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

COURT HALL No.III

SERVICE TAX APPEAL No.40661 OF 2014

(Arising out of Order-in-Appeal No.287 & 288/2013 dated 19.12.2013 passed by Commissioner of Central Excise (Appeals), Central Revenue Building, Lal Bahadur Shastri Marg, Madurai-625 002)

M/s. Indian Hume Pipe Co. Limited **...Appellant**
Opposite to Railway Station,
Silaiman Post,
Madurai 625 201.

Versus

The Commissioner of GST & Central Excise, **...Respondent**
Central Revenue Buildings,
Bibikulam,
Madurai 625 002.

APPEARANCE :

Mr. R. Sudhinder, Advocate
For the Appellant

Mr. R. Rajaraman, Assistant Commissioner (A.R)
For the Respondent

CORAM :

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

Date of Hearing :17.11.2023
Date of Decision : 17.11.2023

FINAL ORDER No.41051/2023

ORDER : Per Ms. SULEKHA BEEVI C.S.

Brief facts are that appellants are engaged in the manufacture of various sizes of PSC (Pre-Stressed Concrete) Pipes. They have Central Excise Registration as manufacturer and also have obtained Service Tax Registration for providing various output services. During the course of verification of records, it was noticed that appellant had entered into contract with Tamilnadu Water and Drainage Board (TWAD) which was a turnkey / composite contract for supply of PSC pipes, for laying of the pipes as well as for executing other installations for the transportation of water as per terms of the contract of water project formulated by TWAD Board. The appellant did not pay service tax on the consideration received in respect of such contracts. The department was of the view that the activity would fall under "Works Contracts Services" w.e.f. 01.06.2007. Show cause notice dt. 23.06.2010 was issued proposing to demand the short paid service tax under 'Works Contracts Service' for the period 04.06.2009 to 12.01.2010 along with interest and for imposing penalties. After due process of law, the original authority confirmed the demand, interest and imposed penalties. On appeal, Commissioner (Appeals) upheld the same. Hence the appellant is now before the Tribunal.

2. The Ld. Counsel Sri R. Sudhinder appeared and argued for the appellant. Ld. Counsel adverted to the definition of 'Works Contracts

Service’ as per sub clause (zzzza) of clause (105) of Section 65 of the Finance Act, 1994 which reads as under :

> *“any service provided or to be provided to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.*
>
> *Explanation. For the purposes of this sub-clause, "Work Contract" means a contract wherein,*
>
> *i. Transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and*
>
> *ii. such contract is for the purposes of carrying out, -*
>
> *a) erection, commissioning or installation of plant, machinery, equipment or structures whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators: or*
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> ***b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or***
>
> *c) construction of a new residential complex or a part thereof: or*
>
> *d) completion and finishing services, repair, alteration, renovation restoration of, or similar services, in relation to (b) and (c) or*
>
> ***(e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects;”***

2.1 It is submitted by the leaned counsel that the activity carried out by the appellant is laying of the pipelines and the same would fall under sub clause (b) of the above definition. The said activity is exempt from levy of service tax for the reason that it is not in the nature of providing services for Commercial or Industrial purposes. The service was carried out for the purpose of drinking water supply of TWAD.

2.1 The letter dated 17.09.2008 issued by the TWAD to the appellant was referred to by the learned counsel to submit that the contract was given to the appellant and it cannot be said that appellant is a sub-contractor. The appellant being engaged by TWAD Board is actually engaged by the Government. The services rendered would fall under sub-clause (b) of the definition of WCS which is exempt from levy of service tax.

2.3 To support his argument learned counsel relied upon the Larger Bench decision of the Tribunal in the case of *Lanco Infratech Ltd. Vs CC, CE & ST, Hyderabad* - 2015 (38) STR 709 (Tri.- LB). Ld. Counsel submitted that the very same issue was considered by the Larger Bench and held that the activity of laying of pipelines as stated in clause (b) of the definition of Works Contract Services as well as turnkey projects involving laying of the pipelines and other connected activities when provided to Government would be exempt from levy of service tax.

2.4 It is submitted that in the appellant's own case, the Tribunal had allowed the appeal by setting aside the demand against which the Department filed Civil Miscellaneous Appeal No.1140/2009 before the Hon'ble Jurisdictional High Court. As per the judgment dt. 8.08.2015, the Hon'ble High Court upheld the decision of the Tribunal setting aside the demand. Ld. Counsel was fair enough to submit that the department has filed further appeal before the Hon'ble Supreme Court which is pending. It is submitted that the decision of the Larger Bench of the Tribunal in the case of *Lanco Infratech Ltd. Vs CC, CE & ST, Hyderabad* (supra) is also appealed by the parties before the Hon'ble Supreme Court and it is pending.

2.5 In the recent decision in the case of *Progressive Constructions Ltd. Vs CST Hyderabad* reported in MANU/CH/0012/2023 on similar set of facts the Tribunal held that laying of pipelines is outside the purview of levy of service tax, under WCS.

2.6 The decision of this Bench in the case of *Shriram EPC Ltd. Vs CGST & Central Excise, Chennai* reported in MANU/CC/0224/2018 was also relied by the Ld. Counsel to support his argument. Ld. Counsel prayed that the appeal may be allowed.

3. Ld. A.R Shri R. Rajaraman appeared on behalf of the Department. The findings in the impugned order was supported by Ld. A.R. In particular, he pointed out para 7 & 8 of the impugned order passed by the Commissioner (Appeals).

3.1 It is submitted by the Ld. A.R that the Board vide its circular in D.O.F No. 334/1/2007-TRU dated 28.02.2007, has clarified that exemption is available only when the contract is directly obtained from the Government and in case of sub-contract the exemption is not available. It is submitted that appellant is only a sub-contractor and the contract was given to appellant by TWAD Board and not by the Government. Therefore, the demand upheld is legal and proper. It is prayed that the appeal may be dismissed.

4. Heard both sides.

5. From the facts narrated above, it is seen that the appellant has been given a contract by TWAD Board for laying pipelines for drinking water supply project. In page 36 of the appeal paper book the appellant has enclosed letter dt. 17.09.2008 issued by the TWAD with regard to the contract. From perusal of same, it cannot be said that appellant is a sub-contractor for providing the services. The said observation by the authorities below cannot be endorsed by us.

6. On perusal of the definition of Works Contract Service, it can be seen that the sub-clause (b) of the definition provides that the laying of pipeline for non-commercial or non-industrial purposes would not attract levy of service tax. In the present case, the activity of laying of pipelines is done by the appellant for TWAD Board which is for the Government and included for supply of drinking water project.

7. The very same issue was considered by the Larger Bench of the Tribunal in the case of *Lanco Infratech Ltd. Vs CC CE & ST Hyderabad* (supra). Relevant part of the order is reproduced as under:

> **"7.** In the above circumstances, we indicated that we would hear and dispose of issues which are common, excluding the issue whether works contract was a taxable service prior to 1-6-2007. All parties agreed to this course of action. On behalf of the several Counsel, five issues were

identified for disposition by this Bench. Revenue does not demur. The *issues* presented for our consideration are :

Issues

(A) Whether laying of pipelines for lift irrigation systems, transmission and distribution of drinking water or sewerage, undertaken for Government/Government undertakings should be classified under ECIS as *erection, commission or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise; or installation of plumbing, drain laying or other installations for transport of fluids,* enumerated in Section 65(105)(zzd) and defined Section 65(39a), during 16-6-2005 to 31-5-2007; or must be classified under CICS, as amounting to *construction of pipeline or conduit*; and if classifiable under the later provision, whether the activity is not taxable since it is not used or to be used, engaged or to be engaged primarily for industry or commerce?

(B) Whether construction of canals for irrigation purposes and laying of pipelines including as part of lift irrigation systems, undertaken for the Government/Government undertakings is liable to Service Tax under WCS as *turnkey projects, including engineering, procurement and construction or commissioning projects* under clause (e) of Explanation (ii) in the definition of WCS or is excluded from the ambit of WCS since it is in respect of a "Dam" and thus stands excluded from WCS, as defined?

(C) Whether, *turnkey projects, including engineering, procurement and construction or commissioning (EPC) projects* specified in clause (e) is merely an enumeration of the mode of execution of taxable services specified in clauses (a) to (d) or is a wholly distinct taxable service and is exigible to Service Tax as an independent species of works contract service?

(D) Whether, even if clause (e) in Explanation (ii) of WCS is considered a distinct and independent service, where construction of canals for irrigation purposes and laying of pipelines either as part of lift irrigation systems or for transport and distribution of water is undertaken for Government/Government undertakings, the same is more appropriately covered under clause (b) of WCS, i.e., *construction of a new building or a civil structure or a part thereof*, or of *a pipeline or conduit*, by applying principles of classification set out in Section 65A(2)(a) & (b) and thus fall outside the ambit of levy, since the activity is not primarily for the purpose of commerce or industry; or whether a contrary view that clause (e) being an independent entry, activities falling thereunder would be taxable even if the rendition of service thereby or thereunder, was not primarily for non-commercial or non-industrial purposes? and

(E) Where execution of the whole or a part of the work is sub-contracted on back to back basis by the main contractor (which is a joint venture) to sub-contractors, in the absence of any transfer of property in goods involved in the execution of such works, from the main contractor to the Government/Government undertakings, whether levy of Service Tax in the hands of appellant (main contractor) is valid under WCS, in the light of the judgment in *State of A.P.* v. *L & T Ltd.* - 2008-TIOL-158-VAT-SC.

... ...

"19. On the aforesaid analyses we hold [on issues (A), (B) & (C)] that construction of canals under a dam for transmission of water or sewerage; or construction of pipelines or conduits for conveyance of water for irrigation, domestic consumption or sewerage disposal even where executed as turnkey/EPC contracts; (i) would be classifiable under clause (b), Explanation (ii) of Section 65(105)(zzzza); (ii) construction of canals, pipelines or conduits for Government/Government undertakings for augmentation of irrigation, water supply or sewerage disposal would be for a non-commercial, non-industrial purpose or user and thus excluded in view of the exclusionary clause in clause (b) of WCS definition; and (iii) construction of canals, pipelines or conduits for transmission of water including by lift irrigation would be, when these works are conceived as integrated to a dam project, works contract "in respect of a dam" and thereby excluded from the purview of WCS.

… … ….

21. In the light of the foregoing analyses, we record our conclusions on the several issues framed, as follows :

(a) **Issue (A) :** Laying of pipelines/conduits for lift irrigation systems for transmission of water or for sewerage disposal, undertaken for Government/Government undertakings and involving associated activities like trenching, soil preparation and filling, supporting masonry work, jointing of pipes, electro-mechanical works or pumping stations and like activity, is classifiable only under Commercial or Industrial Construction Service (CICS) for the period up to 1-6-2007 and not under Erection, Commissioning or Installation Service (ECIS);

(b) **Issues (B), (C) and (D) :**

(i) Construction of canals for irrigation or water supply; construction or laying of pipelines/conduits for lift irrigation conceived and integrated into a dam project, must be classified as works contract "in respect of dam" and is thus excluded from the scope of "Works Contract Service" defined in Section 65(105)(zzzza) of the Act, in view of the exclusionary clause in the provision;

(ii) Turnkey/EPC project contracts, enumerated in clause (e), Explanation (ii) in Section 65(105)(zzzza) of the Act is a descriptive and *ex abundant cautela* drafting methodology. In the light of the decision in *Alstom Projects India Ltd.*, fortified by the Special Bench decision (dated 19-3-2015) in *Larsen & Toubro Ltd.* reference, a turnkey/EPC contract is taxable prior to 1-6-2007 as well. On and since 1-6-2007, turnkey/EPC contracts must be classified on the basis of the essential character of the service provided thereby, with the aid of classification guidelines set out in Section 65A(2) of the Act. Consequently, a turnkey/EPC contract must be classified under any of the clauses (a) to (d), Explanation (ii), Section 65(105)(zzzza). The bundled bouquet of services provided as turnkey/EPC contract, classifiable as Commercial or Industrial Construction Service (CICS) prior to 1-6-2007, would be classifiable

> under clause (b), Explanation (ii), Section 65(105)(zzzza) on and from 1-6-2007 and would not be exigible to Service Tax if the rendition of service thereby is primarily for non-commercial, non-industrial purpose, in view of the exclusionary clause in clause (b) of the definition of WCS.
>
> This is the only possible and harmonious interpretation possible of the several clauses under Explanation (ii) of Section 65(105)(zzzza), a distinct taxable service defined with constituent elements thereof substantially drawn from elements of pre-existing taxable services like ECIS, CICS or COCS; and other services when bundled to amount to turnkey/EPC;
>
> (iii) Construction of canals/pipelines/conduits to support irrigation, water supply or for sewerage disposal, when provided to Government/Government undertakings would be for non-commercial, non-industrial purposes, even when executed under turnkey/EPC contractual mode and would fall within the ambit of clause (b), Explanation (ii) of Section 65(105)(zzzza); and would consequently not be exigible to Service Tax, in view of the exclusion enacted in clause (b); and
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> (c) **Issue (E) :** Whereunder an agreement, whether termed as works contract, turnkey or EPC, the principal contractor, in terms of the agreement with the employer/contractee, assigns the works to a sub-contractor and the transfer of property in goods involved in the execution of such works passes on accretion to or incorporation into the works on the property belonging to the employer/contractee, the principal contractor cannot be considered to have provided the taxable (works contract) service enumerated and defined in Section 65(105)(zzzza) of the Act.

8. The decision of the Larger bench was followed recently by the Hyderabad Bench of the Tribunal in the case of *Progressive Constructions Ltd. Vs CST Hyderabad* – reported in MANU/CH/0012/2023 to hold that demand cannot sustain. This Bench also in the case of *Shriram EPC Ltd. Vs CGST & Central Excise, Chennai* (supra) had considered similar issue and held that demand of service tax on the activity of laying of pipelines for drinking water supply cannot sustain.

9. After appreciating the facts, provisions of law and the decisions as above, we are of the considered opinion that the demand cannot sustain. Ordered accordingly. The impugned order is set aside. Appeal is allowed with consequential reliefs, if any.

(Dictated and pronounced in court)

sd/-

(VASA SESHAGIRI RAO)
Member (Technical)

sd/-

(SULEKHA BEEVI C.S.)
Member (Judicial)

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