summarize:

	Amount (Rs.)	Appeal Status
Construction of Canal/Pipeline etc., for Govt Projects NTPC	11,29,88,318	i) Allowed in respect of 12 Govt Projects only ii) Remanded to Adjudicating Authority in respect of NTPC Project
GTA	11,23,161	Dismissed
Interest on GTA	10,48,178	Dismissed
Renting of Immovable Property	2,19,523	Dismissed
Late fee for	12,600	Dismissed

Appeal partly allowed.

(Order pronounced in the open court on 25.04.2023)

(R.MURALIDHAR)  
MEMBER (JUDICIAL)

(A.K. JYOTISHI)  
MEMBER (TECHNICAL)