CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI

Sl.No.	Appeal No.	Appellant	Respondent
1.	ST/40066/2013	Ramalingam Construction Co.(P).Ltd.	Commissioner of Central Excise& Service Tax, Salem
Arising out of Order-in-Original No.05/2012 (Commissioner) dt. 28.09.2012 passed by Commissioner of Customs & Central Excise, Salem			
2.	ST/40066/2014	Ramalingam Construction Co.(P).Ltd.	Commissioner of Central Excise& Service Tax, Salem
Arising out of Order-in-Original No.08/2013-ST (Commissioner) dt.07.10.2013 passed by Commissioner of Customs, Central Excise& Service Tax, Salem			
3.	ST/40233/2014	CCE & ST Salem	Ramalingam Construction Co.(P).Ltd.
Arising out of Order-in-Original No.08/2013-ST (Commissioner) dt.07.10.2013 passed by Commissioner of Customs, Central Excise& Service Tax, Salem			
4.	ST/41559/2014	Ramalingam Construction Co.(P).Ltd.	CCE & ST Salem
Arising out of Order-in-Original No.05/2014 (ST) (Commissioner) dt. 28.03.2014 passed by Commissioner of Central Excise, Salem			
5.	ST/41748/2015	Ramalingam Construction Co.(P).Ltd.	CCE & ST Salem
Arising out of Order-in-Original No.04/2015– ST – COMMR.) dt.30.04.2015 passed by Commissioner of Central Excise& Service Tax, Salem			
6.	ST/42180/2017	Ramalingam Construction Co.(P).Ltd.	CCE & ST (Audit) Coimbatore
Arising out of Order-in-Original No.06/2017– Commr. Audit Cbe. dt. 31.05.2017 passed by Commissioner of Central Excise &Service Tax (Audit), Coimbatore			

<u>Appearance :</u>

Shri S. Muthuvenkatraman, Advocate
For the Assessee

Shri K. Veerabhadra Reddy, JC (AR)
For the Revenue

CORAM :

Hon'bleMs.ArchanaWadhwa, Member (Judicial)
Hon'bleShriMadhu Mohan Damodhar, Member (Technical)

Date of hearing: 18.04.2018
Date of Pronouncement: 29.06.2018

FINAL ORDER No. 41891-41896 / 2018

Per Madhu Mohan Damodhar

In these six appeals before us, five have been filed by assessee and one by Revenue. All these appeals since relating to same assessee and involving common disputes, they are taken up together for joint disposal.

2. The facts of the case are that M/s.Ramalingam Construction Co. (P).Ltd., the assessee, are providers of taxable services like Construction of Residential Complex Service, Works Contract Services (WCS) Commercial or Industrial Construction Service (CICS) etc. Main areas of dispute are:

(i) With respect to residential complexes built by assessee for Government organizations / agencies like Slum Clearance Board, Housing Board etc., Department takes the view that assessee is required to discharge service tax liabilities under CICS, Construction of Complex defined in Section 65 (30a) of the Act;

(ii) With respect to works related to widening and deepening of canals, construction of flood protection wall, construction of storm water drain, construction of diversion channel etc. for Government agencies like water resources department, Government of Tamil Nadu Water Resources Department, Palar Basin Authority etc., Department took the view that these activities fall under the category of 'dredging service' as defined in Section 65 (36a) of the Finance Act, 1994 and hence service tax should have been discharged on the value of taxable service involved.

(iii) Assessee had constructed civil structures / compound wall, retaining wall, pipe line works for TNSCB, on which activity, department took a view that that assessee should have discharged service tax liability under Commercial or Industrial Construction Services (CICS) as defined in Section 65 (25b) of the Act. For certain periods, such construction work has been alleged to be falling within Works Contract Service (WCS) as defined under Section 65 (105) (zzzza) of the Act.

(iv) Department also took the view that work of repair and renewal of electrical installations at Iron and Steel complex, Santhanakadu, Chennai for CMDA would be exigible to service tax under the category of Management, Maintenance or Repair Services (MMR services).

(v) Assessee provided fire fighting system in double level basement parking for two wheelers at Chennai Metro Bus Terminal (CMBT) for CMDA which was alleged to be exigible to service tax liability under CICS.

3. Show cause notices were issued to the assessee based on the above allegations, inter alia proposing recovery of service tax liabilities with interest, as also imposition of penalties under various provisions of the Finance Act,1994. In adjudication of these proposals, demands of service tax under various heads were confirmed and penalties have also been imposed by the adjudicating authorities under Section 77, 76 and / or 78 of the Act. Aggrieved, appeals related to five impugned orders have been filed by assessee vide Appeal Nos. ST/40066/2013,ST/40066/2014,ST/41559/2014, ST/41748/2015 & ST/42180/2017. Department is aggrieved for non-imposition of penalty under Section 76 by the adjudicating authority in impugned order dt.07.10.2013, hence Departmental Appeal No.ST/40233/2014.

4. The details of the concerned SCNs, impugned orders and issues involved in each of the appeals, as submitted by the assessees can be capsulated in the following table :

Appeal No	SCN, OIO and Period of Dispute	Issues Involved	Amount involved in SCN	Amount Confirmed in OIO	Other Demands and Penalties confirmed in the OIO
ST/40066/2013	SCN No 94/2010 dated 21.10.2010	Construction for Tamilnadu Slum Clearance Board	4,81,26,036	4,81,25,161	Interest under Section 75 of the Finance Act Penalty of Rs 200 per day from
	OIO No 05/2012	Karnataka Housing Board	1,67,74,278	1,62,10,266	

<table>
<tr><td rowspan="9"></td><td rowspan="9">dated 28.09.2012

POD: 16.06.2005 to 31.03.2010</td><td>CICS for PWD, Dharmapuri</td><td>1,90,450</td><td>Not Confirmed</td><td rowspan="9">16.06.2005 to 17.04.2006 under Section 76

Penalty of Rs. 200 per day or 2% per month from 18.04.2006 to 09.05.2008

Rs 200 per day for non registration on M/s Ramalingam for non registration

Penalty of Rs 10,000 for non registration

Penalty of Rs 6,52,95,618 under Section 78</td></tr>
<tr><td>Construction for Royal Orchid Bangalore</td><td>4,27,079</td><td>4,27,079</td></tr>
<tr><td>Chennai Metro Development Authority I</td><td>1,71,125</td><td>1,71,125 (Confirmed totalling to Rs 2,90,058)</td></tr>
<tr><td>Chennai Metro Development Authority III</td><td>75,662</td><td>75,662</td></tr>
<tr><td>Public Works Department Trichy</td><td>43,271</td><td>43,271</td></tr>
<tr><td>Public Works Department Cuddalore</td><td>88,774</td><td>Not Confirmed</td></tr>
<tr><td>Sriram Aveneue, Coimbatore</td><td>8,925</td><td>8,925</td></tr>
<tr><td>Pudhukottai Municipality – Shopping Complex</td><td>2,12,455</td><td>2,34,127</td></tr>
<tr><td>TOTAL</td><td>6,61,18,056</td><td>6,52,95,618</td></tr>
<tr><td rowspan="8">ST/40066/2014</td><td rowspan="8">SCN NO 108/2011 dated 18.10.2011

OIO No 08/2013 dated 7.10.2013

POD April 2010 to March 2011</td><td>Royal Orchid Bangalore</td><td>1,68,251</td><td>1,68,251</td><td rowspan="8">Interest Under Section 75

Penalty of Rs 200 per or Rs 10,000 under Section 77 for non registration

Penalty of Rs 10,000 for non-filing of returns

Penalty of Rs 200 or 2% under Section 76 till the date of payment of Tax.</td></tr>
<tr><td>Tamil Nadu Slum Cleareance Board</td><td>85,32,053</td><td>85,32,053</td></tr>
<tr><td>Karnataka Slum cleareance Board</td><td>2,39,974</td><td>2,39,974</td></tr>
<tr><td>Karnataka Housing Board</td><td>99,73,813</td><td>99,73,813</td></tr>
<tr><td>Dredging Service</td><td>3,30,05,290</td><td>3,30,05,290</td></tr>
<tr><td>CMDA – I (MMRS)</td><td>1,92,114</td><td>1,92,114</td></tr>
<tr><td>CMDA – III (ECIS)</td><td>2,41,403</td><td>2,41,403</td></tr>
<tr><td>TOTAL</td><td>5,23,52,898</td><td>5,23,52,898</td></tr>
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ST/40233/2014		Dept Appeal for reduced penalty under Section 76 and non imposition of penalty under Section 78.			
ST 41559/2014	SCN No 26/2013 dated 16.04.2013 OIO No 05/2014 dated 28.03.2014 POD April 2011 to March 2012	Power Grid Corporation – Rain Harvesting System – Works Contract	2,54,339	2,54,339 (Paid Rs 1,01,736/- + interest of Rs 5,976)	Interest Under Section 75 Penalty of Rs 200 per under Section 77 for non registration Penalty of Rs 10,000 for non-filing of returns under Section 77 Equal Penalty under Section 78
		Construction of Educational Institutions	2,86,303	Demand Dropped	
		Residential Houses for Karnataka Housing Board	5,92,45,989	5,92,45,989	
		Dredging Service	11,20,07,752	11,20,07,752	
		TNPHC, CMDA, CPWD – Electrical Divisions (Demand under ECIS) – Fire Fighting Protection system	10,42,668	10,42,668	
		With held amount released pertaining to receipts received from Karnataka Housing Projects	22,53,753	22,53,753	
		TOTAL	17,50,90,804	17,48,04,501	
ST/41748/2015	SCN No 59/2014 dated 22.05.2014 OIO No	Residential Projects for Karnataka Housing Board	1,03,60,136	1,03,60,136	Interest Under Section 75 Penalty of Rs 200 per day or Rs 10,000
		Dredging Service	80,04,619	80,04,619	

	04/2015 dated 30.04.2015 POD April 2012 to June 2012	Amount With held released from Tamil nadu Slum Cleareance Board	20,01,055	20,01,055	under Section 77 for non registration Penalty of Rs 10,000 for non-filing of returns under Section 77 Equal Penalty under Section 78
		TOTAL	2,03,65,809	2,03,65,809	
ST/42180/2017	SCN 18/2016 dated 22.08.2016 OIO No 06/2017 dated 31.05.2017 POD 01.04.2013 to 31.03.2015	Karnataka Housing Board	2,47,91,740	2,47,91,740	Interest Under Section 75 Penalty of Rs 10,000 for non-filing of returns under Section 77 Equal Penalty under Section 78

5. On 18.4.2018 when the matter came up for hearing, on behalf of the assessee, Ld. Advocate, Shri S. Muthuvenkatraman submitted oral and written submissions in respect of each disputed service and the projects that have come under the department's scanner. These arguments and submissions can be broadly summarized, project wise, as under :

I) <u>Activity alleged to be Dredging Service:</u>

In respect of this activity, various projects were undertaken by the assessee as under:

1. Southern Basin Package VII (Velacherry)
2. Package I (Kodungaiyur)
3. Package III (Buckingham canal)
4. Package II (Maduravoyyal)
5. South Buckingham Canal

1. Name of the Project : Southern Basin Package VII (Velacherry)

Service Tax liability in respect of these projects has been demanded in impugned orders No.8/2013-ST dt. 7.10.2013 (Appeal No.ST/40066/2014), 5/2014 dt. 28.3.2014 (ST/41599/2014) and 4/2015 dt.30.4.2015 (ST/41748/2015). These projects basically involve works for improvement to Veerangalodai drainage course channel like widening and deepening of canal, widening the water ways of existing bridges etc., diversion of drainage channel from Velacherry to South Buckingham canal as back water. The adjudicating authority has held the services to be Dredging Services. However, the Ld. Advocate puts forth the following contentions:

- Assessee is not providing Dredging Services as defined under section 65 (36a) of the Finance Act, 1994 but are only providing construction activities which fall outside the ambit of dredging and are only classifiable under works contract services as under section 65 (105) (zzzza).

- The work undertaken by them is only at the drainage canal for protection of flood and the presumption that VeerangalOdai is a river is incorrect. The work undertaken by the assessee is only widening, deepening and construction of flood protection on both sides and the storm water drainage so that it can freely flow into the Buckingham Canal. The service undertaken by the assessee cannot therefore be classified as 'dredging services'.
- The scope of Dredging services is explained vide Boards letter ref.FNo.B1/6/2005-TRU dated 27.07.2005 wherein it is made clear that service tax is only applicable if only the service for providing adequate draught for ships and other vessels. In the works undertaken by the assessee, even boats cannot pass through.
- Moreover the service of dredging involves huge machinery and equipment to deepen draught for ships and other vessels and to maintain shipping channels.
- As per the work order,assessee have only undertaken construction work of flood protection wall using cement and steel. The value of the construction would include such civil construction material such as bricks, sand, cements, steel, etc.

2. Name of the Project : Package I (Kodungaiyur)

Service Tax liability in respect of these projects has been demanded in impugned orders No.8/2013-ST dt. 7.10.2013 (ST/40066/2014), 5/2014 dt.28.3.2014 (ST/41599/2014) and 4/2015 dt.30.4.2015 (ST/41748/2015).With regard to the above project, Ld. Advocate reiterated the submissions made in respect of Southern Basin Package Velacherry Project. It is also submitted that work undertaken by assessee is for improvement to Kodungaiyur drain from 3050m to 3450m (beneath) GNT Road), construction of diversion channel for surplus in Kollathur Tank to Madhavaram Tank, improvements to OtteriNullah like widening and construction of floor protection wall concrete bed lining; that construction of diversion channel from Kolathur Tank (Surplus water) to Madhavaram Tank beneath GNT Road so as to divert the same to OoteriNullah and widening the construction of flood protection wall to OoteriNullah. The presumption that OoteriNullah as a river is incorrect. The work undertaken by the assessee cannot be considered as dredging service in a river. The said project was merely a construction service and not dredging service as alleged.

3. Name of the Project :Package III (Buckingham Canal)

Service Tax liability in respect of this project has been demanded in impugned orders No.8/2013-ST dt. 7.10.2013 (ST/40066/2014), 5/2014 dt. 28.3.2014 (ST/41599/2014) and 4/2015 dt.30.4.2015 (ST/41748/2015). It is submitted that the work undertaken by the assessee is for improvements to North Buckingham canal like widening and deepening, construction of flood protection wall and fencing in vulnerable place, providing access ramp for maintenance, providing inlet arrangements widening the water ways of bridges etc. This cannot be classified as dredging service of a river. The presumption that VeerangalOdai is a river is incorrect. The adjudicating authority confirmed the demand relying both Circular No.116/20/2009-ST dt. 15.09.2009 with the case law reported in 2010 (19) STR (Tri.-Kolkatta).

4. <u>Name of the Project : Package II (Maduravoyal)</u>

Service Tax liability in respect of this project has been demanded in impugned orders No.8/2013-ST dt. 7.10.2013 (ST/40066/2014), 5/2014 dt. 28.3.2014 (ST/41599/2014) and 4/2015 dt.30.4.2015 (ST/41748/2015). The work undertaken by the assessee is for improvement to the outlet, drainage course and construction of diversion channel from Maduravoyal tank to Cooum, short cut diversion drainage canal for Virugambakkam-Arumbakkam drain from 100ft road bridge to Cooum river at inner ring road bridge, and also providing access ramp for maintenance widening the water way of bridges providing inlet arrangements. The adjudicating authority has confirmed the demand relying both Circular No.116/20/2009-ST dt. 15.09.2009 read with the case law reported in 2010 (19) STR 682 (Tri.-Kolkatta). The work undertaken by assessee is in no way connected with dredging services and it is only draining of storm water to Cooum. Therefore it cannot be classified as dredging services. The works executed by them are similar to works carried out in Thirumanaimuthar. It is in the shape of trapezium wherein bottom and both sides were fully packed and concrete for free flow of waster effluents, rain storm water and drain of excess rain water. These items of work / constructions are not meant for movement of vessels like ships or boats and for any purpose other than draining of rain water.

5. Name of the Project : South Buckingham Canal

Service Tax liability in respect of this project has been demanded in impugned orders No. 5/2014 dt.28.3.2014 (ST/41599/2014). It is alleged that as the assessees rendered widening, deepening in a river, the work would cover no project service. The adjudicating authority has confirmed the tax liability under project service and held that Exemption Notification No.41/2009 is not applicable. The work undertaken by assessee is in no way connected with the dredging services and it is only draining of storm water to Cooum. Therefore it cannot be classified as dredging services.

II (a) Arguments in respect of demand on construction of Residential complex to Karnataka Housing Board (KHB), Karnataka Airport Land Gulbarga, R1/V1 Quarters, Gadag, Thalikottai, Institute Hostel at Gulbarga, Suryanagar, Sheiqroza, Ragigudda.

Demands in respect of these activities have been confirmed by adjudicating authority in impugned OIO dt. 28.09.2012 (ST/40066/2013), OIO dt. 7.10.2013 (ST/40066/2014), OIO dt. 28.3.2014 (ST/41559/2014), OIO dt.30.4.2015 (ST/41748/2015).Assessee had constructed residential units for the KHB Bangalore. In impugned order dt. 28.9.2012 (ST/40066/2013), adjudicating authority has rejected submission of assessee that such construction would be liable to tax only after 1.6.2007 and has demanded tax under Commercial Complex service. In the impugned order dt. 7.10.2013 (ST/40066/2014) adjudicating authority has denied benefits given in Master Circular 96/2005 dt. 23.08.2007 on the ground that houses built for Slum Clearance Board are meant for sale to the allottees. In impugned orders dt. 28.3.2014 (ST/41559/2014) &dt. 30.4.2015 (ST/41748/2015), the adjudicating authority has held that the construction of residential complex are liable to be taxed under Works Construction Service but compensation scheme should not be extended since assessee has not opted for the same and service tax has been determined as per Rule 2A of Valuation Rules. The related submissions of the assessee in this regard are as follows :

- The demand prior to 01-06-2007 is liable to be set aside in view of the Supreme Court decision in State of Kerala Vs. Larsen & Toubro Ltd. - 2015 (39) STR 913 (SC). Therefore the services which are classifiable under works contract from 1.6.2007 could not have been classified in any other service as it existed then by virtue of the fact that there was no requirement for transfer of property on which VAT or sales tax was required to be paid. The construction of the residential houses is for the personal use of Karnataka Housing Board. Reliance placed on:

- Khurana Engineering Ltd Vs CCE, Ahmedabad
2011 (21) STR 115 (Tri)

- P.B.RATHOD Vs. CCE, NASHIK
2015 (39) STR 650 (Tri. - Mumbai)

- NCR BUILDERS PVT LTD Vs. CCE & S.T., GHAZIABAD
2017 (3) G.S.T.L. 198 (Tri.-All.)

- M/s. BL MEHTA CONSTRUCTION PVT LTD Vs. CCE AND SERVICE TAX, CHANDIGARH- 2017-TIOL-3731-CESTAT-CHD

- NITHESH ESTATES LTD. Vs. CCE, ST & CUS., BANGALORE-II 2015 (40) STR 815 (Tri. - Bang.)

- Circular No.332/16/2010 TRU DT.24.05.2010

* This distinction between works contract and other services has been specifically covered in the Board circular issued on 24.05.2010.
* The assessee had constructed a training institute hostel which cannot be classified as residential complex services." For Institute Hostel at Gulbarga. In this regard the assessee submits that the said construction of Hostel for Institutes was not under levy of Service Tax.

(b) <u>TNSCB Projects at Emergency Tsunami Reconstruction Project (ETRP), Thoraipakkam and AIR Land - Tiruvatriyur.</u>

The demands in respect of these activities have been confirmed in impugned order dt.28.9.2012 (ST/40066/2013). The adjudicating authority has rejected the assessee's plea that construction of complex services is liable for service tax only after 1.6.2007 Adjudicating authority has held that assessee is not entitled to benefits given in Master Circular No.96/2007 dt. 23.08.2007, on the ground that houses built for Slum Clearance Board are meant for sale to the allottees. Assessees reiterated the submissions made in respect of the demands made on Karnataka Housing Board (KHB) and Bangalore Development Authority (BDA) residential projects.

- Assessee has constructed houses for TNSCB under the Jawaharlal Nehru National Urban Renewal Mission (JNNURM) towards slum clearance.
- Post 01-07-2010 the service is exempt vide Notification No.28/2010-ST Dt.22-06-2010, wherein service tax on the construction of complex provided to JNNURM is exempt. Reliance is also placed on the decisions placed in SANTOSH KATIYAR Vs CCE, BHOPAL 2017 (3) GST 203 (Tri.-Del.) and CCE, Allahabad v. Ganesh Yadav 2017 (6) GSTL 428.

III **<u>In respect of Management, Maintenance or Repair Services.</u>**

(i) <u>Repair and Renewal of Electrical Installation of Iron and Steel Market complex at Sathangadu – CMDA.</u>

Assessee had provided repairs and renewals of electrical installation of Iron and steel market complex at Sathangadu in relation to Chennai Metropolitan Development Authority (CMDA). Demand of Rs.1,92,115/- has been confirmed by the impugned order dt.7.10.2013 (ST/40066/2014) for the period April 2010 to March 2011.Assessee submits that though the Adjudicating Officer has extracted Section 98 of the Finance Act 1994 according to which, Management, Maintenance or Repairs of non-commercial Government buildings during the period on and from 16.06.2005 till the date of insertion of new Section 66B comes into force is exempted, however has confirmed the demand. The Iron and Steel market complex is a government building. The conclusion of the adjudicating officer that it is used for commercial purposes is one traversing beyond the SCN and therefore it is liable to be set aside. Further the assessee submit that any service rendered for the generation of electricity is not liable to service tax prior to 2010. Reliance is placed on the decision in M/s West Bengal State Electricity Transmission Company Ltd. Vs CST, Kolkata - 2015-TIOL-739-CESTAT-KOL. Tax demand of Rs.75,662/- has also beendemanded on the said activity in the impugned order dt.28.09.2012 (ST/40066/2013) under MMR services. Assessee submits that SCN has raised demand under CICS. Therefore confirmation of demand by adjudicating authority under MMR is beyond the scope of SCN.

(ii) <u>Erection Service</u>

Erection, Commissioning or Installation services are alleged to be provided to CMDA. Assessee had provided fire fighting system in double level parking in Chennai Metropolitan Bus Terminus (CMBT), National Institute of Empowerment of Persons (NIE), Central Industrial Security Force (CISF) Arakonam, office of Commissioner of Police, Chennai. Demands under this head have been confirmed in impugned order dt.7.10.2013 (ST/40066/2014) and 28.03.2014 (ST/41559/2014) under ECIS. Assessee submits that the firefighting system is provided to parking areas in the interest of general public. The fees collected for parking is nothing but renting of immovable property services which is exempted. The work executed by assessee cannot be brought under the category of erection commissioning, installation services since the definition confines to installation of electrical and electronic devices, plumbing drain laying, heating ventilation or air conditioning, thermal installation, sound installation, fire proofing or water proofing, lift and excavator and such other services similar to fire proofing. In the instant case, the assessee is only rendering service for firefighting. Therefore it cannot be said the definition includes the firefighting system.

(iii) <u>Residential Complex for Bangalore Development Authority (BDA)</u>

SCN dt. 22.08.2016 alleged that construction of residential complex to BDA will not fall under definition of rendering of service to government authority since it is not an activity in relation to entrusted to municipality / local authority, hence it is not exempted category provided in Notification 25/2012. Adjudicating authority in impugned order dt. 31.05.2017 (ST 42180/2017) has accepted the contention of assessee that BDA and KHB are government authorities. However, he has refused to grant exemption under Notification No.25/2012. It is the contention of assessee that the Adjudicating authority has failed to rely on serial No. 12(a) of the Notification No.25/2012 exempting a civil structure or any other original works meant predominantly for use other than for commerce industry or any other business or profession. In the instant case, the construction or original works under taken, rightly falling within the ambit of clause 12(a) of the notification. Further in para 5.7 of order in original it has been stated that the services are provided to BDA and not to the allottees of housing units of BDA/KHB. It is submitted that the assessee is entitled to exemption granted under mega exemption Notification No.25/2012 Dt. 20.06.2012.

IV) <u>Commercial or Industrial Construction Service (CICS)</u>

(i) <u>Name of the Project : Project Pudukottai Municipality Shopping Complex</u>

The project was undertaken by the assessee for the period June 2005 to October 2005. SCN has demanded service tax liability under Commercial or Industrial Construction Service (CICS). The demand has been confirmed by the adjudicating authority in the impugned order dt.28.09.2012 (ST/40066/2013). Assessee submits that most of the complexes constructed were occupied by the municipality for their own purposes. In para 12.02 of the SCN at page 168, the total tax payable is Rs.2,12,455/-, whereas at para21.02 in the impugned order, the demand confirmed is Rs.2,34,127/-. Thus the demand in the impugned order is an excess of the demand made in the SCN. Therefore, the differential amount should be set aside.

(ii) Name of the Project :Sri Ram Avenue, Coimbatore

Assessee had undertaken construction of compound wall, retaining wall and pipeline work at Sri Ram Avenue occupied by individual house owners, for the period November 2005 and December 2005. Adjudicating authority vide impugned order dt. 28.09.2012 (Appeal ST/40066/2013) has confirmed the demand on the ground that assessee has not produced any evidence to show that there is no commercial or industrial activity. Assessee submits that they have not undertaken construction of houses and that the activity was only of constructing wall to protect houses occupied therein.

Demand is only a presumption without any evidence to show that these houses were used for commercial purposes.

(iii) <u>Name of the Project : Royal Orchid Hotel, Bangalore</u>

Assessee had undertaken construction of RCC drain cover on the existing storm water drains using RCC piles as permitted by Bangalore Mahanagarpalika for Royal Orchid Hotel, Bangalore. Original authority vide impugned order dt. 28.09.2012 (Appeal ST/40066/2013) has upheld the tax liability on the ground that construction activity has not been carried out on behalf of the Government. Assessee submits that construction activity is related to road and hence they are exempted. The work had only done by their customer as the municipal authorities had procrastinated coverage of the drain.

In impugned order dt. 7.10.2013 (Appeal ST/40066/2014), the demand has been made of Rs.1,68,251/- in respect of the works of RCC cover of storm water drain inside compound of Royal Orchid Hotel Bangalore. Assessee submits that adjudicating authority proceeded on wrong presumption that storm water drain is inside the hotel whereas it was situated outside the hotel on the public road.

(iv) Name of the Project : Rain water harvesting system at Arasur sub-station of Power Grid Corporation Ltd.

The demand has been confirmed by the impugned orderdt.28.3.2014 (ST/41559/2014). The adjudicating authority has held that since the assessee has paid service tax it has to be held that they have accepted the classification as Works Contract Service. Assessee however submits that they had changed the classification and the taxability, however adjudicating authority had failed to consider the submission.

(v) Name of the Project - Koyembedu Bus Terminal - Fire Fighting System .

In the impugned order dt. 28.09.2012 (ST/40066/2013) adjudicating authority has classified the works under CICS. Assessee submits that in SCN, the proposed demand under commercial construction service, whereas adjudicating authority has demanded under ECIS. Hence demand is beyond the scope of SCN.

6.1 On behalf of the Department, Ld. A.R Shri K. Veerabhadra Reddy supports the impugned orders. The following submissions were made by Ld. AR on each service rendered by the assessee :

6.2 **(I) Dredging Service** :

i) The activities of the assessee related to widening and deepening of canals, widening water ways of existing bridges etc. would fall within the definition of ‘dredging’ in Section 65 (36a) of the Finance Act, 1994.

ii) As analyzed by the adjudicating authorities, dredging is not related to ports, harbours alone. The CESTAT in the case of *Mackintosh Burn Ltd. Vs CST Kolkata* - 2010 (19) STR 682 (Tri.-Kol.) held that dredging is not limited to maintenance of shipping channels but will also include widening or desilting of river, backwaters and tributaries.

iii) The SCN itself indicates that North and South Buckingham canals or backwaters, Veerangalodai and OtteriNullah are rivers and that Virugambakkam-Arumbakkam drains are tributaries of Coovum river.

iv) Dredging is defined in an inclusive and in a broad manner, hence the nature of activities carried out by assessee in canals etc. will also come within the definition of 'dredging". Notification No.41/2009-ST claimed by the asseseee applies only to works contract service. However, as the activities of the assessee having found to be falling within 'dredging services', the adjudicating authorities have correctly held that the notification will not be available to assessee.

v) Activities of the assesses will result in removal of materials such as silt, sediment, rocks. The definition of 'dredging' being inclusive, the activities specified in the definition are only indicative and not exhaustive.

6.3 **(II) Construction activity carried out by assessee for Tamil Nadu Slum Clearance Board, Karnataka Slum Clearance Board, Karnataka Housing Board etc :**

i) The construction of complex was brought under service tax w.e.f. 16.6.2005 and is defined in Section 65 (30a) of the Act to include construction of a new residential complex or a part thereof. As per Section (91a) residential complex means any complex comprising of inter alia, a building or buildings having more than 12 residential units. Ld. AR referred to Master's circular No.96/2007 dt. 23.08.2007 to argue that the assessee having building the residential complex as contractor is liable to pay service tax on the gross amount charged for the construction service under the construction of complex category, the argument of assessee that there is no sale in the case of Slum Clearance Board and Housing Board building till the completion is over is also not relevant and their activities will definitely fall under the construction of complex service during the impugned period.

ii) The housing buildings for Slum Clearance Board and Karnataka Housing Boards are for sale to the allottees. These Boards therefore are the promoter or developers and the assessees are the contractors, and in view Board's Circular No.108/02/2009-ST dt. 29.01.2009 they are very much liable for discharging the service tax liability under construction of complex services.

iii) With regard to assessee's contention that construction of residential complex under JNNURM were exempt from tax from 2010 under Notification No.28/2010-ST dt. 22.06.2010, the adjudicating authority has correctly denied the exemption since the construction in those cases started earlier to the date of notification.

iv) With regard to construction activity undertaken by assessee for Royal Orchid Hotel Bangalore, he submits that the work involved covering of the storm water drain with RCC slabs located in the Royal Orchid Hotel Bangalore. Ld. AR submits that Ld. Adjudicating authority has correctly found that there are commercial considerations for improving the hotel accommodation and it was the reason Royal Orchid to have got done this work through assessee. No evidence has also been submitted by assessee to the adjudicating authority that the work was being done on behalf of municipal corporation. Hence the confirmation of demand on these works undertaken by assessee under the commercial construction business is very much justified.

v) For the same reasons, construction service provided by assessee to Pudukottai Housing Complex, Sri Ram Avenue, Coimbatore, Power Grid Corporation Ltd. etc. will all come within the purview of 'Commercial or Industrial Construction Service'

6.4 **(III)** **<u>Management, Maintenance or Repair Service provided to CMDA</u>**.

Ld. AR submits that the work involves repair and renewal of electrical installation which clearly falls under the fold of Management, Maintenance or Repair service only; that iron and steel market complex is a building utilized for commercial purpose and as such amount received by assessee towards maintenance or repair service of said building is liable to payment of service tax. Hence demand under this category is also sustainable.

6.5 **(iv)** **Erection, Commissioning and Installation Service**.

The erection, commission and installation service is rendered to construction wing of CMDA. The assessees have provided fire fighting system to CMBT, Koyembeduwhich activity clearly falls under the scope of erection, commissioning or installation service. These were the works carried out in the parking at CMBT building where the parking of vehicles was allowed on payment of fee. The activity of the service recipient therefore being only a commercial activity, service tax liability will very much arise under the category of "Erection, Commissioning or Installation Service".

6.6 In respect of departmental appeal, Ld. A.R reiterated the grounds of appeal and points out that when ingredients for invocation of extended period was very much present, penalty under Section 78 of the Finance Act, 1944 should have been compulsorily imposed. Hence action of the adjudicating authority to impose reduced penalty under section 76 of the Act instead of section 78 is not correct and legal and that part of the order requires to be modified to the extent of ordering imposition of penalty under Section 78 ibid.

7. Heard both sides and have gone through the records.

8. We intend to take up the issues one by one.

9.1 **Dispute on activity alleged to be dredging Services**

Name of the Projects :

1. Southern Basin Package VII (Velacherry) – Rs.2,52,64,423
2. Package I (Kodungaiyur) – Rs.3,44,49,740
3. Package III (Buckingham canal) – Rs. 8,26,33,444/-
4. Package II (Maduravoyal) – Rs. 85,17,042/-
3. South Buckingham Canal- Rs.21,53,012/-

Period : 2010 – 2013
Total Demand : Rs.15,30,17,661/-
Impugned Order : 08/2013 dt. 07.10.2013, 05/2014 dt. 28.03.2014, 04/2015 dt. 30.04.2015, 5/2014 dt. 28.03.2014
Appeals : ST/40066/2014, ST/41559/2014, ST/41748/2015

'Dredging service', defined in Section 65 (36a) of the Finance Act, 1994 reads as under :

> **(36a) "dredging" includes removal of material including, silt, sediments, rocks, sand, refuse, debris, plant or animal matter in any excavating, cleaning, deepening, widening or lengthening, either permanently or temporarily, of any river, port, harbour, backwater or estuary;**

9.2 Thus, as per the definition in the Finance Act, 1994, the following key ingredients must be present for the activity to fall in the fold of 'dredging service' :-

- An activity like removal of material like silt, sediments, rocks, sand, refuse, debris, plant or animal matter;
- Such removal activity is done **in any** excavating, cleaning, deepening, widening or lengthening, either permanently or temporarily,
- Such'dredging' is done in a river, port, harbour, backwater or estuary.

9.3 From the above analysis, it emerges that to constitute dredging, the activity should encompass both removal of material like silt etc. and only related to or while excavating, cleaning etc. of a river, port, harbour, backwater or estuary. By implication, similar activity when done for lakes, ponds or canals cannot be brought under the definition of "dredging" for the purposes of Section 65 (36a) ibid.

9.4 To better understand the activity of dredging, it will useful to analyse the meaning and etymology of the word as featuring in various dictionaries:

9.4.1 As per the Merriam-Webster Online Dictionary 'Dredging (Verb)' means, to :

> *to dig, gather, or pull out with or as if with a dredge. (see[2] DREDGE) - dredging oysters in the bay – often used with up*
>
> - *Dredge up silt from the canal bottom*
>
> *civil engineering : to deepen (a waterway) with a machine that removes earth usually by buckets on an endless chain or a suction tube : to deepen with a dredge (see[2] DREDGE 2)*

A 'Dredger (Noun)' is described as :

1. *: an apparatus usually in the form of an oblong iron frame with an attached bag net used especially for gathering fish and shellfish*

2. *civil engineering : a machine for removing earth usually by buckets on an endless chain or a suction tube*

3. *nautical : a* ***barge*** *used in* ***dredging***

On origin and etymology, the dictionary opines that the word *Dredge has emanated from Old English *drecge: akin to Old English dræge dragnet, dragan to draw.*

9.4.2 As per the Collins English Online Dictionary "Dredge" (Verb) means :

> *When people dredge a harbour, river, or other area of water, they remove mud and unwanted material from the bottom with a special machine in order to make it deeper or to look for something.*

The word 'dredging' (Noun) is explainedas:

> *The process of clearing a channel or harbour by using a dredge*

A 'Dredger (Noun)' is described as:

> *a machine, in the form a bucket ladder, grab or suction device, used to remove material from a riverbed, channel etc.*

The Origin of the word 'dredge' is explained as :

> *prob.<MDu dregge, akin to drag*

A 'Dredger' is defined as:

> *A dredger is a boat which is fitted with a special machine that is used to increase the size of harbours, rivers, and canals.*

9.4.3 As per the Oxford Online Dictionary 'Dredge (Verb)' means, to :

> ***1*** *Clear the bed of (a harbour, river, or other area of water) by scooping out mud, weeds, and rubbish with a dredge.*
>
> *'the lower stretch of the river had been dredged'*
>
> *'the dredging and deepening of the canal'*
>
> ***1.1*** *Bring up or clear (something) from a river, harbour, or other area of water with a dredge.*
>
> *'mud was dredged out of the harbour'*

The word 'Dredge (Noun)' is described as :

> *An apparatus for bringing up objects or mud from a river or seabed by scooping or dragging*

The origin of the word is explained as :

> *Late 15th century (as a noun; originally in dredge-boat): perhaps related to Middle Dutch dregghe 'grappling hook'*

The word Dredged (Noun) is defined as :

> *A boat designed for dredging harbours or other bodies of water.*

9.4.4. As per the Macmillan Online Dictionary 'Dredge (Verb)' means, to :

1. *to remove dirt and sand from the bottom of a river or lake*

   Synonyms and related words
   ***To dig**: dig out, dig up, dig...*

a. *to look for something at the bottom of a river or lake using a dredger*

   Synonyms and related words

   ***To search for something or someone**:*
   go through look out for, seek out....

A 'Dredger (Noun)' is described as :

1. *a boat with equipment for removing dirt and sand from the bottom of a river or lake*

   Synonyms and related words
   ***Types of boat or ship**: barge , boat, bowser...*

2. *a container used for shaking something such as sugar or flour onto something*

   Synonyms and related words
   ***Crockery used for serving and pouring food and drinks**:*
   bowl, breadbasket, cafeteria...

9.4.5 As per the Cambridge Online English Dictionary, the word 'Dredge (Verb)' means to :

- *remove unwanted things from the bottom of the river, lake, etc. using a boat or special device :*
  They have to dredge the canal regularly to keep it open

- *search an area of water by dredging :*
  *The police are dredging the lake **for** his body.*

  *They dredged **up** (=brought to the surface) all sorts of rubbish from the bottom of the river.*

A “Dredger (Noun)”is described as:

- *A boat or a device that is used to dredge rivers, lakes etc.*

9.5 The combined take away from these definitions and etymology is that dredging an activity that involves clearing, deepening of water way, clearing bed of a harbour, river etc. of unwanted mud, material etc. from the bottom, with a dredger, which is a machine that removes earth and such material by scooping, grabbing or suctioning. Since dredging is related to water bodies or harbour, the dredge or dredger is necessarily fitted on to a barge, boat or ship, as the case may be. It is interesting to note that while some dictionary meanings of ‘dredging’ include removal of such unwanted material from bottom of a lake, canal also, however, the definition of ‘dredging’ in Section 65 (36a) of the Finance Act, 1994, restricts the scope of such activity only to a river, port, harbour, backwater or estuary.

9.6 It then appears to reason that not only are the two essentialities of the definition of ‘dredging’ under Section 65 (36a) of the Act namely, removal of material and such removal related to or while excavating, cleaning etc., required to be present in tandem, but also, such activity will require the use of a boat, ship etc. equipped with a dredger, or, at the very least, there has to be use of dredging apparatus for enabling the activity.

9.7 We now intend to test our increased understanding of the nature and scope of dredging to adjudge whether the activity performed by the assessee will fall within the scope of "dredging" for the purpose of the Finance Act, 1994.

9.8 The projects undertaken by the assessees which have been alleged to be conduct of dredging activities are (1) Southern Basin Package VII (Velacherry), (2) Package I (Kodungaiyur), (3) Package III (Buckingham canal), (4) Package II (Maduravoyyal) & (5) South Buckingham Canal.

9.9 We find, that all these projects involve Buckingham canal or various drainage channels flowing from Velacherry towards that canal.

We find that in respect of Southern Basin Package, assessees have only undertaken widening, deepening and construction of flood protection wall using cement and steel.

In respect of Package I (Kodungaiyur), the assessee has been entrusted with construction of diversion channel from Kolathur tank to Madavaram Tank and widening the construction of flood protection wall to OtteriNullah.

In respect of Package III (Buckingham Canal) assessee is widening and deepening construction for flood and storm water and fencing the same and providing inlet arrangements.

In respect of Package II (Madhuravoyal), assessee has undertaken drainage of storm water to Cooum, in the shape of a trapezium wherein bottom and both sides were fully packed with concrete for free flow of waste affluent or the storm water and drain of excess rain water.

In respect of the project South Buckingham Canal also, they have carried out similar work and connected with draining of storm water to Cooum involving packing of bottom and both sides with concrete.

9.10 The adjudicating authorities have reached a facile conclusion that OtteriNullah is a river. On researching the matter, we find that the said Nullah is nothing but a East-West water way which runs through North Chennai and it is seen as a major outlet for effluent water in North Chennai to flow into the Buckingham Canal. Surely, OtteriNullah cannot be peremptorily promoted to the status of a river. The adjudicating authorities have similarly arrived at conclusions that other channels like Veerangalodai are rivers, along with an even more inexplicable finding that drains are the tributaries thereof. We are not able to fathom how these conclusions have been arrived. Even the Buckingham Canal to which water way these projects are providing inlet/outlet etc., is only a canal built in the late 19th Century by the British. The Buckingham Canal, Veerangalodai drainage course channel, Kolathur Tank, Madhavaram Tank, Kodhungaiyur drain, OtteriNullah and other water channels / drains will not certainly fit into the nomenclature of a 'river, 'port', 'harbour, 'backwater' or 'estuary' for the purpose of the definition of "Dredging Services" in Section 65 (36a) of the Act. While assessee has certainly performed the works of deepening, widening and construction of flood protection walls etc. using cement and steel, there are no attendant contracts to "dredge" From the facts and records there is also no narration that boats or ships equipped with dredgers or for that matter, any dredging apparatus or equipment was used by the assessees for clearing or deepening these water bodies.

9.11 Viewed in this light, the activities of the assessee in respect of the above mentioned projects cannot surely fall within the scope of "dredging services" for the purpose of the Finance Act, 1994. In the event, those part of the impugned orders relating to Appeals ST/40066/2014, ST/41559/2014, & ST/41748/2015 which concluded that the works performed by assessees related to the aforesaid projects fall within the scope of 'Dredging services" and have demanded service tax under that service category cannot be sustained and will have to be set aside, which we hereby do. Appeals made in this regard are allowed. So ordered.

10.1 **Dispute on service tax liability in respect of construction of residential complex for Karnataka Housing Board (KHB) Institute Hostel, Tamil Nadu Slum Clearance Board (TNSCB) projects for Emergency Tsunami Reconstruction Project (ETRP) and other TNSCB projects of slum clearance, Bangalore Development Authority (BDA) etc.**

Name of the Projects :

(i) Karnataka Housing Board (KHB) – Rs.Rs.11,95,67,165/-
(ii) Karnataka Slum Clearance Board – Rs.2,39,974
(iii) TNSCB – ETRP, Thoraipakkam, Tenants at AIR land at Tiruvottiyur – Rs.3,16,91,686
(iv) TNSCB – Perumbakkam (Under JNNURM), Semenchery, Madurai (Rajjakur), Madurai (Ellis Nagar) & Filling of low lying area and construction of retaining wall at RP Nagar, Madurai - Rs.2,49,66,402/-

Period :2005 – 2015
Appeals : ST/40066/2013, ST/40066/2014, ST/41748/2015, ST/42180/2017

10.2 The tax liability has been demanded under construction of residential complex service in impugned orders relating to Appeal ST/40066/2013, ST/40066/2014 ST/41748/2015 & ST/42180/2017. Benefit of exemption Notification No.25/2012-ST is also denied.

10.3 We find that the periods of demand in all these disputes related to construction of residential complexes for KHB etc. spans from 2005 to 2015. We find merit in the appellant’s contention that demands on this score prior to 1.6.2007 is liable to be set aside in view of the decision of the Hon’ble

Apex Court in *CCE & CC Kerala Vs Larsen & Toubro Ltd*. – 2015 (39) STR 913 (SC). So ordered.

10.4 In respect of demands for the periods subsequent to 1.6.2007, we find that in a number of decisions, the higher appellate forums have consistently held that there is no liability to pay service tax for the reason that the complex so constructed are intended for personal use which is excluded in the definition of construction of residential complex.

(i) In *Khurana Engineering Ltd*. *Vs CCE Ahmedabad* – 2011 (21) STR 115 (Tri.-Ahmd.), the construction of quarters for government employees of Income Tax Department as per the contract given by CPWD was held to be a service provided to Govt. of India directly and that the endues of the residential complex by government is covered by the definition 'personal use'.

(ii) This very Bench, in the case of SIMA Engineering Construction and three others vide final Order No.41143-41146/2018 dt. 13.03.2018 and *S.Kadirvel* [Final Order No.41504/2018 dt. 11.05.2018 in Appeal ST/446/2011] involving construction of residential complex, for TNPHCL for use of police personnel, and relying upon the CESTAT Bangalore decision in *Nithesh Estates Ltd. Vs CCE & ST Bangalore* – 2015 (40) STR 815 (Tri.-Bang.), has held that the houses so constructed rested with TNPHCL which is nothing but an extended arm of the Government and they are only meant for personal use.

10.5 Even after the negative list regime w.e.f. 1.7.2012, higher appellate forums have consistently held that services provided by contractors to Housing Boards, Local Development Authority under JNNRUM etc. there could be no service tax liability since such houses etc. were meant for residential purpose, was within exemption under Notification No.25/2012-ST. In *Bharat Bhusan Gupta & Company Vs State of Haryana* – 2016 (44) STR 195 (P&H), involving the construction of houses for Below Poverty Line (BPL) category persons, the Tribunal held that the Board was a governmental authority and that the BPL houses constructed by the appellants were meant for residential purposes and hence service provided by contractors was within exemption Clause 12 of Notification No. 25/2012-S.T., dated 20-6-2012, effective from 1-7-2012, and from that date Board could not deduct Service Tax from bills of contractor. In *NCR Builders Pvt. Ltd. Vs CCE & ST Ghaziabad* – 2017 (3) GSTL 198 (Tri.-All.), the activity of the appellant therein in building houses for local development authority which was given to weaker sections of society on lease basis without consideration was held as not taxable in view of *Explanation* in Section 65 (91a) of the Finance Act, 1994.

In *Santosh Katiyar Vs CCE Bhopal* – 2017 (3) GSTL 2003 construction of small units of jhuggi dwellers without cost or highly subsided cost under Rajiv Awaas Yojana and Jawaharlal Nehru National Urban Renewal Mission (JNNURM) are exempted from service tax since constructed under Central sponsored scheme.

In *CC, CE & ST, Allahabad Vs Ganesh Yadav* - 2017 (6) GSTL 428 (Tri.-all.) construction of low cost house or housing for economically weaker sections for Varanasi Development authority was held to be a scheme neither intended for commerce or industry and further held as not taxable either under WCS or under CICS.

10.6 In impugned order No.05/2012 dt. 28.09.2012 (Appeal ST/40066/2013) the work of (i) filling low lying area and (ii) construction of retaining wall at RP Nagar, Madurai under JNNURM has been held as composite work of construction of 720 tenements at the same site and part and parcel of construction of residential complex services only. Be that as it may, as already held supra, the services in relation to construction of such tenements will not be exigible to service tax liability. Tax liability demanded in respect of these works will also require to be set aside, which we hereby do.

10.7 In the event, the above demands made in respect of construction of residential complexes will not sustain, and are set aside. Appeals in this regard succeed. So ordered.

11.1 **Dispute on tax liability on CICS, MMR services etc. alleged to have been provided by the appellants.**

11.2 Appellants have come in appeals against the following demands made under this service tax category.

11.3 Name of the Project : Municipality Shopping Complex, Pudukottai
Period : June 2005 to October 2005
Impugned Order : 05/2012 dt. 28.09.2012
Demand : Rs.2,12,455/-
Appeal : ST/40066/2013

Discernibly, this construction has culminated in construction of a shopping complex. It appears to reason that the municipality would lease out the shops so constructed. The shops in such complex are leased out at some level of pricing. Hence the scope and purpose of the complex would only be commercial in nature. In the impugned order dt. 28.09.2012 it is brought out that appellant had not produced any documentary evidence to the contrary. Neither have they have done so before this forum. However, we note that from para 12.02 of the related SCN dt.21.10.2010 that appellants had undertaken the construction as a composite contract and received payment from June 2005 to October 2005. This being so, in view of the settled law as laid down by the Hon'ble Apex Court in the case of *L&T Ltd*. – 2015 (39) STR 913 (SC). These services will have to be treated as works construction service which cannot be exigible to service tax levy prior to 1.6.2007. For this reason, this demand cannot be sustained and is set aside. Appeal in this respect is allowed. So ordered.

11.4 Name of the Project : Sri Ram Avenue, Coimbatore
Period : November 2005 to December 2005
Impugned Order : 05/2012 dt. 28.09.2012
Demand : Rs.1,73,966/-
Appeal :ST/40066/2013

From a perusal of the agreement found in page 693 of the compilation submitted by the appellant, it is seen that the agreement made in April 2005 is basically in the nature of Works Contract. The scope of work has been described in the contract. Hence once again applying the *L&T* judgement (supra), the work undertaken for the period November 2005 to December 2005 will also not be subjected to service tax. The demand is set aside and appeal in this regard is allowed. So ordered.

11.5 Name of the Project : Royal Orchid Hotel, Bangalore
Period : 2008-2011
Impugned Order : 05/2012 dt. 28.09.2012, 8/2013 dt. 7.10.2013
Demand : Rs.4,27,079/- & Rs.1,68,251/- Total Rs.5,95,330
Appeal : ST/40066/2013 & ST/40066/2014

The copy of agreements dt. 19.7.2008 & 30.0.3.2009 entered into between the appellant and Royal Orchid Hotel, Bangalore are found in pages 703 and 709 of the compilation respectively. Appellants have argued that construction is for covering of storm water drain in front of the hotel and nto inside the hotel. They have also contended that cost of works should have been borne by the municipality hence there could be no service tax levy on them and hence the same work should be considered as performed by municipality themselves. However, on perusal of the letter dt. 30.03.2009 of the municipality to the Royal Orchid Hotel on page 709 of the compilation, it is seen that the hotel has been advised that the covering of storm water drain has to be carried out only as per approved plan and that the construction being carried out by the hotel should be stopped immediately. It is also noted that the payments to the appellants in this regard were made not by the municipality but by the Royal Hotel Orchid, Bangalore only. This being so, these activities rendered by appellant whether outside the hotel or otherwise would surely be exigible to service tax levy under CICS. Hence that part of these two impugned orders confirming the demands Rs.4,27,079/- (Impugned Order O5/2012 dt. 28.09.2012) and Rs.1,68,251/- (Impugned Order 08/2013 dated 07.02.2013) on this activity is sustained. Appeals on these demands are rejected. So ordered.

11.6 Name of the Project : Power Grid Corporation Ltd.
Period : 2011-2012
Impugned Order : 05/2014 dt. 28.03.2014
Demand : Rs.2,54,339/-
Appeal : ST/41559/2014

Appellant has provided rain water harvesting system for the service recipient.On the same analogy held in para 6.7 above, we find that the service in relation to providing rain water harvesting system for the Power Grid Corporation sub-station is also an activity for a project which is being implemented in public interest through its designated special purpose vehicle specially created for creating and maintaining a power grid. Hence following the ratio of these decisions cited supra, we hold that the demand confirmed in the impugned order in respect of such projects requires to be set aside. Appeal in this regard succeeds. So ordered.

11.7 (a) Name of the Project : Repairs and Renewals of Electrical Installation in Iron and Steel Complex, Sathangadu for CMDA
Period : October 2009 to March 2010
Impugned Order : 05/2012 dt. 28.09.2012
Demand : Rs.75,662
Appeal :ST/40066/2013

11.7 (b) Name of the Project : Repairs and Renewals of Electrical Installation in Iron and Steel Complex, Sathangadu for CMDA
Period : June 2010 to Sept 2010
Impugned order: 8/2013 dt. 7.10.2013
Demand: Rs. 1,92,114/-
Appeal No. :ST/40066/2014

In respect of Appeal ST/40066/2013 (Impugned order dt. 28.09.2012), the SCN dt. 21.10.2010 at para 14 has proposed demand of service tax liability of Rs.75,662/- in respect of this activity under Commercial or Industrial Construction Service (CICS). The impugned order dt. 28.09.2012 has held there is no construction work and only repairs and renewals of electrical installations, hence has confirmed tax liability under Management, Maintenance or Repair Services. The impugned order having thus gone beyond the scope of the SCN, the related demand cannot then sustain and is therefore set aside. Appeal to that extent is allowed. So ordered.

In respect of Appeal ST/40066/2014 (impugned order dt. 7.10.2013), the SCN dt. 18.10.2011 at para 08.03 has proposed demand on the said activity under Management, Maintenance or Repair Services (MMR). The adjudicating authority in the impugned order dt. 07.10.2013 has also confirmed tax liability of Rs.1,92,115/- under MMR services. We find that as per the work order, the work carried out is only renewal/maintenance of electrical installations at the said market place. This being so, the work is surely in the nature of "maintenance or repairs including reconditioning or restoration or servicing of any goods ....." and accordingly the activity will squarely fall within the category of Management, Maintenance or Repair (MMR) services during the impugned period. The tax liability of Rs.1,92,114/- will therefore sustain. Appeal to that extent is rejected. So ordered.

11.8 (a) Name of the Project : Chennai Metropolitan Bus Terminus (CMBT)
Period : April 2009 to July 2009
Demand Rs.1,71,125
Impugned Order : 05/2012 dt.28.09.2012
Appeal : ST/40066/2013

(b) Name of the Project : Chennai Metropolitan Bus Terminus (CMBT)
Period : April 2010
Demand : Rs.2,41,403
Impugned Order : 07.10.2013
Appeal : ST/40066/2014

As per the agreement found at pages 195 to 197 of the compilation, it emerges that the work related to "providing Fire Fighting System in Double Level Basement Parking for Two Wheelers in CMBT at Koyembedu, Chennai". In respect of Appeal No.ST/40066/2013, the related SCN dt. 21.10.2010 has proposed demand of service tax liability on this activity under Commercial or Industrial Construction Service (CICS), however the impugned order dt. 28.09.2012 at para 12.04.02 has held that there is no construction work and only repairs and renewals of electrical installations hence the activities are rightly classifiable under Erection, Commissioning or Installation services. The appellants have relied upon the case law of *Marubeni India Pvt. Ltd. Vs CST, New Delhi* – 2016 (45) STR 549 (Tri.-Del) wherein it has been held that adjudication beyond scope of SCN is not permissible, hence the related demand was set aside. In this case also, as the impugned order has gone beyond the scope of the SCN, having the effect of arbitrary classification of the service, the related demand of Rs.1,71,125/-

raised thereof cannot sustain and is set aside. Appeal in respect of this activity is allowed. So ordered.

In respect of Appeal ST/40066/2014, the related SCN dt. 18.10.2011 proposed demand of service tax liability of Rs.2,41,403/- under Erection, Commissioning or Installation Service (ECIS). The impugned order dt. 07.10.2013 has also confirmed on the same category. Evidently, the work of providing Fire Fighting System will come within the scope of Commissioning or Installation of equipment and falling within the fold of "ECIS" as defined in Section 65 (39a) of the Act. Though the fire fighting system has been installed for the CMDA, it appears to reason that the double level basement parking area would surely be used for commercial purposes by collection of parking fees through contractors. Appellants have also not adduced any evidence to the contrary. This being the case, we sustain the demand of Rs.2,41,403/- in respect of Appeal ST/40066/2014. Appeal in respect of this demand is rejected. So ordered.

11.9 Name of the work: At Bharatiyar University, Trichy, E.I Panel Board and cable feeder to the Academic block for Biomedical Science and Bio chemistry and Bio-Informatics in Bharathiyar University
Period : October 2009 and November 2009
Demand : Rs.2,90,058 (however Rs.43271 in the SCN dt.21.10.2010)
Impugned Order No.05/2012 dt. 28.9.2012
Appeal : ST/40066/2013

In the show cause notice, there is no indication of the tax amount allegedly defaulted in the body of SCN. However in page 13 of the impugned order, there is a reference to receipt of Rs.12,73,059/- from Public Works Department (PWD), Trichy for the above works. The same amount of Rs.12,73,059/- is reflected in Annexure-III to the SCN where a demand of Rs.43,271/- is proposed under CICS. However, the adjudicating authority in the impugned order, in para 12.04.03 refers to receipt amounts of Rs.14,34,456/- and Rs.13,40,061/- and has confirmed a demand of Rs.2,90,058/-. Further, the adjudicating authority holds that the activity is more correctly classifiable under ECIS. When the adjudicating authority has gone beyond the scope of the SCN, the demand thereof cannot be sustained. In any case, the services have been provided in relation to construction activity in academic block of a University and even on this score, the services will not be exigible to tax. For these reasons, the tax demanded on this activity is set aside and appeal in this respect succeeds.

11.10 Name of work : (a) Supply, testing, installation and commissioning of Firefighting equipment to National Institute of Empowerment of Persons with Multiple Disabilities (NIE) at Muttukadu, Chennai.

Period : April 2011 to March 2012
Demand : Separately not quantified and is part of total demand of Rs.10,42,668 in relation to works done for TNPHC, CMDA, CPWD Electrical, demanded under CICS.
Impugned Order No.05/2014 dt. 28.03.2014
Appeal : ST/41559/2014

The assessees have provided these impugned services to the National Institute under the Ministry of Social Justice & Empowerment, Govt. of India and as such is the extension of the Government for creating awareness to serve as National Resource Centre for empowerment of such persons with multiple disabilities, surely then, these services cannot be made exigible to service tax under the Finance Act, 1994. In the event, that part of the impugned order confirming the above demand is set aside. Appeal in this regard succeeds. So ordered.

11.11 Name of works: (a) Provision of Fire Fighting system to RTC at CISF, Arakonam
(b) Provision of Fire Fighting system to office of Commissioner of Police, Chennai
Period : April 2011 to March 2012
Demand : Separately not quantified and is part of total demand of Rs.10,42,668
Impugned Order No.05/2014 dt. 28.03.2014
Appeal : ST/41559/2014

The demands are not made separately but combined demand of Rs.10,42,668/- made for the above services for provision of fire protection system. Discernably, the above services have been provided to Government or Government bodies and hence they cannot be subjected to service tax liability under Finance Act, 1994. The demand confirmed on this score will not sustain and is therefore is set aside. Appeal in this regard succeeds. So ordered.

11.12 Name of the Project :Services in relation to construction of Administrative Training Hostel at Gulbarga
Period : Between May 2010 and October 2010
Demand : Rs.41,934/-
Impugned Order No.08/2013 dt. 7.10.2013
Appeal : ST/40066/2014

These services cannot be made exigible to service tax levy for the same reason that they have been provided in relation to a hostel of the Government institute. The matter also stands clarified by Board's circular No.80/10/2004-ST dt. 17.09.2004.

12.1 Demands made on "''withheld amounts"

12.1.1 Dispute :Withheld amount : Rs.22,53,753/-
Period: 2008-09 & 2009-10
Impugned Order : 5/2014 dt. 28.3.2014
Appeal No.ST/41559/2014

12.1.2. Dispute :With held amount : Rs.20,01,055/-
Period : 2012-13
Impugned Order No.04/2015 dt. 30.04.2015
Appeal : ST/41748/2015

These demands have been confirmed respectively for projects undertaken for KHB for an amount of Rs.2,18,81,094/- and for TNSCB for an amount of Rs.1,61,89,762/-. As already held by us herein above, the services provided to Karnataka Housing Board (KHB), TNSCB etc. are not exigible to service tax, ergo, there can be no tax liability on these "withheld amounts" also. Demands made on this score in the respective impugned orders cannot sustain and are therefore set aside.

13. Coming to the penalties, it cannot be denied that there was some amount of confusion on the taxability or otherwise of those activities. It must be kept in mind that appellants have provided services only to Government bodies like Housing Boards, Slum Clearance Boards, CMDA, BDA etc. It is understandable that such service provider would have taken a view that such services are not liable to tax. In the circumstances, the penalties imposed in all these appeals, including in respect of liabilities upheld herein above are set aside.

14. For the same reasons, department appeal ST/40233/2014 does not have merit and is dismissed.

15. To sum up, the impugned appeals are disposed of as under, with consequential benefits, if any, as per law :

15.1 **Appeal ST/40066/2013** –

(i) The demand of Rs.4,27,079/- with interest as applicable, confirmed in respect of services provided to Royal Orchid Hotel, Bangalore is sustained. Appeal in that respect is dismissed.

(ii) Remaining demands confirmed in the impugned order are set aside.

(iii) Penalties imposed in the impugned order are set aside.

15.2 **Appeal ST/40066/2014** -

(i) The demand of Rs.1,68,251/- with interest as applicable, confirmed in respect of services provided to Royal Orchid Hotel, Bangalore is sustained. Appeal in that respect is dismissed.

(ii) The demand of Rs.1,92,114/- with interest as applicable, confirmed in respect of services related to CMDA Iron & Steel Complex Sathangadu is upheld. Appeal in that respect is dismissed.

(iii) Demand of Rs.2,41,403/- with interest as applicable, in respect of work related to providing fire fighting system in double basement parking in CMBT, Koyembedu is sustained and the appeal in this regard is dismissed.

(iv) Remaining demands confirmed in the impugned order are set aside.

(v) Penalties imposed in the impugned order are set aside.

15.3 **Appeal ST/41559/2014** – Demands and penalties confirmed/imposed in the impugned order are set aside and appeal is allowed in toto.

15.4 **<u>Appeal ST/41748/2015</u>** - Demands and penalties confirmed/imposed in the impugned order are set aside and appeal is allowed in toto.

15.5 **<u>Appeal ST/41748/2015</u>** - Demands and penalties confirmed/imposed in the impugned order are set aside and appeal is allowed in toto.

15.6 **<u>Appeal ST/40233/2014</u>** (Revenue appeal) is dismissed.

(Pronounced in Court on 29.06.2018)

(Madhu Mohan Damodhar)
Member (Technical)

(ArchanaWadhwa)
Member (Judicial)

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