

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH,
COURT NO. 1

SERVICE TAX APPEAL NO. 50005 OF 2016

[Arising out of the Order-in-Original No. 30/ST/SVS/DL-III/2015 dated 25/07/2015 passed by The Principal Commissioner, Service Tax Commissionerate, Delhi – III, New Delhi.]

**The Commissioner,
Service Tax Commissionerate,**
Delhi – III, 7th Floor, Block No. 11,
CGO Complex, Lodhi Road,
New Delhi – 110 003.

...Appellant

Versus

M/s Shaka Electricals,
272, Vikas Kunj, Vikas Puri,
Delhi – 110 018.

...Respondent

APPEARANCE:

Shri Harsh Vardhan, Authorized Representative for the
Department

Shri A.K. Batra, Chartered Accountant for the respondent.

CORAM:

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

FINAL ORDER NO. 50882/2022

DATE OF HEARING/DECISION : 19.09.2022

P.V. SUBBA RAO

This appeal has been filed by the Revenue assailing order-in-original dated 25.07.2015¹ passed by the Principal Commissioner of Service Tax, Delhi – III, whereby he dropped

¹ **impugned order**

the proceedings in pursuance of the show cause notice dated 23.04.2013 against the respondent.

2. The facts of the case, in brief, are that the respondent is registered with the Central Excise department for rendering services of erection, commissioning and installation services² taxable under section 65 (105) (zzd) of the Finance Act, 1994. On perusal of the ST-3 returns filed by the respondent, it was noticed by the officers that prior to obtaining registration the respondent was providing services such as, fabrication supply and erection of various electric poles providing street lighting, etc. during the period 2009-2010 to 2010-2011 which appeared to be classifiable under ECIS. The respondent contested the show cause notice on the ground that the services provided by it were composite work contracts involving both supply of goods and rendering services and, therefore, no service tax was chargeable, under ECIS.

3. The Commissioner passed the impugned order relying on the judgment of Supreme Court in **Gannon Dunkerley & Co. & Ors. Versus State of Rajasthan 86 Ors.**³ and held that the composite works contract are a separate species of contracts known to trade and cannot be charged to service tax under any other head. He, therefore, dropped the entire proceedings.

4. Revenue's appeal against this order is on the following grounds :-

² **ECIS**

³ **(1993) 88 STC 204**

- (i) Respondent had taken service tax registration under ECIS and, therefore, the claim that they had rendered works contract service is an afterthought and cannot be accepted;
- (ii) The respondent had never sought clarification from the Department regarding the classification of services ;
- (iii) The respondent had done working relating to erection, commissioning and installation of street lighting of electric poles etc. which are classifiable under erection, commissioning and installation services. Even if a service is classifiable under two or more sub-clauses of clause (105) of section 65 the classification, which is more specific shall prevail over the general classification and ECIS was a more specific classification and not works contract service ;
- (iv) The Commissioner has relied on the judgment of Supreme Court in **Gannon Dunkerley & Co.**, which was passed on the question of leviability of sales tax and not determining if a service is a works contract.

5. We have considered the submissions in the appeal.

6. It is undisputed that the contracts which the respondent had entered into involved both rendering of services and supply/ deemed supply of goods while rendering the services. Such services are composite contracts and are classifiable as works contract which, according to **Gannon Dunkerley & Co.** is a

subject species of contract. Revenue's objection that **Gannon Dunkerley & Co.** judgment was rendered in a matter dealing with sales tax and, hence, should not apply to decide whether a service is a works contract service cannot be accepted. Whether it is a question of sales tax or service tax, the nature of the contract, i.e., whether it is for supply of goods or for rendering services or a combination of both does not change. Wherever there is a composite contract it is a works contract service. Such services can be classified only under the head of "works contract" service w.e.f. 01.07.2012 under section 65 (105) (zzzza) and were not taxable prior to this date as per the judgment of Supreme Court in **Commissioner of Central Excise & Customs, Kerala versus Larsen & Toubro Ltd.**⁴ Since the entire period in this case was prior to 01.07.2012, the services rendered by the respondent were not taxable.

7. The contention of the Revenue that even works contract should be classified as ECIS because it is a most specific service cannot be accepted for the simple reason works contracts cannot be treated as services simplicitor which are classifiable under various sub-clauses of clause 105 of section 65.

8. The submission of the Revenue that the respondent had obtained registration under ECIS and, therefore, the services in dispute must be considered under this head only cannot also be accepted. Registration by the assessee does not conclusively determine the nature of the service rendered.

⁴ **2015 (39) S.T.R. 913 (S.C.)**

9. For all the above said reasons, we find that the respondent was not liable to pay service tax on the services in dispute and the impugned order is correct and proper and calls for no interference.

10. The impugned order is upheld and Revenue's appeal is dismissed.

(Order dictated and pronounced in open court.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

PK