

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

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REGIONAL BENCH – COURT NO. 1

**Service Tax Appeal No. 1164 Of 2011**

[Arising out of OIA No. 100/CE/APPL/LDH/2011 dated 21.04.2011 passed by the Commissioner (Appeals) of Customs & Central Excise, Chandigarh]

**PNC Infratech Ltd.  
(Formerly Known as PNC Construction Co. Ltd.) : Appellant (s)**

Vs

**CCE- Ludhiana** : **Respondent (s)**  
F Block, Rishi Nagar, Ludhiana

APPEARANCE:

Ms. Krati Singh, Ms. Shreya Khunteta, Advocates for the Appellant  
Shri Harish Kapoor, Authorised Representative for the Respondent

**CORAM : HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)  
HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**ORDER No. A/60181/2023**

Date of Hearing:04.07.2023

Date of Decision:04.07.2023

**Per : S. S. GARG**

The present appeal is directed against the impugned order dated 21.04.2011 passed by the Commissioner (Appeals) of Customs & Central Excise, Chandigarh whereby the Ld. Commissioner has confirmed the demand of Service Tax of Rs. 39,46,036/- under proviso to Section 73 (1) of the Finance Act, 1994 and imposed equivalent penalty under Section 76 and 78 of the Finance Act, 1994. Ld. Commissioner also imposed penalty of Rs. 1,000/- under Section 77 of the Finance Act, 1994. Aggrieved by the said order, the appellant is before us.

2. Briefly the facts of the case are that the show cause notice dated 23.05.2008 was issued to the appellant who was engaged in

providing the services under 'Business Auxiliary Services' alleging that they appeared to have contravened the provisions of Section 68, 69 & 70 of the Finance Act, 1994 and Rules, 4, 5, 6 and 7 of Service Tax Rules, 1994 by providing the said taxable services without obtaining registration and without payment of service tax. It was imputed that they were collecting toll tax at "Doraha Toll Plaza", Doraha, Distt. Ludhiana on behalf of National Highway Authority of India (in short NHAI) for a consideration of Rs. 14,25,900/- per month and had received an amount of Rs. 4,27,77,000/- from NHAI during the period 01.07.2003 to 31.01.2006 for their services at "Doraha Toll Plaza", on which they have failed to pay service tax amounting to Rs. 39,46,036/- under the category of 'Business Auxiliary Services'. On these allegations, an enquiry was conducted against the appellant and statements of the authorized representative of the appellant were recorded. Thereafter, a show cause notice dated 23.05.2008 was issued alleging that 'toll operations' undertaken by the appellant amounted to 'Business Auxiliary Services' ('BAS') under Section 65(19) of the Finance Act, 1994 ('Act') and thus the consideration received against 'tolling operations' was liable to service tax for the period 01.07.2003 to 31.03.2006. The appellant filed the detailed reply to the SCN submitting that the services rendered by the Appellant to NHAI are not liable to service tax under 'Business Auxiliary Service'.

3. After following due process, the adjudicating authority vide order-in-original dated 01.10.2008 confirmed the demand of service tax along with interest and penalty.

4. Aggrieved by the said order, the appellant filed an appeal before the Ld. Commissioner (Appeals) and the Ld. Commissioner (Appeals) upheld the order-in-original vide impugned order dated 02.05.2011. Hence, the present appeal.

5. Heard both the parties and perused the material on record.

6. Ld. Counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law and the binding judicial precedents on the same issue. She further submitted that in the present case, the demand has been confirmed on the ground that the tolling operations carried out by the appellant for NHAI are covered by Business Auxiliary Service under clause (iv) of Section 65(19) of the Act and clause (vii) of Section 65(19) of the Act. She further submitted that in the impugned order, it was held that the appellant is rendering services of collection toll/ fee to NHAI for a consideration and the said service is covered under the definition of 'Business Auxiliary Service' as the same is incidental or auxiliary support service such as billing, billing collection or recovery of cheques, accounts and remittance, evaluation of prospective customer and public relation services and hence subject to service tax. She further submitted that the services rendered by the appellant are not covered by any of the activities specified in this clause. She also submitted that for qualifying under clause (iv) or (vii), the said service is required to be incidental or auxiliary to the services covered in other clauses. She also submitted that by collecting toll from the commuters, appellant was rendering service directly to NHAI and no service was being rendered to commuters on behalf of NHAI and therefore, the services

undertaken by the appellant are not covered by BAS and not liable to pay tax. It is her further submission that the services will be covered by the definition of 'Business Auxiliary Service' only if it is auxiliary to a business activity but NHAI is not undertaking any business activity by constructing and maintaining of national highways and collecting toll for the same rather NHAI is merely undertaking a statutory function and the appellant as a contractor, is engaged in collecting statutory levies on behalf of the statutory authority which is not engaged in any business and hence, demand under Business Auxiliary Service is not sustainable. For this submission, she relied upon the following decisions:-

- **Sukhmani Society for Citizen Services Vs. CCE & ST, Chandigarh, 2017 (47) STR 172 (Tri.-Chandigarh)**
- **Mateshwari Indrani Contractors Pvt. Ltd. Vs. CCE & ST, Jaipur, 2018 (6) TMI 665- CESTAT New Delhi**
- **Commissioner of Service Tax Vs. Intertoll ICS CE CONS O & M Pvt. Ltd., 2013 (31) STR 477 (Tri.-Del.)**
- **M/s. PKSS Infrastructure Vs. CST, Delhi-I, 2018 (10) TMI 1476- CESTAT, New Delhi**
- **PNC Construction Co. Ltd. Vs. CCE, Chandigarh, 2012 (12) TMI 878- CESTAT, New Delhi**

She further submitted that the Tribunal has decided the identical issue in various other cases (including Appellant's own case for other financial year), wherein it has been held that collection of toll by the assessee would not be considered as Business Auxiliary Service provided to NHAI as the assessee is not rendering any service which is incidental or auxiliary on behalf of NHAI and NHAI is not undertaking any business activity. For this submission, she relied upon the following decisions:

- **Commissioner Of C. Ex., Panchkula vs. PNC Construction Co. Ltd. 2018 (10) G.S.T.L. 25 (Tri. - Chan.)**
- **M/s Sangam (India) Limited v Commissioner, Central Excise, Udaipur, 2023 (2) TMI 831 - CESTAT New Delhi**
- **D.V Pawan Kumar, Proprietor Vaishnavi Distributors v C.C.,C.E.& S. T-Cochin, 2022 (1) TMI 508 - CESTAT Bangalore**
- **A. Srinivasulu& Co Vs. CCE, Visakhapatnam -II, 2018 (11) TMI 837 - CESTAT, Hyderabad**
- **Commissioner of Service Tax, Mumbai v. Ideal Road Builders Pvt. Ltd. &Anr., 2017 (10) TMI 401 – CESTAT Mumbai**
- **Souvenir Developers India Pvt. Ltd. Vs. CCE, C & ST-I, 2022 (5) TMI 868-CESTAT Mumbai**
- **Ashoka Buildcon VS. CST, Nashik, 2017 (49) STR 404 (Tri.-Mumbai)**
- **Bans Sands TTC Vs. CCE, New Delhi, 2016 (9) TMI 374- CESTAT, New Delhi**
- **Intertoll ICS Toll Management Company P. Ltd. Vs. CST, Ahmedabad, 2018 (8) TMI 31 - CESTAT Ahmedabad**

She also submitted that the contract entered into by the appellant is a composite contract for undertaking various activities like road maintenance, road property management, incident management engineering improvements and toll operations. Therefore, such a composite contract cannot be vivisected and part of it i.e., tolling operations alone cannot be subject to service tax. She also submitted that the indivisible nature of the whole contract is evident from the tender itself wherein NHAI desired the work to be completed as a whole and was not interested in the individual components separately. She also submitted that the value of taxable service is incorrect because the gross rate of Rs. 14,70,000/- specified against the Bill of Quantities (in short BOQ) of 'toll operations' is for all the jobs mentioned under the said BOQ. She also raised the issue of time bar by submitting that the show cause notice was issued by invoking extended period of limitation in the absence of any element of mala

vide on the part of the appellant and for this submission, she relied upon the decision in the case of **Bharat Hotels Limited v Commissioner Central Excise (Adjudication), 2018 (2) TMI 23 – Delhi High Court.**

7. On the other hand, the Ld. AR reiterated the findings in the impugned order.

8. After considering the submissions of both the parties and perusal of material on record, we find that the appellant has entered into a Short-Term Improvement and Routine Maintenance Contract dated 13.06.2003 with National Highway Authority of India. NHAI is authorised to impose and collect user fee for use of highways under National Highways Fee (Determination of Rates and Collection) Rules, 2008 read with Section 7 of National Highways Act, 1956 read with Section 16(2)(k) of National Highways Authority of India Act, 1988. NHAI invited bids from contractors for 'short term improvement and maintenance contracts' for various sections of National Highways for specified period by issuing tenders for the same. In this regard, the appellant submitted its proposals in response to the tenders, which were accepted by NHAI, and the Appellant was given right to undertake various jobs like road maintenance, road property management, incident management engineering improvements and toll operations on a monthly amount of Rs. 14,25,900/-. The only issue involved in the present case is whether the demand of service tax under the category of 'Business Auxiliary Service' is sustainable in the present case and whether the tolling operations undertaken by the appellant are covered by the Business Auxiliary Service or not?

This issue has been considered by various benches of the Tribunal and in the appellant's own case for the earlier period it has been held that the collection of toll by the assessee would not be considered as Business Auxiliary Service provided to NHAI as the assessee is not rendering any service which is incidental or auxiliary on behalf of NHAI and the NHAI is not undertaking any business activity. In the appellant's own case as reported in 2012 (12) TMI 878 – CESTAT, NEW DELHI, the Tribunal has held as under:-

“4. After hearing both the sides, we note that identical issues were the subject matter of the Tribunal's decisions. In the case of Intertoll ICS CE Cons O&MP Ltd. vide Final Order No.ST/A/34/12-Cus, dtd. 23.12.11, the Tribunal observed that NHAI has availed the services of respondents and the said NHAI is not established by Revenue to be business concern or a commercial concern engaged in any business activities. Therefore, providing BAS to such NHAI is not conceivable. Accordingly appeal filed by the Revenue was dismissed.

Similarly in the case of Intertoll India Consultants (P.) Ltd. v. CCE [2011] 32 STT 269, the Tribunal held that toll tax and fee for use of bridge, by retaining the percentage of such collection, the activity cannot be held to be falling under BAS. In the case of Swarna Tollway (P.) Ltd. v. CC & CE [2011] 32 STT 162, again the same status was reiterated. As regards limitation, we find that the Tribunal in the case of Brij Motors (P.) Ltd. v. CCE [Final Order No. ST/601/2011 (PB), dated 22-11-2011] has held that when the issue is interpreted by judicial forums in different ways, the extended period cannot be invoked in such a situation.

5. By applying the ratio of all the above decisions to the present case, we find that the activities of the appellants in respect of toll fee collection cannot be held to be a service provided to NHAI falling under the category of BAS. As such we set aside the impugned order and allow the appeal with consequential relief to the appellants.”

9. Similarly, by following the said decisions in another case of the appellant, the department appeal was dismissed as reported in 2018 (10) GSTL 25 (Tri.-Chan.). We find that this issue is no more res-integra as held by various benches of this Tribunal cited (supra).

10. By following the ratio of the above decisions, we are of the considered view that the impugned order is not sustainable in law and hence we set-aside the impugned order by allowing the appeal of the appellant with consequential relief, if any.

*(Dictated & pronounced in the open Court)*

**(S. S. GARG)**  
MEMBER (JUDICIAL)

**(P. ANJANI KUMAR)**  
MEMBER (TECHNICAL)

G.Y.