CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 21090 of 2016

(Arising out of Order-in-Appeal No. CAL-EXCUS-000-APP 40 & 41-16-17 dated 28.04.2016 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals-II), Cochin.)

Shri. G. Janardhanan,
PWD Contractor,
Puthenthara, Melarcode,
Pulakkad – 678 703.

Appellant(s)

VERSUS

The Commissioner of Central Excise, Customs and Service Tax,
Pallakkad II Division, Calicut.

Respondent(s)

With

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APPEARANCE:

Mr. Rajesh Kumar T.R, Chartered Accountant for the Appellant

Mr. Vinod Kumar Garhwal, Superintendent (AR) for the Respondent

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

Final Order No. 20993-20994 /2026

DATE OF HEARING: 08.05.2026
DATE OF DECISION: 03.09.2026

PER : P.A. AUGUSTIAN

The issue in the present appeals is regarding sustainability of demand of service tax under the category of Management, Maintenance or Repair service (MMRC) and under the category of manpower recruitment and supply agency service during the period from 16.06.2005 to 31.12.2010.

2. Appellant is a License Contractor of PWD and other Departments of Kerala Government. Alleging that Appellant failed to pay service tax for the above period and also failed to take registration under the relevant category of service tax, proceedings were initiated and in appeal no. ST/21090/2016, show cause notice was issued on 31.05.2010 for the period from 16.06.2005 to 31.03.2009 demanding service tax of Rs. 2,93,140/- under MMRS and Adjudication Authority as per order dated 18.11.2011 confirmed the demand and imposed penalties. Similarly, in the appeal no. ST/21091/2016, another show cause notice was issued on 14.06.2011 for the period from 01.04.2010 to 31.12.2010 and Adjudication Authority as per the order dated 05.10.2012 confirmed the demand of Rs.46,919/-under MMRS and Rs.15,175/- under Man Power Supply. Aggrieved by said orders, appeals were filed before the Commissioner (Appeals). The Commissioner (Appeals) as per the impugned common Order-in-Original dated 28.04.2016 dropped the penalties imposed by the Adjudication authority and confirmed the demand. Aggrieved by said order, present appeals are filed.

3. When the appeals came up for hearing, Learned Chartered Accountant (CA) for the Appellant submits that the appellant had carried out re-construction/repair of damaged portion of irrigation canals including improvement, and maintenance of canal. Since the said works involved supply of property in goods, appellant paid VAT as applicable under ‘works contract'. Learned CA further submits that even as per para 11 of the impugned order, it is stated "The service provider may be paying sales tax/VAT for the materials he purchased for the execution of the contract". However, on the very same order, another finding was given that "It seems that no such transfer of property has been involved in the repairs or maintenance works done for an existing dilapidated concrete structure / a civil structure in dispute". In this regard, learned CA submits that such finding is contradictory and once it is admitted that the activities carried out by the appellant involved supply of goods and if the appellant paid applicable VAT, demand confirmed by the impugned order under the category of Management, Maintenance or Repair Service is unsustainable. Learned CA further draws our attention to the finding where the classification of services under works contract was denied on the grounds that -

a. Under the definition given, the repair/renovation/restoration works mention in clause (d) must be provided in relation either to clause (b) and (c);

b. The canal is not for commerce or industry;

c. Hence it is not covered under works contract.

d. Since it is not works contract, it is taxable under MMRS

4. Learned CA also drew our attention to the certificate issued under Kerala Value Added Tax Rule, 2005 evidencing payment of VAT paid by the Appellant and submits that the issue is no

more res integra as covered by the judgment of Hon'ble Supreme Court in the case of **Commissioner v. Larsen & Toubro 2015 (39) S.T.R. 913 (S.C.)** where it is held that "This is clear from the very language of Section 65(105) which defines "taxable service" as "any service provided". All the services referred to in the said sub-clauses are service contracts simpliciter without any other element in them,". That being a case, there cannot be levy of Service Tax on the works involving transfer of property as a composite works other than under Works Contract Service. Works contract services was introduced specifically to tax a works involving transfer of property in goods. Hence the same cannot be taxed under any other category. If any category of service specifically excludes certain type of services, the same cannot be taxed under any other category. In this regard, Learned CA also placed reliance on the decision in the matter of **Dr. Lal Path Lab Pvt. Ltd. vs Commissioner of C. Ex., Ludhiana 2006 (004) STR 0527 Tri.-Del** which is affirmed by Hon'ble Supreme Court in 2007 (8) STR 337 (P&H.). Learned CA further submits that in the matter of **Lanco Infratech Ltd Vs CC, CE & ST Hyderabad 2015 (38) STR 709 (Tri-LB)** also it was held that construction of canal falls under works contract and hence event the repair / improvement / AMC contracts wherein both material and labour involved should also fall under works contract service only. Further reliance is placed on the following decisions wherein it was held that maintenance or repair works involving materials and in composite nature cannot be taxed under MMRS.

a. Agarwal Engineering Works vs C.C., C. Ex. & S.T., 2019 (24) G.S.T.L. 264 (Tri. - Hyd.)

b. Kailash Chawla vs CCE 25 Centax 337 (Tri.-Del)

5. Learned CA further submits that demand confirmed by invoking extended period of limitation is also unsustainable. The

impugned order itself finds that there was no suppression and intention to evade payment of tax and only on that ground, appellate authority has set aside the penalty under section 78 of the Finance Act, 1994. When there was no suppression or intention to evade payment of tax, demand confirmed by invoking extended period of limitation is unsustainable. As per the relevant date (due date for filing ST-3 return) the SCN should have been issued within 25.04.2010 wherein in the present case, for demanding service tax under MMR Service, for the period from 16.06.2005 to 31.03.2009, the SCN is issued on 31.05.2010. Therefore, the entire demand under MMR Service is barred by limitation.

6. As regarding demand under Manpower Recruitment and Supply Agency Service for the period from 01.04.2010 to 31.12.2012, learned CA submits that the Appellant had provided manpower in emergency situation as one time activity. The value of amount received from the said activity is Rs. 1,7,334/-, and even if it is held that said activity is taxable, it is well within the exemption limit since all other values are exempted.

7. Learned Authorized Representative (AR) for the Revenue reiterated the finding in the impugned order and submits that even if the appellant were paying VAT as applicable, appellant is liable to pay service tax on the service provided by them. He prays that the appeal may be dismissed and the impugned order may be upheld.

8. Heard both sides and perused the records.

9. We find that as per section 65(105)(zzzza), Works Contract means,-

transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and such contract is for the purposes of carrying out,

(a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or

construction of a new building or a civil structure or a part thereof, pipeline or conduit, primarily for the purposes of 11 commerce or industry; or

(c) construction of a new residential complex or a part thereof, or

(d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or

(e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects

10. Further we find that that what is referred to in the charging provision is the taxation of service contracts simpliciter and not composite works contracts, such as are contained on the facts of the present case. As per the judgment of Hon'ble Supreme Court in the matter of **CC vs M/s Larsen & Toubro (supra)**, it is held that:

"24. A close look at the Finance Act, 1994 would show that the five taxable services referred to in the charging Section 65(105) would refer only to service contracts simpliciter and not to composite works contracts. This is clear from the very language

> of Section 65(105) which defines "taxable service" as "any service provided. All the services referred to in the said sub-clauses are service contracts simpliciter without any other element in them, such as for example, a service contract which is a commissioning and installation, or erection, commissioning and installation contract. Further, under Section 67, as has been pointed out above, the value of a taxable service is the gross amount charged by the service provider for such service rendered by him. This would unmistakably show that what is referred to in the charging provision is the taxation of service contracts simpliciter and not composite works contracts, such as are contained on the facts of the present cases. It will also be noticed that no attempt to remove the non-service elements from the composite works contracts has been made by any of the aforesaid Sections by deducting from the gross value of the works contract the value of property in goods transferred in the execution of a works contract."

11. Further We find that similar to appellant's case, in the matter of **M/s Agarwal Engineering Works,** the contracts clearly indicated that they would have to render services as well as provide materials related to those services. As far as materials are concerned, the Indian Railways have deducted an amount of 4% from their bill towards VAT and credited the same to the Government of Andhra Pradesh. Considering the issue, the appeal was allowed insofar as the demand on "Management, Maintenance & Repair Services".

12. As regarding the demand confirmed by invoking the extended period of limitation, we find that once the First Appellate authority has admitted that there is no deliberate suppression of fact and also considering the certificate issued under Kerala Value Added Tax Rule, 2005 evidencing payment of VAT as paid by the Appellant, there is no justification for invoking extended period of limitation. Thus the demand

confirmed by adjudication / appellate authority by invoking extended period of limitation is also unsustainable. Further, as regarding the demand under the category of Manpower Recruitment and Supply Agency Service, though it is taxable activity, since it is below the taxable limit and the demand against the said category is also unsustainable.

13. Accordingly, impugned orders are set aside and appeals are allowed with consequential relief, if any, as per law.

(Order pronounced in Open Court on 03.09.2026)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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