# IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

## REGIONAL BENCH : ALLAHABAD

## COURT No. I

**APPEAL No. ST/50575/2015-CU[DB]**

(Arising out of Order-in-Original No. 12/Commr./Lko/ST/2014-15 dated 14/10/2014 passed by Commissioner, Central Excise & Service Tax, Lucknow)

**M/s Angraj Civil Projects Pvt. Ltd.** **Appellant**

Vs.

**Commissioner of Central Excise &**

**Service Tax, Lucknow** **Respondent**

Appearance:

Shri Dushyant Kumar (Consultant) &
Shri Vishal Srivastava (Advocate) for Appellant
Shri Mohd Altaf (Asstt. Commr.) AR for Respondent

**CORAM:**

**Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)**
**Hon'ble Ms. Rachna Gupta, Member (Judicial)**

Date of Hearing : 31/10/2018
Date of Decision : 31/10/2018

FINAL ORDER NO **72543 / 2018**

**Per: Rachna Gupta**

The appellant herein is aggrieved by the order of Commissioner dated 14.10.2014.

2. The relevant facts for the purpose are that the appellant are registered with Service Tax w.e.f. 13.12.2007 under the category of 'Works Contract Service'. Department during the scrutiny of records of the appellant for the period from 2007-08 to 2011-12 observed that the appellant had been providing

Work Contract Service to Uttar Pradesh Jal Nigam but has not paid service tax on the amount collected from the said Uttar Pradesh Jal Nigam qua the work contract for laying sewer pipe/sewerage system and even have not discharged the service tax liability thereon. Alleging the service of the appellant to fall under 'Erection, Commissioning and Installation Service' as defined in sub Clause (ii)(a) of Section 65(105)(zzzza) of the Finance Act. 1994 a demand of Rs.5,37,23,665/- along with interest at the appropriate rate and the proportionate penalty was proposed against the appellant vide show cause notice dated 25.03.2013. The said demand has been confirmed vide the order under challenge.

3. Hence the present appeal.

4. We have heard the parties at length. It is submitted on behalf of the appellant that the issue herein is no more *res-integra* as the same is covered by the decision of the Larger Bench in the case of **Lanco Infratech Ltd. vs. CC, CE & ST, Hyderabad reported as 2015 (38) S.T.R. 709 (Tri. – LB)** and this Tribunal has also relied upon the said decision in another case reported at **Jyoti Buildtech (P) Ltd. vs. Commissioner of C. Ex., Cus. & S.T., Noida, 2017 (3) G.S.T.L. 116 (Tri.- All.)**. It is impressed upon that the activity of the appellant falls under sub Clause (ii)(b) of the Works Contract Definition. As per the said sub-clause, the activity is to be taxable, if the service tax is rendered for the purpose of

Commerce or Industry but in the present case services have been rendered to Uttar Pradesh Jal Nigam, a Government Authority as such the amount collected for providing the said services is not taxable. Therefore, the impugned order is prayed to be set aside and appeal is prayed to be allowed.

5. Learned DR, on the other hand, while justifying the order has impressed upon the findings thereof submitting that the Adjudicating Authority below has clearly brought out the legislative intent to exclude only construction of non-commercial/non-industrial buildings/structures from WCS and since Clause (b) is for the purpose of commerce. Clause (ii) (b) of WCS has rightly been applied for confirming the demand. Appeal accordingly is prayed to be dismissed.

6. After hearing and perusing the case law as relied upon and also after going through the order under challenge we are of the opinion that the whole case of Department for proposing and confirming the demand in hand is that the activity of appellant i.e., of laying pipelines/sewerage system, is the activity as can be defined as Erection, Commissioning and Installation Activity (ECIS) under sub Clause (ii)(a) of Section 65(105)(zzzza) of Finance Act, 1994 (The Act hereinafter) i.e., definition of Works Contract Service. For the purpose the definition of ECIS under Section 65(39a) of the Act and even CICS under Section 65(25b) of the Act (as asserted by the appellant) along with dictionary meanings

referred for the purpose all observed. We have also looked into the Larger Bench's decision as has been referred and we conclude that the construction of pipelines for transmission of water/sewerage does not amount to be an installation for transport action of fluid as classified sub Clause (ii) (a) of WCS. This is a work of civil construction in nature because the activities not merely includes the transmission of water in the laid pipelines but includes the construction also of the space where these pipelines were to be laid down. From no stretch of imagination such an activity can be called as Erection Commissioning and Installation Service. Tribunal Madras in the case of **CCE, Tiruchirappalli vs. Indian Hume Pipes Co. Ltd. reported as 2015 (40) S.T.R. 214 (Mad.)** has held that laying of pipes for water supply to enable State Water Supply Board to supply water in public interest is the part of construction activity, non-commercial in nature. Further, the Larger Bench in Lanco Infratech Ltd. has held as follows:-

> *"(iii) Construction of canals/pipelines/conduits to support irrigation, water supply or for sewerage disposal, when provided to Government/Government undertakings would be for non-commercial, non-industrial purposes, even when executed under turnkey/EPC contractual mode and would fall within the ambit of clause (b), Explanation (ii) of Section 65(105)(zzzza); and would*

*consequently not be exigible to Service Tax, in view of the exclusion enacted in clause (b); and"*

6. Keeping in view the same and in view of the entire discussion and also that the similar matter has also been decided by this Tribunal itself in favour of the assessee holding the activity to be one falling under (ii)(b) of Contraction Service. Since the said activity, in the present case, has not been provided to a commercial undertaking but to a state owned Authority i.e., Uttar Pradesh Jal Nigam the question of any taxability to it has legislatively being excluded. We find merit in the contention of the appellant. Accordingly, impugned order stands set aside and appeal stands allowed.

(Dictated & Pronounced in Court)

| | |
|---|---|
| **Sd/-** | **Sd/-** |
| **(Rachna Gupta)** | **(Anil G. Shakkarwar)** |
| **Member (Judicial)** | **Member (Technical)** |

*Ankit*