REGISTERED / AD

FAX : 0532-2400149

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 21/02/2017

To
Appellant as per address in table below
Respondent as per address in table below

Final Order No. ST/A/70210/2017-CU[DB] dated 21/02/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the **Finance Act, 1994 relating to Service Tax Act, 1994.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	ST/51841/2014	**Jyoti Buildtech P Ltd** C-24, Sector 33, Noida GAUTAM BUDHA NAGAR U P
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH-201307

Copy To
3Advocate(s) / Consultant(s):

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Delhi

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise, I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

S.T. Appeal No.51841/2014

Arising out of O/O No.30/Commissioner/Noida/2013-14 dated 23.12.2012 passed by Commr. of Central Excise, Customs & S. Tax, Noida.

For approval and signature:

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

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	: No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	: Yes
3. Whether His Lordship wishes to see the fair copy of the Order?	: Seen
4. Whether Order is to be circulated to the Departmental Authorities?	: Yes

M/s Jyoti Buildtech (P) Ltd. ...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Customs & S.Tax, Noida RESPONDENT (S)

APPEARANCE

Shri Ruchir Bhatia, Adv. for the Appellant (s)
Shri Rajeev Ranjan, Joint Commr. (A.R.) for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 29.08.2016

ORDER NO.-70210/2017

Per Mr. Anil Choudhary :

The appellant is engaged in various activities of constructions of civil structures including pipelines for sewage etc., is in appeal against order in original dated 23/12/13 passed by Commissioner of Central Excise, Customs & Service Tax, Noida, demanding service tax of Rs.13,48,28,865/- with interest and equal amount of penalty under Section 78 and further penalty of Rs.10,000/- imposed under section 77 (1) (b) of the Finance Act, 1994.

2. The brief facts as per the show cause notice dated 18/10/12 for the period under dispute 2007-08 to 31st March 2011, are that the appellant is registered under the provisions of service tax for 'construction and engineering service', 'erection, commissioning and installation services' and 'works contract service'. Pursuant to audit it appeared to Revenue that the appellants have not paid service tax on 'erection, commissioning and installation service' being construction of sewage pumping station, water treatment plants, sewage treatment plant and sewage works. The SCN further observes that the appellant assessee had pleaded that the works of laying of pipelines for sewage etc. are not for commerce and trade and as such the same is exempted from service tax in terms of provisions of Explanation (ii)(b) of Section 65 (105)(zzzza) of the Finance Act, 1994. The appellant contested the show cause notice and the same was adjudicated and the proposed demand confirmed observing, that applying the principle of classification as provided under sub-section (2) of Section 65A, sub-clause (ii)(b) of Section 65(105)(zzzza) of Finance Act, 1994, provides

the most specific description of services of laying drains or pipes. Accordingly, it was held that services of laying pipelines and conduits is a taxable service as defined under "works contract" vide clause (ii) (a) of Explanation to Section 65(105)(zzzza) of Finance Act, 1994 and the appellant is liable to pay service tax. Being aggrieved the appellant is before this Tribunal.

3.1 The ld. Counsel for the appellant, states that the issue is no longer *res-integra,* the same has been considered in detail by the Larger Bench of this Tribunal in the case of Lanco Infratech Ltd and others versus CCE, CC & S. Tax, Hyderabad : 2015 (38) STR 709 (Tri-.LB). The service tax demanded for different works is as follows :

Service Tax demand in respect of sewer works	12,13,54,039/-
Service Tax demand on account of laying of pipeline for water supply	1,06,38,226/-
Service tax demand on account of execution of sub-station for water supply under Jawaharlal Nehru National Urban Renewal Mission (JNNURM) Scheme	Rs.28,36,599/-
Total	13,48,28,865/-

3.2 The ld. Counsel further states that the Larger Bench of this Tribunal in the case of Lanco Infratech Ltd and others (supra) had framed the following issues :

(A) Whether laying of pipelines for lift irrigation systems, transmission and distribution of drinking water or sewerage, undertaken for Government/Government undertakings should be classified under ECIS as erection, commission or installation of plant,

A

machinery, equipment or structures, whether pre-fabricated or otherwise; or installation of plumbing, drain laying or other installations for transport of fluids, enumerated in Section 65(105) (zzd) and defined Section 65(39a), during 16-6-2005 to 31-5-2007; or must be classified under CICS, as amounting to construction of pipeline or conduit; and if classifiable under the later provision, whether the activity is not taxable since it is not used or to be used, engaged or to be engaged primarily for industry or commerce ?

(B) Whether construction of canals for irrigation purposes and laying of pipelines including as part of lift irrigation systems, undertaken for the Government/Government undertakings is liable to Service Tax under WCS as turnkey projects, including engineering, procurement and construction or commissioning projects under clause (e) of Explanation (ii) in the definition of WCS or is excluded from the ambit of WCS since it is in respect of a "Dam" and thus stands excluded from WCS, as defined?

(C) Whether, turnkey projects, including engineering, procurement and construction or commissioning (EPC) projects specified in clause (e) is merely an enumeration of the mode of execution of taxable services specified in clauses (a) to (d) or is a wholly distinct taxable service and is exigible to Service Tax as an independent species of works contract service?

(D) Whether, even if clause (e) in Explanation (ii) of WCS is considered a distinct and independent service, where construction of canals for irrigation purposes and laying of pipelines either as part of lift irrigation systems or for transport and distribution of water is undertaken for Government/Government undertakings, the same is more appropriately covered under clause (b) of WCS, i.e., construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, by applying principles of classification set out in Section 65A (2)(a) & (b) and thus fall outside the ambit of levy, since the activity is not primarily for the purpose of commerce or industry; or whether a contrary view that clause (e) being an independent entry, activities falling thereunder would be taxable even if the rendition of service thereby or thereunder, was not primarily for non-commercial or non-industrial purposes? and

(E) Where execution of the whole or a part of the work is sub-contracted on back to back basis by the main contractor (which is a joint venture) to sub-contractors, in the absence of any transfer of property in goods involved in the execution of such works, from the main contractor to the Government/Government undertakings, whether levy of Service Tax in the hands of appellant (main contractor) is valid under WCS, in the light of the judgment in *State of A.P. v. L&T Ltd.-2008-TIOL-158-VAT-SC".*

3.3 Considered in the light of the precedents referred to hereinabove, the definitions of ECIS and CICS ; the Board clarification dt.07.01.2010 ; the Dictionary meanings ascribed to the word "conduit" and provisions of Section 65A (2) (a) and (b), the Larger Bench concluded that "construction of a pipeline/conduit for transmission of water/sewerage and involving associated works like digging of the earth , supporting masonry structures, refilling the earth, jointing of different lengths of pipes for laying the pipeline/conduit, construction of pumping stations together with associated machinery and other construction works, including for transmission of water in lift irrigation projects, cannot be classified under ECIS. These services are only classifiable as CICS. Where the pipeline/conduit laying is executed for Government or Government Undertakings as part of irrigation, water supply, or sewerage projects, the works are not excisable to service tax under CICS (prior to 01.06.2007), since these are not primarily for commercial or industrial purposes and are excluded from the scope of the taxable services qua the exclusionary clause definition of CICS, in Section 65 (25b) of the Act.

3.3 Considering the issue (B), (C) & (D) the noticed herein above, the larger bench observed as follows: -

> "In view of the Special (5 Member) Bench decision in the *Larsen & Toubro Limited* reference, it follows that a works contract is exigible to Service Tax even prior to 1-6-2007. In view of *Indian Hume Pipe Co. Limited*; and *Alstom Projects India Limited* it follows that a turnkey/EPC contract is exigible to Service Tax prior to 1-6-2007, under the appropriate taxable service such as ECIC, CICS or COCS. From this position it inexorably follows that clauses (a) to (e) of the definition of WCS in Explanation (ii) thereof are enumerations of taxable services drawn substantially from definitions and integers of existing taxable services such as ECIS, CICS and COCS. From the decision in *Indian Hume Pipe Co. Limited* and other decisions [referred to in paras 15(i) and (ii) (supra)], it is clear that laying of pipelines/conduits for transmission of water or for disposal of sewerage falls within the

ambit of CICS and not ECIS; and where provided to Government/Government undertakings and for supply of water for irrigation or consumption or for disposal of sewerage, the activity is non-commercial, non-industrial, is covered by the exclusionary clause in the definition of CICS and is not exigible to Service Tax. Since a turnkey/EPC contract would inhere elements of several services, consisting of combination of different services, the service which gives such contract its essential character would be laying of pipelines or conduits. A turnkey/EPC contract for laying of pipeline/conduit should therefore, logically be classified under clause (b), Explanation (ii) of Section 65(105)(zzzza), on and from 1-6-2007 as well. This is the consequence of applying Section 65A(2)(b) of the Act and this position is clarified in Board Circular No. 123/5/2010-TRU, dated 24-5-2010.

From the structural arrangement of the definition of works contract set out in Explanation (ii) of Section 65(105)(zzzza), it is apparent that the several species of activities brought within the scope of this taxable service were drawn from pre-existing taxable services. Thus, clause (a) substantially reproduces the integers of the taxable service ECIS defined in Section 65(39a). Clause (b) is drawn from essential elements of CICS defined in Section 65(25b), in particular, sub-clauses (a) and (b) thereof. Clause (c) under Explanation (ii) of the WCS definition is drawn from the definition of COCS, in particular sub-clause (a) thereof. Clause (d) of WCS is substantially an extract of clauses (c) & (d) of the definition of CICS and COCS in Section 65(25b) and (30a), respectively.

We are thus left with the activity of construction of pipelines/conduits under the turnkey/EPC mode. When the construction is for Government/Government undertakings and for water supply or sewerage disposal purposes, prior to 1-6-2007 this activity is classifiable under CICS and is excluded from the purview of the definition. Under clause (b) under Explanation (ii) of the definition of WCS, construction of a pipeline or a conduit primarily for the purposes of commerce or industry is an activity falling within the definition of WCS. This provision in the definition of WCS is extracted from the definition of CICS, is *pari materia*. Construction of pipeline or conduit (otherwise than under a turnkey/EPC mode), when executed for Government/Government undertakings for transmission of water or sewerage would be outside the ambit of levy of tax, in terms of the definition itself, since this would undisputedly fall within the ambit of sub-clause (b) of WCS.

19. On the aforesaid analyses we hold [on issues (A), (B) & (C)] that construction of canals under a dam for transmission of water or sewerage; or construction of pipelines or conduits for conveyance of water for irrigation, domestic consumption or sewerage disposal even where executed as turnkey/EPC contracts; (i) would be classifiable under clause (b), Explanation (ii) of Section 65(105)(zzzza); (ii) construction of canals, pipelines or conduits for Government/Government undertakings for augmentation of irrigation, water supply or sewerage disposal would be for a non-commercial, non-industrial purpose or user and thus excluded in view of the exclusionary clause in clause (b) of WCS definition; and (iii) construction of canals, pipelines or conduits for transmission of water including by lift irrigation would be, when these works are conceived as integrated to a dam project, works contract "in respect of a dam" and thereby excluded from the purview of WCS".

3.4 The ld. Counsel further points out that the Larger Bench's ruling of this Tribunal in the case of M/s Lanco Infratech Ltd. (supra) have been followed and relied upon by Hon'ble Madras High Court in the case of Indian Hume Pipes Company Ltd. : 2015 (40) STR 214 (Mad.) wherein for similar works executed, laying of pipes for water supply, the Hon'ble High Court held that laying of long-distance pipelines to enable State Water Supply and Drainage Board to supply water in public interest and to take care of civil amenities, the Tribunal rightly held that the said activity is a part of "construction activity" not commercial in nature, hence, not covered under erection, commissioning or installation service and hence, is exempted from service tax levy. Accordingly, the learned Counsel prays for allowing the appeal with consequential benefits.

3.5 The ld. counsel further points out that only with regard to erection and commissioning of service station (electrical) for supply of water under Jawaharlal Lal Nehru National Urban Renewal Mission Scheme, it is evident from the copy of the contract that out of the gross amount, only Rs.3,25,200/- is attributable to erection/Labour part. The balance is attributable to supply of items/materials. Thus, at best service tax is only leviable on this amount of Rs.3,25,200/-. The learned counsel also states that it is admitted fact that all the transactions were found duly recorded by Revenue in the books of accounts maintained in the ordinary course of business. Further in view of the confusion prevailing regarding classification/exemption, and the issue being finally referred to and settled by the Larger Bench of this tribunal, the issue is wholly interpretational and the extended period of limitation is not invokable.

4. The ld.A.R. for Revenue relies on the impugned order.

5. Having considered by the rival contentions, we are satisfied that the issue now stands settled by the Larger Bench of this Tribunal in M/s Lanco Infratech Ltd. (supra) and also confirmed by order of the Hon'ble Madras High Court (supra) in Indian Hume Pipes Ltd. wherein it has been held that such works executed by the appellant in the

nature of sewerage works, laying of pipe and for water supply falling under Explanation (ii) (b) fall under the definition of "works contract service" and were also exempted under the classification commercial and industrial construction service prior to 1/6/2007, as explained by the Larger Bench. Further, we find that the issue is wholly interpretational and thus the longer period of limitation is not invokable under the facts and circumstances. Accordingly, we allow the appeal setting aside the impugned order, except the demand for normal period, if any, in the case of erection of service station for the gross amount of Rs.3,25,200/- for labour/charges. The appellant will be entitled to consequential benefits in accordance with law.

(Dictated and pronounced in the open Court)

-Sd/- -Sd/-

(ANIL G. SHAKKARWAR) (ANIL CHOUDHARY)

Member (TECHNICAL) Member(JUDICIAL)

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प्रमाणित-प्रति / Certified True Copy
03/03/17
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर अपील अधिकरण / (C.E.S.T.A.T.)
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