

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 2

Service Tax Appeal No. 870 of 2012

(Arising out of Order-in-Original No.9/2012 dated 31.01.2012 passed
by the Commissioner of Service Tax, Bangalore.)

**Santech Engineers Private
Limited**

13/4, 13th Cross, 11th Main,
Malleswaram,
Bangalore – 560 003.

Appellant(s)

VERSUS

**The Commissioner of Service
Tax**

16/1, 5th Floor, S.P. Complex,
Lalbagh Road,
Bangalore – 560 027.

Respondent(s)

APPEARANCE:

Shri N. Anand, Advocate for the Appellant

Shri M. A. Jithendra, Authorised Representative for the Respondent

CORAM:

**HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)**

Final Order No. 20874 / 2025

DATE OF HEARING: 09.05.2025

DATE OF DECISION: 09.05.2025

PER : P.A. AUGUSTIAN

The issue involved in the present appeal is regarding classification of the taxable service whether falls under 'Erection, Commissioning or Installation Service' or under works contract service. Appellant was providing taxable service under the category of Erection, Commissioning or Installation and claimed

the benefit of Notification No.12/2003-ST dated 20.06.2003. Alleging that the appellant has not claimed exclusion of the material actually used during the service provided by them to claim the benefit of Notification No.12/2003-ST dated 20.06.2003, proceedings were initiated. As per the impugned order, the adjudicating authority held that a contract involving transfer of property/material are subject to service tax under the category of works contract service and not discharged the service tax under works contract service and not followed the provisions of works contract service but continued to discharge service tax at 15% of the gross value and paid only VAT on the balance amount. Accordingly, adjudicating authority confirmed the demand for the period from June 2007 to September 2010 under Proviso to Section 73(1) and confirmed the duty @ 4.12% on the gross value which is inclusive of both material and labour involved in the works contract as per "Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007" and also imposed penalties under Section 76, 77 and 78 of the Finance Act, 1994. Aggrieved by this order, present appeal is filed.

2. When the appeal came up for hearing, the learned advocate for the appellant drew our attention to Circular No. 98/1/2008-ST dated 04.01.2008. Learned advocate further submits that prior to 01.06.2007 when levy of service tax on "works contract" was introduced by Parliament, the appellant was paying Service Tax on 15% of the contract value under the head 'Erection, Commissioning or Installation' services classifiable under Section 65(105)(zzd) of the Finance Act, 1994 though not leviable as per the decision in **CCE v. Larsen & Toubro Ltd.: 2015 (39) STR 913 (SC)**, after claiming exemption to the extent of 85% towards value of goods and materials sold vide Notification No.12/2003-ST dated 20.06.2003. Post 01.06.2007, the appellant continued to pay

service tax on 15% of the value under the category of "Erection, Commissioning or Installation" service itself as per Board Circular No.98/1/2008-ST dated 04.01.2008.

2.1 Learned counsel drew our attention to six tax invoices and submits that value of goods and materials sold was determined as 85% and 15% was determined as value of labour and other charges. Accordingly, appellant paid VAT on 85% of the value of goods and 15% VAT on the value of service. Learned advocate further submits that even if the activity is classifiable under works contract, Revenue could not compel or force the appellant to adopt composition scheme and it is only an option of the assessee to opt for the composition scheme. The Revenue was bound to determine the value in terms of Rule 2A, which is very much applicable and determinable in the facts of the appellant's case. Even as per Rule 2A, the discharge of Service Tax on the value of service represented by 15% of the gross value is justified. Hence, the impugned order is not tenable and adoption of 15% of the value are not notional and it is as per the Rule 2A of Service Tax (Determination of Value) Rules, 2006. Learned counsel, however, submits that the issue whether fixing of 15% of the gross amount is notional was considered by the Hon'ble Supreme court in the matter of **M/s. Builders Association of India vs. State of Karnataka: (1993) 1 SSC 409**. Further, the issue was also considered in the matter of **Safety Retreading Co. Pvt. Ltd. Vs. Comm. Of Customs & Central Excise, Salem: 2017 (48) STR 97 (SC)** wherein it is held that:

"10. The exigibility of the component of the gross turnover of the assessee to service tax in respect of which the assessee had paid taxes under the local Act whereunder it was registered as a Works Contractor, would no longer be in doubt in view of the clear provisions of Section 67 of the Finance Act, 1994, as amended, which deals with the valuation of taxable services for

charging service tax and specifically excludes the costs of parts or other material, if any, sold (deemed sale) to the customer while providing maintenance or repair service. This, in fact, is what is provided by the Notification dated 20th June, 2003 and CBEC Circular dated 7th April, 2004, extracted above, subject, however, to the condition that adequate and satisfactory proof in this regard is forthcoming from the assessee. On the very face of the language used in Section 67 of the Finance Act, 1994 we cannot subscribe to the view held by the Majority in the Appellate Tribunal that in a contract of the kind under consideration there is no sale or deemed sale of the parts or other materials used in the execution of the contract of repairs and maintenance. The finding of the Appellate Tribunal that it is the entire of the gross value of the service rendered that is liable to service tax, in our considered view, does not lay down the correct proposition of law which, according to us, is that an assessee is liable to pay tax only on the service component which under the State Act has been quantified at 30%.

11. An argument has been advanced by Ms. Pinky Anand, learned Additional Solicitor General that there is no evidence forthcoming from the side of the assessee that the value of the goods or the parts used in the contract and sold to the customer amounts to seventy per cent (70%) of the value of the service rendered which is the taxable component under the State Act. The aforesaid argument overlooks certain basic features of the case, namely, the undisputed assessment of the assessee under the local Act; the case projected by the Department itself in the show cause notice; and thirdly the affidavit filed before this Court by one S. Subramanian, Commissioner of Central Excise, Salem.

12. No dispute has been raised with regard to the assessment of the appellant on its turnover under the local/State Act, insofar as payment of Value Added Tax on that component (70%) is concerned. A reading of the show cause notice dated 24th January, 2008 would go to show that the entire thrust of the Department's case is the alleged liability of the appellant-assessee

to pay service tax on the gross value. In the aforesaid show cause notice, the details of the value of the goods, raw materials, parts, etc. and the value of the services rendered have been mentioned and service tax has been sought to be levied at the prescribed rate of ten per cent (10%) on the differential amount. It is now stated before us that the aforesaid figures have been furnished by the assessee himself and, therefore, must be understood not to be authentic. This, indeed, is strange. No dispute has been raised with regard to the correctness of the said figures furnished by the assessee in the show cause notice issued to justify the stand now taken before this Court; at no point of time such a plea had been advanced."

2.2 Learned counsel also draw our attention to the decision of this Tribunal in the matter of **Gokul Tyre Re-treaders vs. Customs and Central Excise, Belgaum: Final Order No.20283/2025 dated 18.02.2025** wherein it is categorically held that value on which service tax is to be levied has to include the material cost on which VAT has been discharged. Learned counsel draw our attention to the decision of the Tribunal in the matter of **Schindler India Pvt. Ltd. Vs. Comm. Of Central Goods and Service Tax: (2023) 13 Centax 38 (Tri.-Bom.)**, it was observed that:

"8. With regard to the other observations made by the learned Adjudicating Authority that the appellants should be liable to pay the service tax for non-compliance of the composition scheme provided under the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007, we are of the considered view that such scheme is optional and subject to acceptance by the assessee on accounting point of view. In the present case since, the appellants are maintaining proper and adequate accounting records to demonstrate that there is segregation of the price towards supply of material and for installation and commissioning of equipment, denial of the value declared by the appellants without proper substantiation by the adjudicating

authority, cannot also stand judicial scrutiny. Further, it is also relevant to mention here that even the learned Adjudicating Authority has also not objected to maintenance of the accounting records by the appellants, which is evident from paragraph 20 in the impugned order, wherein he has categorically stated that "noticee has furnished a sample copy of Return submitted to the state department and that no one is disputing the facts on payment of VAT by the noticee". This observations made by the learned Adjudicating Authority makes the position amply clear that based on records maintained, the appellants appropriately discharged the VAT amount and the liability has never been questioned or objected to by the authorities under the respective statute. Thus, under such circumstances, the learned Adjudicating Authority cannot fasten the impugned demands confirmed in the impugned order on the appellants."

3. Learned Authorised Representative (AR) for the Revenue reiterated the findings in the impugned order and submitted that even as per the judgment of the Hon'ble Supreme court in the matter of **CCE vs. L&T Ltd.** (supra), the activities carried out by the appellant after 01.07.2006 can be classified only as falling under 'works contract service' and the classification opted by the appellant under category of "Erection, Commissioning or Installation service" and payment of service tax by availing the benefit of Notification No.12/2003-ST dated 20.06.2003 is unsustainable.

4. Heard both sides. As per the evidence on record, the appellant was carrying out the activities over a period of time and as evident from the impugned order, the adjudicating authority has considered the activities carried out by the appellant only after 01.07.2006 and the fact being so, the adjudicating authority rightly classified the activities as falling under 'works contract service' and same cannot be considered as "Erection, Commissioning or Installation service". Further, we find that the appellant was paying service tax by opting the

scheme as per the State VAT Rules and also submitted evidence regarding payment of VAT against 85% of the value of goods/materials during the relevant period and paid service tax on the balance 15%. Further, as evident from the ST-3 returns filed and relied by the appellant shows the value of 'works contract service' and the value of material separately. Fact being so, alleging that the appellant had violated the provision of law is *prima facie* unsustainable. Considering the same, the classification of the activity by the adjudicating authority under 'works contract service' is confirmed. But the demand confirmed by invoking extended period of limitation, is unsustainable as there is no reason or justification given. As a result, the penalties imposed by the adjudicating authority is also set aside. As regarding the contention that the appellant while assessing the service tax by opting composite scheme, the adjudicating authority has no legal right to force the Appellant opt for composite scheme and to confirm the demand.

5. Accordingly, the impugned order is set aside and the matter is remanded with a specific direction to consider the activities carried out by the appellant as 'works contract service' and to assess Service Tax liability as per Rule 2A of the Service Tax (Determination of Value) Rules 2006. Appeal is partially allowed.

(Operative portion of the order was pronounced in Open Court
on conclusion of hearing.)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)