

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
SOUTH ZONAL BENCH, CHENNAI**

**ST/00023, 00024/2012**

[arising out of Order-in-Original No.10/2011-ST. Adg., dated 17.10.2011  
passed by the Commissioner of Central Excise, Tiruchirapalli]

M/s. KAVERI ELECTRICAL WORKS  
M/s. S.P. ELECTRICAL WORKS

APPELLANT/S

Versus

COMMISSIONER OF CENTRAL EXCISE, TRICHY

RESPONDENT

Appearance:

For the Appellant      Shri J. Shankararaman, Adv.  
For the Respondent    Smt. T. Usha Devi, DC (AR)

**CORAM:**

**Hon'be Smt. Sulekha Beevi C.S, Judicial Member**  
**Hon'ble Shri Madhu Mohan Damodhar, Technical Member**

Date of hearing/decision      **21-12-2018**

FINAL ORDER NOS. **43203-43204 / 2018**

**Per Bench:**

Brief facts are that the appellants are a proprietary concern and are engaged in providing the service of installation of electrical devices to various clients. They are registered under Works Contract Services. On the basis of intelligence gathered that the appellants have not discharged their service tax liability on the services provided

by them, investigation was initiated. On scrutiny of documents, it was noticed that they had provided services under Erection, Commissioning and Installation Services falling under section 65(105)(zzd) of the Finance Act, 1994 read with section 65(30a) of the Act.

2. Such services when provided with supply of materials is liable to be classified under the category of Works Contract Service with effect from 01.06.2007 as provided under section 65(105)(zzzza) of the Act *ibid*. Thus, the services provided by the appellant are liable to levy of service tax under ECIS with effect from 16.06.2005. They did not discharge their service tax liability. Show-cause notices were issued proposing to demand the service tax under ECIS as well as Works Contract Service for the period 16.06.2005 to 31.03.2010. After due process of law, the original authority confirmed the demand prior to 01.06.2007 under ECIS and part of the demand after 01.06.2007 under WCS as well as ECIS. Thus, an amount of Rs.71,83,478/- was confirmed for the period Oct.'05 to Mar.'10 along with interest and the adjudicating authority imposed equal penalty under section 78 apart from separate penalty of Rs.5,000/- under section 77 of the Finance Act, 1994. The confirmation of demand is made on Shri S. Packiaraj, who is the Proprietor of M/s. Kaveri Electrical Works [KEW] and M/s. S.P. Electrical Works [SPEW], who are appellants herein.

3. On behalf of the appellants, the learned counsel Shri J. Shankar Raman appeared and argued the matter. The period involved

and the demand confirmed under ECIS is given by him in the table as shown below:-

Sl. No.	Period	Erection & Commissioning or Installation Services [Amount: in Rs.]
(1)	(2)	(3)
01	01.10.2005 to 31.03.2006	5,67,465
02	01.04.2006 to 31.03.2007	16,17,850
03	01.04.2007 to 31.03.2008	19,32,823
04	04.04.2008 to 31.03.2009	19,56,606
05	04.04.2009 to 31.03.2010	10,71,733

4. According to him, in show-cause notice para 12, it is stated that in respect of works involving both supply of materials and rendition of services, the services are to be classified under ECIS for the period from Oct.'05 to 31<sup>st</sup> May, 2007. The appellants are engaged mainly in providing services of Electrical Installation Work/Works contract for installation of electrical devices or equipments to customers like Southern Railway, Trichy and Madurai, M/s. BHEL, Trichy and various other companies. All these works are composite in nature involving both supply of material and services. Only in the case of customer, namely, M/s. Dalmia Cements, the appellants were rendering pure labour contract without any supply of materials. Even this work executed by appellants would fall under the

category of Repair and Maintenance Services [RMS] and, therefore, the demand is not sustainable under ECIS. In any case, the liability in this regard would be only to the extent of the amount realised by the appellants and not on the basis of amount shown in the invoices.

5. With regard to period after 01.06.2007, it is submitted by the learned counsel that the adjudicating authority has confirmed certain part of the demand in respect of certain customers to be falling under ECIS, whereas, in respect of certain other customers, the demand has been confirmed under WCS. With regard to the demand confirmed after 01.06.2007 under ECIS, he submitted that the demand is not sustainable as per the decision of the Tribunal in the case of *M/s. Real Value Promoters. Pvt. Ltd.*, vide Final Order No.42436-42438/2018, dated 18.09.2018, wherein the Tribunal has held that the demand in respect of composite contracts after 01.06.2007 can be sustained only under WCS.

6. In respect of part of the demand confirmed under Works Contract Services for the period after 01.06.2007, the learned counsel submitted that the appellants are not contesting the said demand and concedes the liability to pay the service tax. However, he prayed that since the issue was highly contentious during the period, the penalty imposed in this regard may be set aside.

7. With regard to the work executed for their client *M/s. Dalmia Cements*, the learned counsel submitted that the appellants have

rendered pure labour contract without any supply of materials. However, no service tax was separately collected and although this fact was pleaded before the adjudicating authority, the cum-tax benefit has not been granted. He relied upon the Explanation in section 67 of the Finance Act, 1994 and argued that whether the gross amount charged by the service provider is inclusive of service tax payable, the value of taxable services shall be such amount as with the addition of tax payable is equal to the gross amount charged. He, therefore, prayed that the appellants may be given cum-tax benefit and relied upon the decision of Tribunal in the case of *M/s. Panther Detective Services Vs CCE* reported in 2006 (4) S.T.R.116 (Tri.-Del.).

8. The learned Authorised Representative for the Revenue Ms. T. Usha Devi, DC(AR) supported the findings in the impugned order. She argued that the adjudicating authority has rightly confirmed the demands for the period after 01.06.2007 under ECIS as well as under WCS. The contracts are composite in nature involving supply of materials and rendition of services. Therefore, the activities like Installation of Electrical and Electronic Devices would fall under ECIS and certain works executed would fall under WCS. The demands confirmed are legal and proper and prayed not to interfere with the impugned order.

9. Heard both sides.

10. These appeals are filed by M/s. KEW and M/s. SPEW, who are two proprietorship concerns owned by Shri S. Packiaraj. In para 31 of the impugned order, it is seen that both these concerns had combined account books and all the payments were received under the above names and accounted for income-tax statements filed in the name of Shri S. Packiaraj only. As the service provider was maintaining consolidated accounts of receipts for the taxable services provided by both concerns, break-up of receipts in the name of these two concerns were made available to the department. Thus, the show-cause notice has been issued proposing to demand the service tax jointly and severally of both these proprietorship concerns. Against the impugned order, separate appeals have been filed by these proprietorship concerns. It is concluded in para 31 by the adjudicating authority that as both the concerns are owned by Shri S. Packiaraj, he is liable to pay service tax demanded in the notice issued to both the firms.

11. The show-cause notice has been issued proposing the demand under ECIS and also Works Contract Services in respect of certain services executed by the appellants. The adjudicating authority has made para-wise discussions with regard to each customer from para 33 to 46 of the impugned order. In para 35, the adjudicating authority has discussed the services provided by appellants to M/s. BHEL. It is seen that in the show-cause notice the work executed with regard to M/s. BHEL involves both supply of materials as well as provisions of services. The period involved is from 2007-08 to 2009-10 and the demand is raised in the category of WCS.

The learned counsel for the appellants has submitted that appellant is not contesting the demand raised under the category of WCS but is confining the contest in this issue only on the penalties imposed. We, therefore, are of the opinion that it is not necessary to dwell into the merits of the demand confirmed under WCS.

12. In para 37, the services provided to M/s. Southern Railway is discussed. The period involved is 2006-07 and it is stated therein that the works include provision of services along with supply of materials. The demand is raised as well as confirmed under ECIS. The Hon'ble Apex Court in the case of *M/s. Larsen & Toubro Ltd.*, (supra) has held that for the period prior to 01.06.2007, the demand under these categories of contracts of composite nature cannot sustain. Following the same, we are of view that the demands confirmed under ECIS and where the works executed are of composite in nature involving both supply of materials and provision of services, the demand requires to be set aside, which we hereby do. Thus, the entire demand under ECIS, which involves both labour and materials prior to 01.06.2007 is set aside. For the period after 01.06.2007, for all the demands which have been confirmed under ECIS, wherein, the contracts are of composite in nature involving both supply of materials and provision of services cannot sustain as per the decision of the Tribunal in the case of *M/s. Real Value Promoters. Pvt. Ltd.*, (supra). As such, demands are, therefore, set aside.

13. The appellants have submitted that they are not contesting the demand confirmed under WCS after the period 01.06.2007. Needless to say that the demand prior to 01.06.2007 under WCS, if any, cannot sustain as per the decisions of the Hon'ble Apex Court rendered in *M/s. Larsen & Toubro Ltd.*, (supra). The issue whether composite contracts are subject to levy of service tax was contentious during the relevant period. Taking note of the fact that the issue an interpretational one, the penalties imposed in regard to the demands confirmed under WCS is unwarranted and requires to be set aside, which we hereby do. Thus, the penalties imposed in regard to WCS after 01.06.2007 are set aside in toto.

14. The learned counsel has drawn our attention with regard to the demand confirmed in respect of works executed to their customer *M/s. Dalmia Cements Ltd.* He submitted that these contracts are services simplicitor and, therefore, the demand under ECIS prior to 01.06.2007 as well as after 01.06.2007 would sustain. We, therefore, uphold the confirmation of demand in respect of *M/s. Dalmia Cements Ltd.*, wherein activities are services simplicitor only. However, it is pleaded by the appellants that they have not collected service tax from their clients and that the amount received is inclusive of service tax. If that be so, the appellants are eligible for cum-tax benefit. For the limited purpose of granting the benefit of cum-tax, if any, the matter is remanded to the adjudicating authority, who shall look into this plea of the appellants and requantify the demand.

15. The appellant has contested the penalties imposed with regard to the amount confirmed in respect of M/s. Dalmia Cements Ltd., also. As already stated, the issue with regard to the Works Contract Services was contentious for a long time and we, therefore, hold that the penalty imposed in this regard requires to be set aside. So ordered.

16. From the discussions made above, the demand prior to 01.06.2007 under ECIS as well as WCS is set aside. The demand under ECIS for the period after 01.06.2007 in the composite contracts is set aside. The demand in respect of Works Contract Services prior to 01.06.2007, if any, is set aside. The demand in respect of WCS after 01.06.2007 is upheld. The penalties imposed in respect of WCS as well as the demand under ECIS for M/s. Dalmia Cements Ltd., is remanded for considering the cum-tax benefit is set aside. All the penalties imposed are set aside. The appeals are partly allowed and partly remanded in the above manner with consequential reliefs, if any.

(Dictated and pronounced in open court)

(MADHU MOHAN DAMODHAR)  
TECHNICAL MEMBER

(SULEKHA BEEVI C.S)  
JUDICIAL MEMBER

	<b>DRAFT</b>			<b>Remarks</b>
	<b>I</b>	<b>II</b>	<b>III</b>	
<b>Date of dictation</b>	21.12.2018	11.02.2019		
<b>Draft Order - Date of typing</b>	03.01.2019	12.02.2019		
<b>Fair Order Typing</b>	12.02.2019			
<b>Date of number and date of dispatch</b>	25.02.2019			

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