

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Service Tax Appeal No. 163/2011

(Arising out of Order-in-Original No. 06/2010 (Commissioner) dated 13.12.2010 passed by the Commissioner of Customs and Central Excise, Salem)

With

(i) Service Tax Appeal No. 40280/2014 (RPP Infra Projects Ltd.) (Arising out of Order in Original No. 11/2013 dated 20.11.2013 passed by the Commissioner of Customs and Central Excise, Salem)

(ii) Service Tax Appeal No. 40281/2014 (RPP Infra Projects Ltd.) (Arising out of Order in Original No. 14/2013 dated 22.11.2013 passed by the Commissioner of Customs and Central Excise, Salem)

(iii) Service Tax Appeal No. 42195/2014 (RPP Infra Projects Ltd.) (Arising out of Order in Original No. 11/2014 dated 20.6.2014 passed by the Commissioner of Customs and Central Excise, Salem)

(iv) Service Tax Appeal No. 40215/2016 (RPP Infra Projects Ltd.) (Arising out of Order in Original No. 17/2015 dated 30.10.2015 passed by the Commissioner of Customs and Central Excise, Salem)

(v) Service Tax Appeal No. 40385/2016 (RPP Infra Projects Ltd.) (Arising out of Order in Original No. 19/2015 dated 12.11.2015 passed by the Commissioner of Customs and Central Excise, Salem)

(vi) Service Tax Appeal No. 42305/2017 (RPP Infra Projects Ltd.) (Arising out of Order in Appeal No. 47/2017 dated 18.8.2017 passed by the Commissioner of Customs and Central Excise (Appeals), Salem)

(vii) Service Tax Appeal No. 40406/2018 (RPP Infra Projects Ltd.) (Arising out of Order in Original No. 02/2017 dated 08.11.2017 passed by the Commissioner of Customs and Central Excise, Salem)

M/s. RPP Infra Projects Ltd.

(formerly RPP Constructions Pvt. Ltd.)

S.F. No. 454, Raghupathynaiken Palayam

Poondurai Road, Railway Colony, Erode, Salem – 638 002.

Appellant

Vs.

Commissioner of GST & Central Excise

No. 1, Foulk's Compound, Anaimeadu, Salem – 626 001.

Respondent

AND

(i) Service Tax Appeal No. 164/2011 (CGST & CE, Salem) (Arising out of Order in Original No. 06/2010 (Commissioner) dated 13.12.2010 passed by the Commissioner of Customs and Central Excise, Salem)

(ii) Service Tax Appeal No. 40524/2014 (CGST & CE, Salem) (Arising out of Order in Original No. 11/2013 dated 20.11.2013 passed by the Commissioner of Customs and Central Excise, Salem)

(iii) Service Tax Appeal No. 40525/2014 (CGST & CE, Salem) (Arising out of Order in Original No. 14/2013 dated 22.11.2013 passed by the Commissioner of Customs and Central Excise, Salem)

(iv) Service Tax Appeal No.42545/2014 (CGST & CE, Salem) (Arising out of Order in Original No. 11/2014 dated 20.6.2014 passed by the Commissioner of Customs and Central Excise, Salem)

Commissioner of GST & Central Excise

No. 1, Foulk's Compound, Anaimeadu, Salem – 626 001.

Appellant

Vs.

M/s. RPP Infra Projects Ltd.

(formerly RPP Constructions Pvt. Ltd.)

S.F. No. 454, Raghupathynaiken Palayam

Poondurai Road, Railway Colony, Erode, Salem – 600 032.

Respondent

APPEARANCE:

Shri S. Muthuvenkataraman, Advocate for the Appellant-Assessee

Shri P.R.V. Ramanan, Special Counsel & Shri M. Ambe, DC (AR) for the Respondent

CORAM

Hon'ble Shri P. Dinesha, Member (Judicial)

Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order Nos. 40564-40575/2024

Date of Hearing : 05.03.2024

Date of Decision: 30.05.2024

Per M. Ajit Kumar,

These appeals filed by the Rival Parties involve common issues and hence they were heard together and are disposed by this common order.

M/s. RPP Infra Projects Ltd., (RPP) are providers of taxable service and are registered with the Department for providing service under the categories of:

- (i) Commercial or Industrial Construction Service (CICS)
- (ii) Erection, Commissioning and Installation Service (ECIS)
- (iii) Interior Decorator Service, and
- (iv) Construction of Residential Complex Service

There are 8 appeals filed by the assessee i.e. M/s RPP and 4 departmental appeals being disposed off through this common order. The demands have been raised under 9 categories of services against which both RPP and the department are in appeal before this Tribunal. Since a large number of individual projects are involved in all the appeals put together, its proposed to group the projects service wise for ease of discussion and decision on the legal issues involved.

2. The index of issues discussed is given in the table below.

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3. It may at this stage be helpful to chronicle the important events and judgments that would provide the legal framework for the discussions on the dispute during the impugned time period.

3.1 Chronological dates and events pertaining to statutory provisions/ notifications

Date	Development	Remarks / Summary *
10.09.2004	Service tax levied on “Construction service”.	Sec. 65 (105) (zzq). Taxable service means any service provided or to be provided to any person by a commercial concern, inr elation to construction service. Sec. 65 (30a) “construction service” means, (a) construction of new building or civil structure or a part thereof; or (b) repair, alteration or restoration of, or similar services in relation to, building or civil structure, which is – (i) used, or to be used, primarily for; or (ii) occupied, or to be occupied, primarily with; or (iii) engaged, or to be engaged, primarily in,

		commerce or industry, or work intended for commerce or industry, but does not include road, airport, railway, transport terminal, bridge, tunnel, long distance pipeline and dam.
10.09.2004	67 % abatement (exemption from value) provided for.	Notification 15/2004 Service Tax Dt. 10.09.2004
16.06.2005	“Construction service” renamed as “commercial or industrial construction service.”	Sec. 65 (25b) “commercial or industrial construction service” means — (a) construction of a new building or a civil structure or a part thereof; or (b) construction of pipeline or conduit; or (c) completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services, in relation to building or civil structure; or (d) repair, alteration, renovation or restoration of, or similar services in relation to, building or civil structure, pipeline or conduit, which is — (i) used, or to be used, primarily for; or (ii) occupied, or to be occupied, primarily with; or (iii) engaged, or to be engaged, primarily in, commerce or industry, or work intended for commerce or industry, but does not include such services provided in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.
16.06.2005	Service Tax levied on “Construction of complex service”	Sec. 65 (105) (zzzh) Taxable service means any service provided or to be provided to any person by any other person in relation to construction of complex. Sec. 65 (30a) “construction of complex” means — (a) construction of a new residential complex or a part thereof; or (b) completion and finishing services in relation to residential complex such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services; or (c) repair, alteration, renovation or restoration of, or similar services in relation to, residential complex. Sec. 65 (91a) “residential complex” means any complex comprising of— (i) a building or buildings, having more than twelve residential units; (ii) a common area; and (iii) any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system, located within a premises and the layout of such premises is approved by an authority under any law for the time being in force, but does not include a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person. Explanation. — For the removal of doubts, it is hereby declared that for the purposes of this clause, —

		(a) “personal use” includes permitting the complex for use as residence by another person on rent or without consideration; (b) “residential unit” means a single house or a single apartment intended for use as a place of residence.
16.06.2005	67 % abatement (exemption from value) provided for.	Notification 18/2005 Service Tax Dt. 07.06.2005
01.03.2006	All abatements are prescribed under single Notification and the above individual notifications rescinded	Notification 1/2006 Service Tax Dt. 01.03.2006
01.06.2007	Introduction of Service Tax on “works contracts”	Sec. 65 (105) (zzzza). Taxable service means 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, “works 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 (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 or restoration of, or similar services, in relation to (b) and (c); or (e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects.
01.06.2007	Rule 2 A introduced in Service Tax (Determination of Value) Rules, 2000 to prescribe mechanism for valuation of service portion of works contract	Notification 29/2007 Service Tax Dt. 22.05.2007
01.06.2007	Optional Composition scheme introduced for payment of Service Tax on Works Contracts, prescribing Service Tax rate of 2 % on gross amount	Works Contracts (Composition scheme for payment of Service Tax) Rules, 2007. Notification 32/2007 Service Tax Dt. 22.05.2007
04.01.2008	CBIC clarified that if tax was paid under CICS or CCS before 01.06.2007, such service shall continue to be classified under CICS or CCS and the benefit of composition scheme is not applicable.	CBIC Circular No. 98/1/2008 Dt. 04.01.2008 A service provider who paid service tax prior to 01.06.07 for the taxable service, namely, erection, commissioning or installation service, commercial or industrial construction service or construction of complex service, as the case may be, is not entitled to change the classification of the single composite

		service for the purpose of payment of service tax on or after 01.06.07 and hence, is not entitled to avail the Composition Scheme.
01.03.2008	The rate of tax under composition scheme enhanced to 4 %	Notification 7/2008 Service Tax Dt. 01.03.2008
01.07.2010	In the definition of CICS and CCS, the following Explanation has been added. <i>Explanation.</i> — For the purposes of this sub-clause, the construction of a new building which is intended for sale, wholly or partly, by a builder or any person authorised by the builder before, during or after construction (except in cases for which no sum is received from or on behalf of the prospective buyer by the builder or the person authorised by the builder before grant of completion certificate by the authority competent to issue such certificate under any law for the time being in force) shall be deemed to be service provided by the builder to the buyer.	The purpose of introduction of this Explanation during Budget has been explained in CBIC's letter 334/1/2010 TRU Dt. 26.02.2010, as under; In the definition of the taxable services 'Construction of Complex service' [section 65 (105) (zzzh)], and 'Commercial or industrial construction service' [section 65 (105) (zzq)], it is being provided that unless the entire consideration for the property is paid after the completion of construction (i.e. after issuance of completion certificate by the competent authority), the activity of construction would be deemed to be a taxable service provided by the builder/promoter/developer to the prospective buyer and the service tax would be charged accordingly.
24.08.2010	The clarification issued on 04.01.2008 is modified. It is clarified that the classification of CICS and CCS should be changed to WCS after 01.06.2017.	CBIC Circular No. 128/10/2010 Dt. 24.08.2010 Classification of services would undergo a change in case of long term contracts even though part of the service was classified under the respective taxable service prior to 01.06.2007. This is because 'works contract' describes the nature of the activity more specifically. As regards applicability of composition scheme, this provision casts an obligation for exercising an option to choose the scheme prior to payment of service tax in respect of a particular works contract. Once such an option is made, it is applicable for the entire contract and cannot be altered. Therefore, in case a contract where the provision of service commenced prior to 01.06.2007 and any payment of service tax was made under the respective taxable service before 01.06.2007, the said condition under rule 3(3) was not satisfied and thus no portion of that contract would be eligible for composition scheme. On the other hand, even if the provision of service commenced before 01.06.2007 but no payment of service tax was made till the taxpayer opted for the composition scheme after its coming into effect from 01.06.2007, such contracts would be eligible for opting of the composition scheme.
20.06.2012	Service Tax Mega Exemption Notification No. 25/2012 dated 20/06/2012, later amended by Notification dated 30/01/2014	Clause 2(s) "governmental authority" means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution." Post Amendment:

		Clause 2(s) "governmental authority" means an authority or a board or any other body; (i) set up by an Act of Parliament or a State Legislature; or (ii) established by Government, with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution.
01.07.2012	Section 66D of the 1994 Act, inserted by the Finance Act, 2012 with effect from 1st July, 2012, specifies the ' Negative List of Services ', i.e., the services on which service tax is not leviable. Individual classification of services has been done away with.	Ratio of L & T decision is no more relevant , for services provided after introduction of negative list based levy of service tax has been introduced.
01.07.2012	Composition scheme under WCS rescinded. Rule 2A of Service Tax (Determination of Value Rules) 2000 amended , to provide for two options to pay tax on works contracts.	

* Remarks/ Summary is only for ease of understanding. The actual provisions may be looked into.

3.2 Chronological dates of important Judgements.

S.No.	Judgement	Remarks
1	Nagarjuna Construction Co. Ltd. Vs GOI - 2012 (28) STR 561 SC, decided on 09/11/2012	The Hon'ble Supreme Court Held that the appellant, who had paid service tax prior to 01.06.07 for the taxable services, namely, erection, commissioning or installation service, commercial or industrial construction service or construction of complex service, was not entitled to change the classification of the single composite service for the purpose of payment of service tax on or after 01.06.07 and hence, was not entitled to avail of the Composition Scheme. Validity of CBIC circular Dated 04/01/2008 was upheld.
2	Larsen & Toubro Ltd. and others Vs State of Karnataka [2014 (34) S.T.R. 481 (S.C.)]. Decided on 26/09/2013.	The Hon'ble Supreme Court held that building contracts are species of the works contract. It summed up the legal position regarding the difference between a contract for work and a contract for sale . Even if in a contract, besides the obligations of supply of goods and materials and performance of labour and services, some additional obligations are imposed, such contract does not cease to be works contract
3	Commissioner of Central Excise and Customs, Kerala Vs Larsen & Toubro Ltd. [2015 (39) S.T.R. 913 (S.C.)]. Decided on 20/08/2015	Settled the law that composite works contracts involving services and goods covered under Section 65(105)(zzzza) are liable to tax only with effect from 1st June, 2007. Service contracts prior to 01/06/2007, would cover only pure service contracts.
4	Suresh Kumar Bhansal Vs UOI – 2016 (43) STR 3 Del. Decided on 03/06/2016 by Hon'ble Delhi High Court	Explanations added in CICS and CCS from 01.07.2010 struck down , in the absence of statutory mechanism to determine the value of service.
5	Bhayana Builders Pvt. Ltd. Vs CST. Decision of the Larger Bench of the Tribunal Dated 06.09.2013. Upheld by the Hon'ble SC on 19/02/2018 (L & T decision is also noted by SC)	While claiming abatement of 67% whether the value of materials supplied by customer also should be included or not. Held in favour of assesses, that the same is not includible.

6	Realvalue Promoters Pvt. Ltd. Vs CCE, Chennai CESTAT. Decided on 18/09/2018	L & T Followed. Even after 01.06.2007 , Service Tax on composite contracts can be levied only under WCS and demands under CICS and CCS set aside.
7	Total Environment Building Systems Pvt. Ltd. Vs Deputy Commissioner of Commercial Taxes [2022 (63) G.S.T.L. 257 (S.C.)]. decided on decided on 02-08-2022	Hon'ble Supreme Court noted its judgment in Nagarjuna Construction Company , but rejected Revenue's plea to re-consider and/or review its judgment in the case of Larsen and Toubro Limited , Kerala.
8	Jain Housing & Construction Ltd. Vs CST, CESTAT, Chennai. Decided on 24/02/2023. Upheld by Hon'ble SC on 05.09.2023	Real Value decision followed.

4. Legal position

4.1 The legal position as it stands is that;

I) In **Larsen and Toubro Limited and Another v. State of Karnataka and Another** [Civil Appeal No. 8672 of 2013, dated: 26/09/2013 - (2014) (1) SCC 708] (henceforth referred to as **L&T Karnataka**), the Apex Court deciphered the meaning of the works contract from the earlier judgments and in para 72 opined as under:

“72. In our opinion, the term “works contract” in Article 366(29A)(b) is amply wide and cannot be confined to a particular understanding of the term or to a particular form. The term encompasses a wide range and many varieties of contract. Parliament had such wide meaning of “works contract” in its view at the time of the Forty-sixth Amendment. The object of insertion of clause (29A) in Article 366 was to enlarge the scope of the expression “tax on sale or purchase of goods” and overcome Gannon Dunkerley (1) [State of Madras v. Gannon Dunkerley and Co. (Madras) Ltd., AIR 1958 SC 560 : 1959 SCR 379]. Seen thus, even if in a contract, besides the obligations of supply of goods and materials and performance of labour and services, some additional obligations are imposed, such contract does not cease to be works contract. The additional obligations in the contract would not alter the nature of contract so long as the contract provides for a contract for works and satisfies the primary description of works contract. Once the characteristics or elements of works contract are satisfied in a contract then irrespective of additional obligations, such contract would be covered by the term “works contract”. (emphasis added)

II) A contract which has both the elements of goods and service is a works contract. The Hon'ble Apex Court in **Commissioner Central Excise & Customs, Kerala vs. Larsen & Toubro Ltd.** [Civil Appeal No. 6770 OF 2004/ 2015 (39) S.T.R. 913 (S.C.)] (henceforth referred to as **L&T Kerala**) held that ‘Works Contract’ is a separate species of contract distinct from contracts for services simpliciter. Service contracts simpliciter is used to describe pure

service contracts where the focus is solely on the provision of services i.e. services provided without any associated supply of goods or other complexities. There was no charging section to tax 'works contract' in the Finance Act, 1994 (**FA 1994**) i.e. until the amendment made with the insertion of subclause (zzzza) to clause 105 of Section 65 of the FA1994 on 01.06.2007.

III) Pure construction services, where all materials etc. required for the construction are supplied by the service recipient and the service provider is engaged only for provision of construction service (not composite involving supply of goods) and are not in the nature of works contract are liable to service tax, prior to 1.6.2007.

IV) The Hon'ble Apex Court in **L&T Kerala** (supra) held that any charge to tax under the five heads in Section 65(105) would only be of service contracts simpliciter and not composite indivisible works contract. Those five heads are:

(g) to a client, by a consulting engineer in relation to advice, consultancy or technical assistance in any manner in one or more disciplines of engineering but not in the discipline of computer hardware engineering or computer software engineering;

(zzd) to a customer, by a commissioning and installation agency in relation to erection, commissioning or installation;

(zzh) to any person, by a technical testing and analysis agency, in relation to technical testing and analysis;

(zzq) to any person, by a commercial concern, in relation to construction service;

(zzzh) to any person, by any other person, in relation to construction of a complex;

V) In the case of **Real Value Promoters Pvt. Ltd. Others Vs CGST & CE, Chennai** - Final Order No. 42436-42438/2018 dt. 18/09/2018 a Coordinate Bench of this Tribunal considered the issue as to whether the levy of service tax under CICS/CCS/RCS is sustainable even after 1.6.2007, when the works

executed are composite in nature. The relevant part of the order reads as under:

“7.10 The issue was analyzed by the Hon’ble Apex Court in Larsen & Toubro case (supra) and held that there can be no levy of service tax on composite contracts (involving both service and supply of goods) prior to 1.6.2007. This read together with the budget speech as above would lead to the strong conclusion that composite contracts were brought within the ambit of levy of service tax only with effect from 1.6.2007 by introduction of Section 65(105)(zzzza) i.e. Works Contract Services. As pointed out by the Id. counsels for appellants, there is no change in the definition of CICS/CCS/RCS after 1.6.2007. Therefore only those contracts which were service simpliciter (not involving supply of goods) would be subject to levy of service tax under CICS / CCS / RCS prior to 1.6.2007 and after. Our view is supported by the fact that the method / scheme for discharging service tax on the service portion of composite contract was introduced only in 2007. (emphasis added)

This judgment was followed by this Tribunal in **Jain Housing and Construction Ltd. Vs CST** [(2023) 10 Centax 117 (Tri-Mad)] and came to be upheld by the Hon’ble Supreme Court on 05/09/2023. Composite contracts involving services and goods were liable to tax only with effect from 1st June, 2007.

VI) From 01/07/2012, there was a paradigm shift in the levy of service tax. Section 66D of the 1994 Act, was inserted by the Finance Act, 2012 with effect from 01/07/2012, which listed the 17 services specified in the **negative list of services**, i.e., the services on which service tax is not leviable. Service tax was imposed on all services other than those specified in the negative list.

VII) Classification of services is a matter relating to chargeability and the burden of proof is squarely upon the Revenue. If the Department intends to classify a service under a particular category different from that claimed by the assessee, the Department has to adduce proper evidence and discharge the burden of proof. The judgments of the Hon’ble Supreme Court in **Union of India v. Garware Nylons Ltd.** [1996 10 SCC 413]; **H.P.L Chemicals vs. Commissioner of Central Excise**, [2006 (197) E.L.T. 324 (S.C.)]; **Puma Ayurvedic Herbal (P) Ltd. v. Commissioner of C. Ex., Nagpur** [2006 (196) E.L.T. 3 (S.C.)], which declare the law although rendered in the case of

classification under the Central Excise Act are also relevant for classification of a service under the FA 1994.

VIII) It is now an accepted legal position, flowing from the above principle that if the burden of proving the alternate classification as proposed by the Revenue is not satisfactorily discharged, then even if the classification made by the assessee is wrong, it will remain undisturbed. [See **Pepsico Holdings Pvt. Ltd. v. Commissioner of C. Ex, Pine III** — 2019 (25) G.S.T.L. 271 (Tri. - Mumbai); **Sun Rise Traders v. Commissioner of Customs, Mundra** [2022 (381) E.L.T. 393 (Tri. - Ahmd.)]. As stated by the Hon'ble Supreme Court in the case of **Warner Hindustan Ltd. vs Collector Of Central Excise, Hyderabad** [(1999) 6 SCC 762 / 1999 (113) E.L.T. 24 (S.C.)] it is impermissible for the Tribunal to decide in favour of a classification that has not been pleaded before it or is laid for the first time in appeal, because the stage for setting out the factual matrix is before authorities below. The correct course for the Tribunal is to leave it open to the Authorities to issue a fresh show cause notice to the appellant for the future. This will give the appellant the opportunity to place on record such material as was available to it to establish the contrary.

IX) In **Commissioner of Customs (Import) Vs M/s Dilip Kumar and Company & Ors.** [Civil Appeal No. 3327 of 2007 / AIR 2018 SUPREME COURT 3606 / AIRONLINE 2018 SC 73] the Hon'ble Court has overruled its earlier verdict in **Sun Export Corporation, Bombay Vs Collector of Customs, Bombay [2002-TIOL-118-SC-CX-LB]** and held that while availing the benefit of an exemption notification the burden of proving applicability would be on the assessee/importer claiming the benefit of the said notification. Further benefit of any ambiguity in notification related to tax exemptions must be interpreted in favour of the State. It held:

“52. To sum up, we answer the reference holding as under

(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.

(3) The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export Case (supra) stands overruled.”

5. We have heard the rival parties. Shri S. Muthuvenkataraman, learned Advocate for RPP and Shri P.R.V. Ramanan, learned Special Counsel for the Department. Their arguments along with submissions made in writing will be examined while discussing the individual issues involved. The issues are categorised and discussed under the following heads:

- a. Dredging Service
- b. Works Contract Service (WCS)
- c. Civil Supplies
- d. Residential Construction Service (RCS)
- e. Erection and Commissioning and Installation Service (ECIS)
- f. Commercial Construction Service (CCS)
- g. SEZ
- h. Interior Design Services
- i. Site Formation Service

5.1 Since we are dealing with many contracts covered by the impugned orders, it would be relevant to refer to the Apex Courts judgment in **DLF Universal Ltd. & Anr. v. Director, Town and Country Planning Department, Haryana & Ors.**, [(2010) 14 SCC 1] which explains the interpretation of the contract thus:

Interpretation of contract

13. It is a settled principle in law that a contract is interpreted according to its purpose. The purpose of a contract is the interests, objectives, values, policy that the contract is designed to actualize. It comprises the joint intent of the parties. Every such contract expresses the autonomy of the contractual parties' private will. It creates reasonable, legally protected expectations between the parties and reliance on its results. Consistent with the character of purposive interpretation, the court is required to determine the ultimate purpose of a contract primarily by the joint intent of the parties at the time the contract so formed. It is not the intent of a single party; it is the joint intent of both the parties and the joint intent of the parties is to be discovered from the entirety of the contract and the circumstances surrounding its formation.

Hence in the case of any ambiguity on the nature of the service rendered, the question that arises would be as to what the intention of the contracting parties were while entering into the contract. Hence when any doubt arises on the kind of service rendered by RPP to its service recipients, the Latin Maxim "*Pacta dant legem contractui*" can be relied upon to answer the question, which means that the stipulations of the parties constitute the law of the contract.

6. We now examine the impugned orders after bunching them service wise.

7. DREDGING

S.No	Name of the Project	Order in original	Period and duty amount involved
1.	PSK, Cuddalore	OIO.No.14/2013-ST, OIO.No.11/2013- ST OIO No.19/2015 – ST	The Appellant has submitted that the period of dispute is from 01.10.2010 to 30.06.2012 i.e prior to the introduction of the 'Negative List' in Service Tax law, from 01.07.2012. The Total Service Tax Demand is Rs. 5,28,51,575/-.
2.	SBC	OIO.No.14/2013-ST OIO.No.11/2013 – ST OIO No.19/2015 – ST	
3.	KMR (SAKTHI)	OIO.No.14/2013-ST OIO.No. 11/2013 –ST OIO.No.19/2015-ST	
4.	ANR (SAKTHI)	OIO.No.14/2013-ST OIO.No.11/2013 – ST	
5.	Virudachalam (AM)	OIO.No.14/2013-ST OIO.No.11/2013 – ST	
6.	RPP SELVAM	OIO.No.14/2013-ST	
7.	VSWD	OIO.No.11/2013-ST	
8.	KPM Canadian Work	OIO.No.19/2015 -ST	

7.1 Submissions by Revenue: It is understood that the nature of work undertaken is mainly for removal of slush, mud, plastic and other waste and unwanted weeds to ensure the smooth flow of water during heavy rains and flood. The activity of 'deepening, widening and construction on the two sides for flood protection' as purported by RPP can be achieved only after dredging operations. Dredging is the main activity; repairs to the bund is incidental. Hence, impugned services are covered under the definition of 'dredging services'. The definition of 'dredging services' is inclusive in nature. It is not exhaustive in coverage. There is no need to apply the definitions in the

dictionaries as the definition covers the activities as well as areas of application. Services have been rendered at Panavanar river, Kollidam river, Vadavar river, Manimuthar river and Buckingham Canal. The Canal is nothing but a man-made river, which was once used to carry timber and other merchandise to different destinations. Thus, areas of application are not different from those enumerated in the definition. Revenue relies on the decision of Hon'ble CESTAT, Kolkata Bench rendered in the context of **MacIntosh Burn vs Commissioner of Service Tax, Kolkata** [2010 (19) S.T.R. 682 (Tri. - Kolkata)]. [RPP in their written submissions have made a reference to OIO. No. 5/2014 – ST as a part of the order appealed against under this service heading. On verification with them they have stated that the inclusion of the said order, was wrongly shown in place of OIO.No.11/2013 – ST].

7.2 Submissions by RPP: The Appellant has submitted that the period of dispute is from 01.10.2010 to 30.06.2012 and the Total Service Tax Demand is Rs. 5,28,51,575/-. The period is thus prior to the introduction of the 'Negative List' in Service Tax law, from 1.07.2012. Further the nature of work undertaken is works contract mainly in the nature of construction of drainage canals and bunds on the bank of water bodies as a flood protection measure. It did not involve any work of removal of slush, mud, plastic, and other waste and unwanted weeds. Section 65(36a) which defines the term "dredging" has two limbs with one (referring to the activity) being inclusive and the other (referring to the water body) being exhaustive. The scope of Dredging services is explained vide boards letter Ref. F.No.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 appellants, they state that even boats cannot pass through. The definition of dredging is an inclusive definition and activities specified are

only indicative and not exhaustive. In **Ramalingam constructions v. Commissioner**, reported in 2018 (7) TMI 620 – CESTAT Chennai, at paragraph 9.1 the Tribunal while dealing with the scope of dredging services held that in order to constitute dredging the activity should encompass both removal of material and must be related to or while excavating or cleaning a river, port, harbour, backwater or estuary. There has to be use of dredging apparatus for enabling the activity. It is for Revenue to prove their case. Since there is no allegation in the SCN that they are rendering works contract service, then if the classification under dredging service fails the impugned orders merit to be dropped.

7.3 Discussion and decision: We find that the dispute between the parties is whether the service is classifiable as a dredging service (Revenue) or a works contract (RPP). RPP has entered into contracts with various entities to render service which is the subject matter of interpretation. As discussed above it would be essential to ascertain as to what service was contracted and rendered by the parties to the contract. What then was the substance of the contract in this case?

A) The agreement entered into between the government of Tamil Nadu pertaining to the **river Manimuthar** from Paravalur to Gudaliyuthur is for construction of permanent flood protection works; clearing scrub jungle and levelling the site; earthwork which involves excavating and depositing on the Bank of the river in order to form a bund by spreading earth at the site in layers; Laying of foundation, placing cement, and erecting a horizontal and vertical cement concrete retaining wall. It did not involve any removal or excavation of material from the bottom of a water body using specialised dredger machinery. The intention of the contracting parties was not the dredging of the river.

B) The **South Buckingham Canal** contract involves improvements to canals and construction of arterial drains and construction of stormwater drains [feeder and collector]. They pertain to efficient drainage of rain water into the canal and the intention is not one of deepening or dredging the canal for navigation. These activities undertaken on land outside the canal is in order to ensure absence of stagnation or flooding in Chennai city and not for dredging.

C) The agreement relating to **Contour Canal** provides details of the work that are expected to be carried out by the contractor - clearing jungle, dismantling brick and stone masonry, earthwork, concrete reinforcement, steel fabrication and random rubble masonry. None of these activities fall within the ambit of dredging.

D) The agreement for the work relate to standardising, strengthening, and permanent protection to the right bank of **Kollidam river** provides for the work involved in execution of the contract mainly for the construction of bunds and clearing away of the banks of the river which do not fall within the ambit of the term dredging.

E) The **Velachery Water Shed** contract entered into between the corporation of Chennai and RPP is to provide concrete lining to Raj Bhavan canal including fencing and other improvement works and construction of stormwater drain work in South Buckingham canal watershed Chennai city for the purpose of improvements to canals and construction of arterial drains and construction of stormwater drains [feeder and collector]. They are not primarily for dredging the canal.

F) The contract for improvements to **Kannadiyan Anaicut** is between the public works department and RPP to carry out improvements to existing kannadian channel to drought prone areas by interlinking thamirabarani, karumeniyar and Nambiar rivers and not for dredging.

7.3.1 We find that the term, 'Dredging' and 'Taxable Service' have been defined in the FA 1994, as under:-

“Section 65(36a) : “dredging” includes removal of material including silt, sediments, rocks, sand, refuse, debris, plant or animal matter in any excavating, cleaning, widening or lengthening, either permanently or temporarily, of any river, port, harbour, backwater or estuary;

Section 65(105)(zzzb) : “taxable service” means any service provided or to be provided to any person, by any other person, in relation to dredging;”

7.3.2 Service tax is a tax on a taxable activity rendered to a recipient of service. Being an indirect tax, it is not a charge on the business but on the consumer. Classification of a taxable service is determined based on the nature of service provided. While classifying a service it hence necessary to be kept in mind that a service provider exists because of a consumer or user's needs and not vice versa. The provision of service represents the way in which a service provider aligns its capabilities, on the one hand, with the needs, demands and expectations of a service consumer / user. Since Service tax is a levy on the event of service, the event, provided it is covered by the FA 1994, is the service which fulfills the needs of the consumer or user.

7.3.3 The legal issue is obvious and trite that a subject is not taxable by inference or by analogy, but only by the plain words of a statute applicable to the facts and circumstances of the individual case. From the above description it is seen that the service tax recipients were seeking the services of RPP for construction of drainage canals and bunds on the bank of water bodies as a flood protection measure; for construction of permanent flood protection works; clearing scrub jungle and levelling the site; improvements to canals and construction of arterial drains and construction of stormwater drains. The removal of any material including silt, sediments, rocks, etc was incidental to the main activity. In **MacIntosh Burn vs Commissioner of Service Tax, Kolkata** [2010 (19) S.T.R. 682 (Tri. - Kolkata)], the matter related to the

scope of work awarded through tender by the Irrigation Department of the West Bengal Government for dredging of river Ichhamati. The matter is hence distinguished. A Coordinate Bench of this Tribunal in its judgment in **Ramalingam constructions v. Commissioner**, reported in 2018 (7) TMI 620 – CESTAT Chennai, had a more comprehensive look at the service and stated as under;

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.

Since the activity undertaken by RPP does not involve the two essential requirements of the definition of ‘dredging’ service as discussed above, Revenue has failed to prove its case and hence the demand cannot sustain. The appeal of RPP in this matter, hence succeed.

8. The next five services i.e. (i) Works Contract (ii) Civil Supplies (iii) Residential Construction (iv) Erection and Commissioning and Installation (v) Commercial Construction are based on some common legal issues and hence are being considered together. Common discussion and decision are at para 14.

9. WORKS CONTRACT

S.No	Name of the Project	Order in original / Appeal	Period and duty amount involved
1.	CMDA	OIO.No.07/2017-ST	
2.	Madurai Corporation	OIO.No.07/2017-ST OIO.No. 02/2017-ST	

	Vegetable Market		The Appellant has submitted that the period of dispute is from 01.04.2013 to 30.06.2015 i.e. after the introduction of the 'Negative List' in Service Tax law, from 01.07.2012. The Total Service Tax Demand is Rs. 1,31,86,275/-,
3.	SPH	OIO.No.17/2015-ST OIO.No.07/2017-ST (JC)	
4.	SIPCOT, Perundurai	OIO.No.17/2015-ST OIO.No.7/2017	
5.	CCA, Chennai	OIO.No.17/2015-ST	
6.	M.P. Garden	OIO.No.17/2015- ST	
7.	SPAC	OIO.No.17/2015-ST	
8.	MMIS-MRPL	OIO.No. 07/2017- ST OIA.No. 47/2017- ST	
9.	KPTCL (KTSS)	OIO.No. 02/2017 – ST	
10.	Anna Universtiy (Tuticorin)	OIO.No. 02/2017 – ST	

9.1 Submissions by Revenue:

(i) **Project 'CMDA'** is for construction of parking yards for trucks as a facilitation measure used for commercial purposes and fees for parking are charged. Though CMDA is a statutory authority, the impugned function is not a sovereign function.

(ii) **Project 'MVM'** is for construction of godowns and shops for storage/selling of vegetables and other perishable commodities. The project is intended for commerce and business. The subject tax demand is, therefore, legal and proper.

(iii) **Project 'SPH'** is for expansion of circulation of water system and fire protection system at Neyveli Lignite Corporation Ltd. a PSU, engaged in commercial activity. It is not a government authority. Besides, RPP has carried out the activity as a sub-contractor to the main contractor; accordingly, they cannot escape the tax liability.

(iv) Coming to the **project titled 'SIPCOT Perundurai'**, the work involved was construction of a sump for water supply to the factories, providing external lighting arrangement, open well submersible pump set etc. The said construction is meant for the use of industries in Perundurai, for which SIPCOT is recovering charges. SIPCOT is a corporate body and is not a statutory authority.

(v) **Project 'MP Garden'** involves renovation and modernization of 'Malampuzha Garden'. The purpose is to provide facilities for tourists. The work is not, however, in the nature of renovation of a civil structure or other 'original works' as defined in Explanation I of Rule 2 A of S Tax (Determination of value) Rules 2006. Hence, it is not covered under S.No.12 (a) of Notification 25/2012. S tax as applicable to WCS is attracted.

(vi) **Project 'SPAC'** relates to construction of an effluent treatment plant at the factory of SPAC. The facility is only for the use of the factory, though the requirement of such a plant is a statutory requirement. SPAC is a private commercial establishment. RPP are liable to pay Service tax under the category 'WCS'.

(vii) **Project 'MMIS-MRPL'** involved construction of industrial pipeline for Mangalore Refineries and Petrochemicals Ltd., a public limited company. RPP has accepted the tax liability and paid the same before the personal hearing. They seek waiver of penalty of Rs.14.50 lakhs. Tax paid has been appropriated.

(viii) **Project 'KPTCL'** involved construction relating to upgradation of existing sub-stations. KPTCL is a Karnataka state undertaking and is engaged in power transmission within the state of Karnataka. Exemption has been denied on the ground that KPTCL is a commercial concern.

(ix) **Project 'Anna University'** relates to construction of hostels for students of the University at Tuticorin. Exemption under S.No.12 of 25/2012 has been denied on the ground that hostels are not directly related to imparting education.

9.2 Submissions by RPP: The period of dispute is from 01.04.2013 to 30.06.2015 i.e. after the negative list of services was incorporated into FA 1994. The Total Service Tax Demand is Rs. 1,31,86,275/-, All the services are rendered directly or indirectly to governmental authorities under various

Clauses of the Mega Exemption Notification No. 25/2012 dated 20.06.2012 like 12(a), 13(a), 14(d). They have drawn attention to the Apex Courts judgment in **Commissioner, Customs Central Excise and Service Tax, Patna v. M/s. Shapoorji Paloonji and Company Pvt. Ltd. & Ors.** [Civil Appeal No. 3991-3992/2023, Dated 13/10/2023] in support of their stand.

10. CIVIL SUPPLIES (WORKS CONTRACT)

S.No	Name of the Project	Order in original	Period and duty amount involved
1.	ALCS	OIO.No.02/2017 – ST	The period of dispute is from 01.04.2014 to 30.06.2015 i.e. prior to the introduction of 'Negative List', but after the Mega Service Tax Exemption Notification No. 25/2012 dated 20/06/2012, came into force. The Total Service Tax Demand is Rs. 4,20,17,115/-.
2.	ARCS		
3.	CCS		
4.	DCS		
5.	KCS		
6.	KKCS		
7.	MCS		
8.	NCS		
9.	SCS		
10.	PCS		
11.	TCCS		

10.1 Submissions by Revenue: The scope of the work in these projects involves construction of scientific storage godowns for storage of essential commodities for public distribution system. The impugned order has held that Tamil Nadu Civil Supplies Corporation (TNCSC) is engaged in commercial activity and runs on profit motive and therefore the exemption claimed under Sl. No. 12 of the Mega Notification 25/2012 cannot be extended.

10.2 Submissions by RPP: The period of dispute is from 01.04.2014 to 30.06.2015 i.e. prior to the introduction of 'Negative List', but after the Mega Service Tax Exemption Notification No. 25/2012 dated 20/06/2012, came into force and the Total Service Tax Demand is Rs. 4,20,17,115/-. They have stated that TNCSC is covered by the definition of "governmental authority"

under clause 2(s) in Mega Service Tax Exemption Notification No. 25/2012 and they are hence not liable to pay duty under entry 14(d) of the said notification, which exempts services rendered by way of construction, erection, commissioning, or installation of original works pertaining to post-harvest storage infrastructure for agricultural produce including a cold storage for such purposes. They have also referred to the case of **Sescot Sheet Metal Works Ltd. Vs CESTAT, Chennai** [2015 (321) E.L.T. 545 (Mad.)], wherein it has been observed by the Hon'ble Madras High Court at Para 10 that Public Distribution System is a primary concern of the State. The Judgment also recognised the TNCSC to be an organ of the State at para 10 as under;

10.. . . . The order further reveals that the goods supplied by the appellant to the Tamil Nadu Civil Supplies Corporation are used in relation to Public Distribution System. In such a backdrop, this Court is unable to understand as to the basis on which Tribunal has held that there is nothing in the nature of activity of the appellant that is relatable to "State" for the benefit of the people and, thereby, the scope of unjustly enriching themselves gets squarely attracted and that the appellant falls outside the said purview. It would not be out of context here to state that Public Distribution System is a primary concern of the State and the appellant is supplying goods to the Tamil Nadu Civil Supplies Corporation and that both the entities are State funded, State controlled and State monitored organisations and are discharging duties for the welfare of the people of the country.

11. RESIDENTIAL COMPLEX CONSTRUCTION

S.No	Name of the Project	Order in original	Period and duty amount involved
1.	NIT, Trichy	OIO.No.11/2014-ST OIO.No.14/2013 – ST OIO.No.11/2013- ST	Period of Dispute is 2004 to 2009 & 01.04.2010 to 30.06.2015 i.e. prior to the introduction of the 'Negative List' in Service Tax law, from 01.07.2012. The Total Service Tax Demand is Rs. Rs. 7,45,64,036/-.
2.	NTECL	OIO.No.11/2014-ST OIO.No.14/2013- ST OIO.No.11/2013-ST OIO.No.19/2015-ST OIO No.17/2015 -ST OIO No. 07/2017 - ST	
3.	HPL (Sri lanka Residential Building)	OIO.No. 11/2013-ST OIO.No. 19/2015- ST	
4.	Tsunami Reconstruction of Vulnerable houses	OIO.No.14/2013-ST OIO.No.11/2013-ST OIO.No.19/2015 – ST OIO No. 17/2015- ST	
5.	PPH	OIO.No.06/2010-ST	
6.	APHS	OIO.No.06/2010-ST	
7.	APH/NPP/PPH/PHD	OIO.No. 06/2010 – ST	
8.	MTSS Madurai	OIO.No. 11/2014- ST	

11.1 Submissions by Revenue: The Adjudicating officer has stated that RPP a sub-contract is liable to pay service tax, as per Ministry's letter F. No. 323/16/2010 TRU dt 24.05.2010. Since RPP is a subcontractor for CPWD in executing the project they are liable to pay service tax. NTECL is a public sector company and not a Government organization they do not enjoy any specific exemption and therefore service tax was demanded after allowing 67% rebate. The Adjudicating officer stated that as a subcontractor the appellant constructed 1000 Houses in Northern Sri Lanka and received payment in Indian Rupee. In the absence of specific exemption notification and the clustered houses were constructed with simple compound, the services rendered falls under residential complex services. The judgment of the Apex Court rendered in the case of **Larsen and Toubro** [2015 (39) STR 913 (SC)] holding that there cannot be a levy of service tax on Works contract was with reference to the period prior to 1.6/2007. The same rationale cannot be applied to assessments after 1/6/2007. In a similar matter concerning **Shri S.K. Bansal vs. UOI** an appeal has been filed before the Hon'ble SC and the decision is awaited. The Notification No.1/2006 dated 1/3/2006, providing abatement from the gross amount charged for the said services continued till 20/6/2012 i.e. until the new scheme of taxation of service tax took effect. Without the notification being held to be illegal or ultra vires it has to be held that it remained effective after 1/6/2007 and up to 1/7/2012. The Order has not noticed/considered the Hon'ble Apex Court judgment rendered in the case of **Nagarjuna Construction Co. Ltd vs UOI** [(2013)1 SCC 731 affirming the judgment of the Hon'ble AP High Court. They have further made project wise submissions as under:

(i) **Project -NIT Trichy:** This project relates to construction of 24 staff quarters for Asst. Professors of National Institute of Technology, Trichy, by RPP as a sub-contractor to CPWD and are hence liable to pay Service tax. [See

Shree Gurukripa Construction Company and OM Sai Fabricators

(affirmed by SC)]. Besides, it is seen that S.No 12 (c) specifies a structure 'predominantly for use as an educational establishment', which is different from 'use by an educational establishment'.

(ii) **Project NTECL-A:** This project involved construction of sewage treatment plant and external electrification of Residential township at Vallur Thermal Power project of NTPC, a PSU which is run on commercial lines. Hence, the tax demand is in order.

(iii) **Project NTECL-B:** This project involved construction of residential houses and other usages like park in the Vallur township of NTECL. It is seen that RPP has received materials for construction thus the services are covered under CRCS. Exclusion from coverage in case of construction of complex for 'personal use' is, however, a factor in favour of the appellant.

(iv) **Project NTECL-C:** This pertains to houses for employees. It is seen that for the project, materials for construction were received. If so, the services are covered under CRCS not WCS. This aspect needs clarification from the appellant.

(v) **Project HPL:** This project relates to construction of 1000 houses in Northern Sri Lanka. Payment for the services were received in INR. RPP has acted as sub-contractor for Hindustan Pre-Fab Ltd. The period of dispute is 2011 to 2012 prior to the Negative List scheme. It has been claimed that the work was done as a Works Contract. RPP may be asked to produce evidence to substantiate this claim.

(vi) **Project -Tsunami Reconstruction:** The scope of work is reconstruction of vulnerable houses under Tsunami Reconstruction scheme. Demands have been confirmed for want of specific exemption to cover the activity. This is applicable to 3 appeals. RPP have claimed that the services were provided

under a WC and have been rendered to the Government but the period covered in some cases is prior to issue of Notification No.25/2012.

(vii) **Project -PPH:** The work done relates to construction of houses for Police Personnel as per contract with Police Housing Corporation Ltd. It is stated that the project was completed before October,2005 i.e. prior to the introduction of the levy on CRCS. But no proof was provided to substantiate this claim. Notwithstanding the same, Hon'ble Tribunal has decided in several cases that Service Tax is not chargeable on construction services provided to TNPHC Ltd.

(viii) **Project -MTSS:** This project involved construction of residential quarters at Kendriya Vidyalaya, Madurai. It was found that the work order was for 9 dwelling units and the amount indicated was Rs.91.30 Lakhs. However, RPP received a sum of Rs.2.84 Cr. for the work. It was accordingly presumed that the dwelling units would have been more than 12 units attracting CRCS. The argument that the matter could have been decided by visiting the site or based on available documents. Since RPP was claiming exemption it was their responsibility to explain the difference in the amounts. It is seen that S.No 12 (c) specifies as a structure 'predominantly for use as an educational establishment'. RPP has cited in support the Tribunal's Order in the case of **Ramalingam Constructions**, relating to the hostel attached to Karnataka Housing Board Institute. This decision has been appealed against to the Apex Court. However, the expression used, 'for use as an educational establishment' as different from 'use by an educational establishment' seems to suggest that the entry in question may not cover staff quarters. Exclusion from coverage in case of construction of complex for 'personal use' is, however, a factor in favour of the appellant.

11.2 RPP's Response: Period of Dispute is 2004 to 2009 & 01.04.2010 to 30.06.2015 i.e. prior to the introduction of the 'Negative List' and the Total

Service Tax Demand is Rs. Rs. 7,45,64,036/-. These activities carried out by M/s RPP fall within the scope of WCS defined in section 65(105)(zzzza) of the FA 1994. The statute intentionally integrated construction of a new residential complex, commercial or industrial construction service, et al., where there is a transfer of property in goods within the definition of Works Contract Service. RPP submits that both transfer of goods pursuant to a contract for the construction of a residential complex was made, therefore no service simpliciter was provided. Since the Department has in some cases (albeit inconsistently) extended abatement, establishing that there was a transfer of goods along with provision of service. Therefore, the demand under any other taxable service head is not sustainable. They have also relied upon Final Order No. 40920/2023 dated 13.10.2023, in the case of **M/s. GET Power Pvt. Ltd.** where the Tribunal had after considering the said decisions of Larsen & Tubro Ltd., Real Value Promoters and Jain Housing, held that service simpliciter only would be leviable to service tax under CICS/CCS/RCS service till the introduction of the negative list.

12. ERECTION AND COMMISSIONING

S.No	Name of the Project	Order in original	Period and duty amount involved
1.	AM Agniyar,- PWD	OIO.No.11/2014-ST OIO.No.14/2013 – ST	Period of dispute is from 2004 – 2009 and 01.04.2010 to 30.06.2015 i.e. prior to and after the introduction of 'Negative List' in Service Tax law, on 01.07.2012. Both periods. The Total Service Tax Demand is Rs. 3,51,75,678/-.
2.	KPM, Canadian Work	OIO.No.14/2013-ST OIO.No.11/2013-ST	
3.	PTPS- PALANI	OIO.No.14/2013-ST OIO.No. 11/2013 – ST	
4.	CPS Cuddalore	OIO.No.11/2014-ST OIO.No.14/2013-ST OIO.No.11/2013-ST	
5.	Contour Canal Sarvesh	OIO.No.11/2013-ST OIO.No.19/2015-ST	
6.	PTS- Pattukkottai	OIO.No.14/2013 – ST OIO.No.11/2013 – ST	
7.	KPM, Dindugal	OIO.No. 06/2010 – ST	
8.	TCC Canal Work	OIO.No. 11/2013 – ST OIO.No. 19/2015- ST	

9.	KTSS (Power Project Work)	OIO.No. 11/2013 – ST	
10.	TWAD Lakka	OIO.No. 11/2013	
11.	MRTS-SR	OIO.No. 06/2010	
12.	KTC	OIO.No. 06/2010	
13.	ATP	OIO.No. 06/2010	
14.	MTP	OIO.No. 06/2010 OIO.No. 11/2014	
15.	SPS	OIO.No. 11/2014	
16.	HCC	OIO.No. 06/2010	
17.	MGS-SUB,	OIO.No. 06/2010	
18.	L&T Bhiwadi	OIO.No. 06/2010	

12.1 Submissions by Revenue:

i) 19 projects fall in this category. In all these cases, the demands have been confirmed holding the services rendered to be under ECIS. RPP's contention is that the services provided fall in the category of WCS. Applying the ratio of the decision in the case of Real Value Promoters P. Ltd. setting aside the demands is sought.

ii) In respect of almost all cases, the adjudicating authority has observed that RPP has failed to produce proof that the service provided was covered under WCS. Hence, the services appear to have been classified under ECIS, being the predominant activity. RPP may be asked to produce a copy of the Contract to substantiate their claim.

iii) As regards 5 projects, namely, Agniyar sub-basin, Ambuliyar sub-basin, Kannadian Food Anicut, TWAD board, Cuddalore and Madurai covered in Appeal No.ST/40281/14, the work description comprises, rehabilitation of irrigation infrastructure, strengthening of flood channel and dam, which involve civil construction work, laying of pipes for delivery and drawl of water and erection of pumping stations, which consists of more than two services. Applying the provisions of section 65A, it has been held that the essential character is lent by ECIS.

(iv) As regards 4 projects, covered in Appeal No.ST/42195/14, the reasoning adopted by the AA is the same as at (iii) above.

(v) As regards 8 projects, covered in Appeal No.ST/40280/14, the reasoning adopted by the AA is the same as at (iii) above.

(vi) As regards 16 projects, covered in Appeal No.ST/163/11, the AA has relied upon the decision of the Larger Bench of the Tribunal in the case of BSBK Ltd. and held at Page 44 that the some of the projects involve 'plumbing, drain laying or other installations for transport of fluids' and they are rightly classifiable under ECIS. In respect of service rendered for doing structural steel work for industrial plant at Bhiwadi as a sub-contractor to L & T, the work, being related to structures is covered in the definition of ECIS under clause (i) of Section 65(39a). Further, it is seen that the client had supplied the materials. Since RPP has rendered the services only to L&T, RPP is required to pay the tax demanded. It may also be noted that the AA has accepted the claim of RPP wherever full justification was provided.

12.2 RPP's submissions: Period of dispute is from 2004 – 2009 and 01.04.2010 to 30.06.2015 i.e. prior to and after the 'Negative List' in Service Tax law, from 1.07.2012. The Total Service Tax Demand is Rs. 3,51,75,678/- . These activities carried out by M/s RPP fit within Works Contract Service as defined in section 65(105)(zzzza) of the FA 1994, as the statute has intentionally integrated erection and commissioning service, commercial or industrial construction service, construction of complex service, and turnkey projects (including EPC projects) into the definition of Works Contract Service. Further, M/s RPP are rendering services to the governmental authority who is performing functions enshrined under Article 243W of the Constitution of India read with the 12th schedule. Therefore, the same is exempt under Clause 14(d) of the Mega Exemption Notification No. 25/2012. In this regard reliance is placed on the latest decision of the Hon'ble Supreme Court in the case of **M/S Shapoorji Pallonji And Company**. With regard to construction of pipeline for drawing and delivery of water for the public works department it

is exempt from Service Tax in view of the decision in **Indian Hume Pipe Co. Ltd. Versus Commissioner of C. Ex., Trichy** 2008 (12) S.T.R. 363 (Tri. Chennai) as upheld by the Madras High Court in **Commissioner of C. Ex., Tiruchirappalli Versus Indian Hume Pipes Co. Ltd.** 2015 (40) S.T.R. 214 (Mad.). Further, the Appellant, M/s RPP submit that any Construction activity undertaken for canals is exempted by virtue of Notification No 41/2009- ST dated 23.10.2009. It is further submitted that there can be no question of non-production of documents, especially as stated in the revenue's contention with regard to evidentiary gap as the authorities have consistently in all the Notices, acknowledged the perusals of all the relevant Contracts, Work Orders details of payments with confirmation of copies of ledger accounts, based on which the said notices have been issued. Without prejudice to the above it is submitted that the Hon'ble Bombay High Court in the case of **D.P. JAIN AND COMPANY INFRASTRUCTURE PVT. LTD. Versus UNION OF INDIA 2016 (43) S.T.R. 507 (Bom.)** has held that the said service would if not under Commercial construction be covered only under Management maintenance and repair service. M/s RPP submits that the same having not been proposed in the notice or order, the entire demand of service tax is liable to be set aside.

13. COMMERCIAL CONSTRUCTION SERVICES

S.No	Name of the Project	Order in original	Submissions of RPP
1.	Construction of Indoor stadium, Pondicherry Govt. MAHE,	OIO.No.06/2010-ST OIO.No.11/2014 OIO.No.14/2013 OIO.No.11/2013	The Period of dispute is from FY 2004-2009 and 01-04-2010 to 30-06-2015. i.e. prior to and after the introduction of the 'Negative List' in Service Tax law, from 01.07.2012. The total demand raised under this particular head cumulatively for all the projects and appeals where this issue arises is ₹ 3, 10, 77, 895/-.
2.	DCW,	OIO.No.06/2010 OIO.No.14/2013 OIO.No.11/2013	
3.	SSP,	OIO.No.06/2010 OIO.No.14/2013 OIO.No.11/2013	
4.	CCA Chennai,	OIO.No.11/2014-ST OIO.No.14/2013 OIO.No.11/2013	
5.	BHEL Chennai,	OIO.No.11/2014	

		OIO.No.19/2015	
6.	SPH,	OIO.No. 11/2014 OIO.No. 14/2013 OIO.No. 19/2015	
7.	BHEL (R&C),	OIO.No. 14/2013	
8.	SIPCOT, Chennai, Siruseri,	OIO.No. 11/2013 OIO.No. 14/2013 OIO.No. 11/2013 OIO.No. 19/2015	
9.	SIPCOT, Perundurai,	OIO.No. 06/2010 OIO.No. 14/2013	
10.	SSE,	OIO.No. 14/2013 OIO.No. 11/2013	
11.	M P Garden,	OIO.No. 11/2013	
12.	PWD, Salem (Periyar University),	OIO.No. 11/2013	
13.	UMS,	OIO.No. 11/2014 OIO.No. 11/2013 OIO.No. 19/2015	
14.	URC,	OIO.No. 11/2013	
15.	Tec Educ Tuticorin (College building at Tuticorin),	OIO.No. 11/2013 OIO.No. 19/2015	
16.	KSR,	OIO.No. 06/2010	
17.	AMPA,	OIO.No. 06/2010	
18.	CHP,	OIO.No. 06/2010	
19.	Neyveli Bridge & Road,	OIO.No. 06/2010	
20.	VPR,	OIO.No. 06/2010	
21.	Thermax,	OIO.No. 11/2013	
22.	SPAC	OIO.No. 11/2013 OIO.No. 19/2015	

13.1 Submissions by Revenue:

(i) **Indoor Stadium at Mahe (Puduchery):** The AA has held that the indoor stadium is given on rent to host public functions, organizing major events, entertainment programmes etc., thereby generating income. The SCN /OIO has classified the services under CICS.

(ii) **DCW:** This project is covered in 3 Appeals and spans the period from 2004 to 2009. The OIO has confirmed the tax liability on the ground that the sub-contractor was liable to S tax in terms of CBEC circular dated 23/8/2007. The SCN /OIO has classified the services under CICS.

(iii) **SSP**: The work undertaken is part of civil work for Salem Steel plant as sub-contractor to Mysore Constructions. The OIO has confirmed the tax liability on the ground that the sub-contractor was liable to S tax in terms of CBEC circular dated 23/8/2007. The SCN /OIO has classified the services under CICS.

(iv) **CCA, Chennai**: This project relates to construction of air-conditioned auditorium for Chennai Corporation. Submissions made in respect the same project as at Para 7 (v) above would apply to the demand under CICS.

(v) **BHEL, Chennai**: The scope of work involved piling work for switchyard and buildings at North Chennai for BHEL. RPP undertook the work as a sub-contractor. The SCN /OIO has classified the services under CICS.

(vi) **SPH**: The project involved construction of circulating water system and fire protection system at NLC and has been carried out as a sub-contractor.

(vii) **BHEL (R&C)**: The scope of work was construction of additional shop floor for BHEL at Trichy as a sub-contractor of Richardson & Cruddas.

(viii) **SIPCOT Siruseri**: The work involved providing concrete retaining walls for side of existing open drains at SIPCOT Siruseri. The said construction is meant for the use of industries at Siruseri, for which SIPCOT is recovering charges. SIPCOT is a corporate body and is not a statutory authority. The SCN /OIO has classified the services under CICS.

(ix) '**SIPCOT Perundurai**': The work involved was construction of a sump for water supply to the factories, providing external lighting arrangement, open well submersible pump set etc. The SCN /OIO has classified the services under CICS.

(x) **SSE**: RPP had executed the work as job-worker to Sri Saravana Engineering works. The work related to hydro-electric project cooling water system, drainage system and embedded parts including supporting structures for Bhavani Barrage.

(xi) **MP Garden:** The scope of work involved planting of trees, providing lighting, drinking water fountain, toilet facilities, cloak room, park layout facilities, plumbing/pipe laying works.

(xii) **Periyar University:** Work involved is construction of elevation and finishing arrangements for construction of Science Block at Periyar University, Salem. The building is primarily for purposes other than commerce or business.

(xiii) **UMS-** Work involved is construction of additional building for National Institute of Unani Medicine, Bangalore. This is a premier institute for teaching Unani Medicine set up by the Union Ministry for Health. For the earlier period the demand was dropped vide Order No.6/2010. An appeal has been filed against this decision.

(xiv) **URC:** This relates to small value construction work done to URC. Amount of S tax has been paid. Plea is for waiver of penalty, which may be considered.

(xv) **Anna University, Tuticorin:** Scope of work is construction of academic block for Anna University Engg. work, Tuticorin. The building is primarily for purposes other than commerce or business. For the earlier period the demand was dropped vide Order No.6/2010. Though an appeal has been filed against this decision, the point made above require consideration.

(xvi) **KSR:** This project involves construction of civil and structural work at Summer Indian Textile Mills Ltd. The work was appears to have begun before 1/6/2007 and in terms of rule 3(3) of 2007 Rules, and the decision in the case of Nagarjuna Construction Pvt. Ltd., their classification could not be changed to 'Works Contract' services. RPP stated that they did not pay the tax as they had not received the tax amount from the client. However, they have received payment for the services. Hence, demand merits confirmation.

(xvii) **AMPA:** The work is related to AMPA Centre at Chennai. RPP stated that they did not pay the tax as they had not received the tax amount from the

client. However, they have received payment for the services. Hence, demand merits confirmation. The work began prior to 2007 and got completed in 2009. In terms of rule 3(3) of 2007 Rules, and the decision in the case of Nagarjuna Construction Pvt. Ltd., their classification could not be changed to 'Works Contract' services.

(xviii) **CHP**: Work involved is construction of Weaving Park, that is construction of all buildings and loom sheds at Kumarapalayam. RPP stated that they did not pay the tax as they had not received the tax amount from the client. However, they have received payment for the services. Hence, demand merits confirmation. Besides, the work began prior to 2007 and got completed in 2009. In terms of rule 3(3) of 2007 Rules, and the decision in the case of Nagarjuna Construction Pvt. Ltd., their classification could not be changed to 'Works Contract' services.

(xix) **Neyveli Bridge and Road**: Scope of work includes Construction, structural work, electrical work for site office, Security House, drains, roads etc.at NLC, Neyveli. No separate cost is available for roads.

(xx) **VPR**: Scope pf work involves civil work for a common effluent plant for industries Tirupur. The factories using this facility pay purification charges. The work is for a commercial purpose. Besides, the work began prior to 2007 and got completed in 2008. In terms of rule 3(3) of 2007 Rules, and the decision in the case of Nagarjuna Construction Pvt. Ltd., their classification could not be changed to 'Works Contract' services.

(xxi) **Thermax**: Scope of work is earth work and foundation work at the factory of Thermax. Tax due has been paid with interest upon being pointed out. Plea is for waiver of penalty.

(xxii) **SPAC**: The work done is construction of roads within SPAC factory premises. RPP has paid the tax along with interest before issue of SCN. The plea is for waiver of penalty.

13.2 RPP's Submission: The Period of dispute is from FY 2004- 2009 and 01-04-2010 to 30-06-2015 i.e. before and after the introduction of the 'negative list'. The total demand raised under this particular head cumulatively for all the projects and appeals where this issue arises is ₹.3,10,77,895/-. The primary contention of the Appellant, M/s RPP is that the service is one of composite works contract and not commercial construction service. The department has also allowed abatement at 67% of the Gross Value for most projects. The language of Section 65(25b) was without any ambiguity and states that construction ipso facto is not leviable to service tax, but it is only so when used, or to be used, primarily for "commerce" or "industry" or work intended for "commerce" or "industry". On the definition of the term "commercial construction" and the stipulation that it must be "primarily" for commerce, RPP relies upon the decisions in **CST v. SM Sai Construction [2016 (42) S.T.R. 716 (Tri. - Mumbai)]**, **ECP Housing India Pvt Ltd v. CCE [2013 (30) S.T.R. 703 (Tri. - Mumbai)]**, and **Central India Engineering Co v. CCE [2016 (44) S.T.R. 657 (Tri. - Mumbai)]**. The legal issue that sub-contractor has to discharge liability even when the main contractor has discharged duty liability has been decided in favour of the Revenue by the Larger Bench in **CST v. Melange Developers Pvt Ltd [2020 (33) G.S.T.L. 116 (Tri. - LB)]**. However, the very fact that there was a difference in opinion and divergence in prevailing views even among the Tribunal warranting a decision by the Larger Bench, militates against the imposition of penalty. In the case of **THERMAX** and **SPAC**, the dispute centers around only the imposition of penalty as the tax has already been paid. In the case of MP Garden: they were awarded a works contract for renovation of a garden which included planting of various trees and plants after cleaning and ploughing, supplying and fitting of LED light fittings and drinking water

fountain, toilet rooms, dust bins, sign board, retirement room for garden staff, clock room at the entrance, operation and maintenance of irrigation network. Abatement at 67% was also allowed to the Appellant. The work is in the nature of composite works contract and abatement has also been provided for the same.

14. Discussion: The two common issues raised by RPP which run right through the different individual services rendered by them to their clients and alluded to in para 8, i.e. (i) Works Contract (ii) Civil Supplies (iii) Residential Construction (iv) Erection and Commissioning and Installation (v) Commercial Construction, are (i) the works carried out by RPP constitute composite works contracts, not pure service contracts and hence are taxable under Works Contract Service only. This is subject to the legal position that no service tax was leviable on Composite Works Contract prior to 01.06.2007 and after the said date duty can be demanded only if the Show Cause Notice proposed classification of the said service as Works Contract Service and not under any other classification head. (ii) services rendered are mostly to "governmental authority" and hence are exempted. These general and connected issues are examined below;

I. Service rendered was composite works contract and was not liable to tax under any other classification heading.

i) In **L&T Karnataka** (supra) the Apex Court held that the term "works contract" in Article 366(29-A)(b) takes within its fold all genre of works contract and is not restricted to one species of contract to provide for labour and services alone. That even if in a contract, besides the obligations of supply of goods and materials and performance of labour and services, some additional obligations are imposed, such contract does not cease to be works contract.

ii) Composite contracts falling under the taxable services of clause (105) of S.65 of the FA 1994, namely, 'Erection Commission and Installation Service' (sub-cl. zzd), 'Commercial or Industrial Construction Service' (sub-cl. zzq) and 'Construction or Complex Service' (sub-cl. zzzh) were clarified by the Board to be taxable under the stated service classifications, prior to the introduction of the Works Contract Service. 67 % abatement (exemption from value) was provided for such composite contracts vide **Notification 15/2004 Service Tax Dt. 10.09.2004 etc.** It was explained in **Board's letter F. No. B2/8/2004-TRU dtd 10/09/2004** that in the case of a composite contract, bifurcation of value of goods sold is often difficult hence the abatement. This would, however, be subject to the condition that no credit of input goods, capital goods and no benefit under notification no. 12/2003-ST of exemption towards cost of goods are availed.

iii) On the introduction of the 'Works Contract Service' under the Service Tax net on 01/06/2007, also came the **Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007**. It provided an option to pay service tax @ 2% of the gross amount charged for the works contract. However, the service provider opting for composition scheme for payment of service tax should exercise the option prior to payment of service tax. A question arose as to whether a service provider who has paid part of the payment of Service Tax prior to 01.06.07 on the payment received for services classified under (i) erection, commissioning or installation service, (ii) commercial or industrial construction service or (iii) construction of complex service, as the case may be, and paid service tax accordingly, can revise the classification to 'Works Contract Service' from the respective classification and pay service tax for the amount received on or after 01.06.07 under the Composition scheme? **Board's Circular No. 98/1/2008-ST, dated 4.1.2008** which clarified the position, held that classification of a taxable

service is determined based on the nature of service provided whereas liability to pay service tax is related to receipt of consideration. Vivisecting a single composite service and classifying the same under two different taxable services depending upon the time of receipt of the consideration is not legally sustainable. The implications was that assesses, who had paid service tax prior to 01.06.07 for the above mentioned taxable services, were not entitled to change the classification of the single composite service for the purpose of payment of service tax on or after 01.06.07 when the 'works contract service' was introduced and hence, were not entitled to avail of the 'Composition Scheme' whereby service tax was required to be paid only on 33% of the total value, subject to conditions.

iv) The Circular No. 98/1/2008-ST, dated 4.1.2008 found support from the Hon'ble Supreme Court's judgment in **Nagarjuna Constn. Co. Ltd.** (supra). The judgment upheld the validity of the Circular. It held that the impugned Circular has only explained the contents of Rule 3 (3) of the 2007 Rules so as to provide guidelines to the Revenue Officers. The said judgment was passed before the Apex Courts decision in **L&T Kerala** (supra).

v) In **L&T Kerala** the Apex Court had an occasion to examine whether imposition of service tax on composite works contract was valid under various sub-clauses of S. 65(105) as existed prior to 1-7-2012. The Apex Court held that a combined reading of S. 65(105), S. 66 and S. 67 would unequivocally show that what is referred to in Ch. V of FA 1994 is the taxability of the service contract simpliciter and not a composite works contract. 'Works Contract' is a separate species of contract distinct from contracts for services simpliciter. Hence pure construction services, where all materials etc required for the construction are supplied by the service recipient and the service provider is engaged only for provision of construction service (not composite involving supply of goods) which are not in the nature of works contract are liable to

service tax, prior to 1.6.2007. There was no charging section to tax 'works contract' in the FA 1994 i.e. until the amendment made with the insertion of subclause (zzzza) to clause 105 of Section 65 of the FA 1994 on 01.06.2007. The argument of Revenue that the exemption notification providing for exemption of certain percentage of the contract value gave enough sanctity to the levy of tax on Composite Contracts was found illogical and irrelevant. The Hon'ble Court held that, "whichever judgments which are in appeal before us and have referred to and dealt with such notifications will have to be disregarded. Since, the levy itself of service tax has been found to be non-existence, no question of any exemption would arise". Revenue has expressed a view that from 01.06.2007 the levy of service tax is valid for Composite Contract even under 'Erection Commission and Installation Service' (sub-cl. zzh), 'Commercial or Industrial Construction Service' (sub-cl. zzq) and 'Construction or Complex Service' (sub-cl. zzzh). Such a view does not factor in the judgment of the Hon'ble Supreme Court in **L&T Kerala** which held that those clauses never gave power to the Government to tax anything other than the service element. These taxable services being services simpliciter, the said judgment would hold good even after 01.06.2007 so far as the non-levy of service tax on composite works contract under these clauses is concerned. Composite Works Contracts classified under Contract Service [Section 65(105)(zzzza)] as on 01.06.2007 would however be leviable to service tax.

vi) The **Nagarjuna Constn. Co. Ltd.** judgment (supra) came up, along with others, for consideration by the Apex Court in **Total Environment Building Systems Pvt. Ltd. v. Deputy Commissioner of Commercial Taxes** [2022 (63) G.S.T.L. 257 (S.C.)], since Revenue prayed that the Apex Courts decision in **L&T Kerala** (supra) requires re-consideration by a Larger Bench. The Hon'ble Court held that if the prayer made on behalf of the Revenue to re-consider and/or review the judgment in the case of **L&T Kerala** was accepted,

in that case, it will affect so many other assesseees in whose favour the decisions have already been taken relying upon and/or following the decision of this Court in the said case and it may unsettle the law, which has been consistently followed since 2015 onwards. This being so Revenues plea that in a similar matter concerning **Shri S.K. Bansal vs. UOI** an appeal has been filed before the Hon'ble SC and the decision is awaited, need not detain us. It has been held by the Apex Court in **Dharampal Satyapal Ltd Vs Dy. Commr of C. Ex., Gauhati** [2015 (320) ELT 3 SC], wherein a plea was taken that the judgment in R.C. Tobacco (which is a two Judge Bench decision) is in conflict with the three Judge Bench judgment in J.K. Cotton. The Hon'ble Court held that when the Court was conscious of principle laid down in a particular case, and after citing it, explained it in a particular manner while deciding a case, it cannot be said that such judgment was contrary to cited case.

II. Service provided only to Government, a local authority or a governmental authority and hence not taxable.

i) The next major issue pertains to Service Tax **Mega Exemption Notification No. 25/2012 dated 20/06/2012** as amended by Notification dated 30/01/2014, for having provided service to Government, a local authority or a governmental authority. The impugned period covers both the pre and post amendment periods of the said notification. Since the amendment is held to be clarificatory in nature it would apply to both the periods.

ii) We find that the judgment of the Apex Court in **Shapoorji Paloonji and Company** (supra) cited by the appellant in their favour, centers around a common question: whether the educational institutions like IIT and NIT are covered by the definition of "governmental authority" under clause 2(s) in

Mega Service Tax Exemption Notification No. 25/2012, G.S.R 467(E) dated 20/06/2012 as amended by Notification dated 30/01/2014. However, the judgement is important as it imparts finality to the interpretation of amending notification dated 30.01.2014. Clause 2(s) of the parent Exemption Notification defining "governmental authority" is reproduced hereunder:

"(s) "governmental authority" means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution.

iii) The said clause underwent an amendment vide Notification dated 30/01/2014 ("Clarification Notification", hereafter). This amendment, re-defining "governmental authority", sought to broaden the scope of the exemption. The amended definition is set out hereinbelow;

"(s) "governmental authority" means an authority or a board or any other body;
 (i) set up by an Act of Parliament or a State Legislature; or
 (ii) established by Government, with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution."

iv) The Hon'ble Patna High Court in its interpretation of clause 2(s), observed that provisions contained in sub-clauses (i) and (ii) of clause 2(s) are independent disjunctive provisions and the expression "90% or more participation by way of equity or control to carry out any function entrusted to a municipality under Article 243W of the Constitution" is related to sub-clause (ii) alone because sub-clause (i) is followed by the punctuation ";" and then by the conjunction "or". According to the Court, any authority set up by an Act of Parliament or by an Act of the State Legislature as envisaged in sub-clause (i), therefore, cannot be made subject to the condition of "90% or more participation by way of equity or control" and it is only an authority or a board or any other body established by the Government as envisaged under sub-clause (ii) of clause 2(s) that has to meet the requirement of governmental

participation of 90% or more by way of equity or control. This judgment of the Court found favour with the Hon'ble Supreme Court who went on to state at para 27 as under;

“We are, therefore, of the opinion that the long line of clause 2(s) governs only sub-clause (ii) and not sub-clause (i) because of the simple reason that the introduction of semicolon after sub-clause (i), followed by the word "or", has established it as an independent category, thereby making it distinct from sub-clause (ii). If the author wanted both these parts to be read together, there is no plausible reason as to why it did not use the word "and" and without the punctuation semicolon. “

v) As stated by the Apex Court, an amendment by way of the Clarification Notification was, therefore, introduced which expanded the definition of "governmental authority" and widened the exemption base for service tax to be provided even to an authority or a board or any other body, set up by an Act of Parliament or a State Legislature without the condition of having been established with 90% or more participation by way of equity or control by Government to carry out any function entrusted to a municipality under Article 243W of the Constitution.

vi) Notification dated 30/01/2014 being clarificatory in nature would apply from the inception of clause 2 (S) of notification dated 20.06.2012. Hence to examine the exemption benefit it is necessary to ascertain the limb under which the recipient whether being an authority or a board or any other body, falls i.e. whether it is, (i) set up by an Act of Parliament or a State Legislature or (ii) established by Government, with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution, before proceeding in each individual case. A service recipient satisfying any one of the limbs of the Clause 2(s) of the Exemption Notification would be entitled for duty exemption benefit conferred by the notification subject to other conditions. In the case of limb (i), proof of being set up by an Act of Parliament or a State Legislature would suffice. In

case the assessee's case falls under limb (ii) of clause 2(s), they have to demonstrate that (i) they have been established by Government, with 90% or more participation by way of equity or control; (ii) they have been established to carry out any function entrusted to a municipality under article 243W of the Constitution. The benefit of the notification can be claimed for projects which commenced after 20/06/2012 and satisfy its conditions.

vii) Some of the relevant Clauses of the Mega Exemption Notification No. 25/2012 dated 20.06.2012 like 12(a), 13(a), 14(d) read as follows:

"12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of –

(a) A civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;"

.....

"13. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-

(a) a road, bridge, tunnel, or terminal for road transportation for use by general public;"

.....

"14 Services by way of construction, erection, commissioning, or installation of original works pertaining to,-

(d) post-harvest storage infrastructure for agricultural produce including a cold storage for such purposes;"

(emphasis added)

viii) As seen above the availability of the exemption is not limited to the term "governmental authority". Further conditions regarding the use of the service are attached to individual clauses of the exemption notification and need to be examined before extending the exemption even when the service is provided to Government, a local authority or a governmental authority. For example, in clause 12(a) the phrase 'predominantly for use other than for

commerce, industry, or any other business or profession' makes it clear that the beneficiary must ultimately have used the appellants service for a civil structure which is predominantly used other than for commerce, industry, or any other business or profession. If the use cannot be established by the appellant the exemption will not be eligible. However, the fact that the civil structure has secondary or incidental uses would not alter the nature of the contract so long as the primary use of the civil structure is not for commerce, industry, or any other business or profession. In clause 13(a) the phrase for use by general public is popularly understood as for the general use and equal enjoyment of the citizens who compose organized society. The appellant will have to establish that the object or aim which the project concerns itself was with the general interest of the community, as opposed to the particular interest of individuals or a restricted group of people.

ix) In the case of Construction of scientific storage godown for TNCSC discussed at para 10 above [Civil Supplies (Works Contract)], RPP is eligible for the benefit of Notification No. 25/2012 under entry 14 (d) of the said notification, in the light of the Hon'ble Madras High Court recognizing TNCSC to be an organ of the State. Their appeal hence succeeds.

x) RPP have agreed that subcontractors are liable to pay duty, even when the main contractor has discharged duty, as decided by the Larger Bench of this tribunal in **Melange Developers** (supra), they have, however, stated that demand under the extended period is not liable to be demanded since the legal issue was far from clear and was only settled after the judgement of the Larger Bench. We find that the Board Circular issued in 2002 had clarified that service tax is not payable by sub-contractor if service tax is discharged by the main contractor. However, by Circular No.96/6/2007-ST dated 23.08.2007 and as per Ministry's letter F. No. 323/16/2010 TRU dt 24.05.2010

a subcontractor is liable to pay service tax. A sub-contractor is essentially a service provider, therefore the sub-contractor is required to charge Service Tax to the main contractor. We agree that the legal issue was contentious and non-payment of tax cannot be held to be a result of suppression, et cetera as the legal issue got settled only after the Larger Bench Decision dated 23/05/2019 in the case of *Melange Developers (supra)*, hence extended time limit cannot be invoked for demand of duty, in case the demand is sought on the said term.

14.1 In fine the legal issue relating to the levy of Service Tax on composite services involving both goods and services being treated on par with pure construction services prior to the introduction of works contract service was largely accepted in line with the view of Revenue and found acceptance by the Hon'ble Apex Court in **Nagarjuna Constn. Co. Ltd.** (supra). But the subsequent decisions of the Hon'ble Apex Court in **L&T Kerala** (supra) and **Total Environment Building Systems** (supra) changed the complexion of taxability of composite service contracts. The argument of Revenue that the exemption notification providing for exemption of certain percentage of the contract value gave enough sanctity to the levy of service tax on composite services was found illogical and irrelevant, and it was held that since, the levy itself of service tax has been found to be non-existence, no question of any exemption would arise. This being so any demand confirmed for WCS under any other taxable service classification must fail till the introduction of the negative list regime with effect from 01/07/2012 as per Section 66D of the 1994 Act, inserted by the Finance Act, 2012. Similarly, the dispute on the provision of services to Government, a local authority or a governmental authority attained more clarity after the Supreme Court's judgment in **Shapoorji Paloondi and Company** (supra). The legal issue is obvious and

trite that a subject is not taxable by inference or by analogy, but only by the plain words of a statute / notifications applicable to the facts and circumstances of the individual case. These issues were not directly addressed in the SCN and impugned orders. Since these judgments were not available to the Original Authority, nor did the Appellant who has to prove his eligibility for exemption, as stated in **M/s Dilip Kumar and Company & Ors.** (supra) approach the issue in the said light, the matter merits being remanded to the Original Authority for a fresh look and decision there on for the above issues listed in the Order – in – Original and mentioned at from paras 9, 11,12 & 13 above. While doing so projects in which the department has extended the benefit of abatement from gross amount charged for the said services rendered by RPP in the SCN or OIO will be taken as acceptance by the department of the contracts involving both goods and services and being composite contracts. The relevant provisions of law at the relevant time for composite contracts and discussed above would accordingly be applicable.

15. SEZ

S.No	Name of the Project	Order in original	Period and duty amount involved
1.	Moserbaer, Chennai SEZ	OIO.No.11/2014-ST OIO.No.14/2013 OIO.No.11/2013	Period of Dispute is 01.04.2010 to 30.06.2015 i.e. prior to and after the introduction of the 'Negative List' in Service Tax law, from 10.07.2012. Both periods. Total Service Tax Demand is Rs. 90,73,575/-.
2.	Mangalore SEZ Pipeline Corridor and Compound	OIO.No.02/2017	

15.1 Revenue's submissions: The period of dispute is after 15/5/2009. The exemption claimed by the developer or units of SEZ as per Notification 9/2009-Service Tax, dated 03/03/2009 was amended by Notification No. 15/2009-ST dated 20.5.2009 changing the conditions for availing exemption under the main notification in certain situation. Revenue has observed that RPP has not provided proof that the services were rendered within the SEZ

premises. Considering the intangible nature of the services the notification envisages duty exemptions only for those services which are consumed within a SEZ, in other cases, the exemption is provided by way of a refund. Department has stated that they would not otherwise be in a position to verify the consumption of service since the consumer is a SEZ and not under its jurisdiction. The SEZ authority will also not be in a position to verify proper use of the service since consumption takes place outside SEZ. Therefore, such an exemption is difficult to administer and prone to misuse unless regulated. In other words, after 15/5/2009, only if the specified services were used for authorized operations inside SEZ premises, they could claim tax exemption; otherwise, they have to pay the tax upfront and the SEZ unit has to claim refund of the tax so paid. The decision in the case of Vision Pro relied upon is not applicable since it did not take into account the aforesaid amendment dated 15/5/2009. RPP has failed to demonstrate adherence to the amended notification and were hence rightly liable pay the entry demanded.

iv) Denial of exemption is in order in the case of Moser Baer Ltd.

v) As for Mangalore Pipeline corridor, submissions made by RPP are reasonable and can be accepted.

15.2 RPP's Submissions

Period of Dispute is 01.04.2010 to 30.06.2015 i.e. prior to 'Negative List' and the Total Service Tax Demand is Rs. 90,73,575/-. With regard to point (i) raised by the Revenue regarding "services rendered within and outside the SEZ" it is submitted that even if the services are rendered outside an SEZ, if the work related to SEZ, the exemption available for an SEZ unit is applicable, in view of the following decisions:-

- a. Vision Pro Event Management V. CCE & ST, Chennai reported in 2018 (7) TMI 334- Cestat Chennai

- b. GMR Aerospace Engineering Limited And Another Versus Union of India And Others reported in 2019 (31) G. S. T. L. 596 (A.P.)

Without prejudice to the above, it is submitted that the courts have consistently held that as long as all substantial conditions for allowing exemption is satisfied, exemption cannot be denied for submission or non-submission of Forms. With regard to Vision Pro case not taking into consideration the amendment dated 15/5/2009, they submitted that the amendment vide Notification No. 15/2009 ST dated 20.5.2009, was considered in the subsequent decisions of this Tribunal including the case of **M/S. Cheyyar SEZ Developers Pvt. Ltd. Vs Commissioner Of Central Excise & Service Tax, Pondicherry** – reported in 2019 (2) TMI 210 - Cestat Chennai and held in favour of the Assessee. The Appellant, M/s RPP submits that with regard to Moser Baer, the impugned Order has given abatement of 67% and hence composite in nature, categorising under works contract. M/s RPP in this regard place reliance on the latest decisions of this Tribunal, as discussed in para 4.4. supra. It is further submitted that in their case for the projects executed for the very same company, in other Appeals exemption has been granted and therefore it is prayed that the same might be followed in the present case as well.

15.3 Discussions: The dispute relates to the interpretation of amending notification 15/2009-Service Tax, dated 20/05/2009. Relevant portion of the same is reproduced below;

Notification No. 15/2009-Service Tax G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.9/2009-Service Tax, dated the 3rd March, 2009 which was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 146(E), dated the 3rd March, 2009, namely:- In the said notification,-

(A) in paragraph 1, in the proviso,— the sub-paragraph (c), the following shall be substituted, namely:- “(c) the exemption claimed by the developer or units of Special Economic Zone shall be provided by way of refund of service tax paid on the specified services used in relation to the authorised operations in the Special Economic Zone **except for services consumed wholly within the Special Economic Zone;**”

(B) in paragraph 2, for the words, “shall be subject to the following conditions”, the words, “**,except for services consumed wholly within the Special Economic Zone, shall be subject to the following conditions**” shall be substituted.
(emphasis added)

It is seen that the amending notification does not seek to deny benefit to the SEZ units or developers for service consumed inside the SEZ. It only seeks to give a different treatment for the manner of availing the exemption when the services are consumed outside the SEZ.

15.3.1 All laws of India are applicable in SEZs unless specifically exempted as per the SEZ Act. We find that the SEZ Act is a self-contained Act where exemptions on taxes, duties, cess, drawbacks and concessions are provided on imports and exports of the goods and on supply of services to the Developers and SEZ units. Sections 7, 26 and 50 are the three main provisions of the SEZ Act which allow the SEZ Units to claim the exemptions on duties, tax, cess and certain drawbacks and concessions. The levy of Service Tax under the FA 1994 is subject to the overriding effect under Section 51 of the SEZ Act. Section 26(1)(e) of the SEZ Act provides exemption from Service Tax under Chapter V of the FA 1994 on taxable services provided to a Developer or Unit to carry on the authorised operations in a Special Economic Zone. The core area covered by the Act thus relates to the SEZ enclave. It would be relevant to state that as per the Apex Court’s judgment in **Peekay Re-Rolling Mills Pvt. Ltd. Vs Assistant Commissioner** [2007 (219) E.L.T. 3 (S.C.)], exemption does not negate a levy of tax altogether. Despite an exemption, the liability to tax remains unaffected, only the subsequent requirement of payment of tax to fulfil the liability is done away with. Hence

when the liability to tax remains unaffected under FA 1994 for units situated in a SEZ, notwithstanding the overriding effect under Section 51 of the SEZ Act, the question is whether a notification issued under FA 1994 can regulate the manner in which an exemption is availed, especially when the services are utilized by the Developer or Unit outside the SEZ enclave, which is a penumbra area for the application of the SEZ Act and there is a likelihood of misuse of the exemption.

15.3.2 SEZ is a specifically delineated duty-free enclave, deemed to be a foreign territory for the purposes of trade operations and duties and tariffs. As per the Hon'ble Supreme Courts judgment in **Imagic Creative Pvt. Ltd vs Commissioner Of Commercial Taxes** [2008 (9) S.T.R. 337 (S.C.)] a deeming fiction should not be applied beyond a point which was not contemplated by the legislature. It stated as under;

26. We have noticed hereinbefore that a legal fiction is created by reason of the said provision. Such a legal fiction, as is well known, should be applied only to the extent for which it was enacted. It, although must be given its full effect but the same would not mean that it should be applied beyond a point which was not contemplated by the legislature or which would lead to an anomaly or absurdity.

15.3.3 In **RK Garg v. Union of India** [(1981) 4 SCC 675], a Constitution Bench observed that laws relating to economic activities must be viewed with greater latitude and deference when compared to laws relating to civil rights such as freedom of speech:

“8. Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said by no less a person than Holmes, J., that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved.” (emphasis added)

The Apex Court had also observed in **State of Madhya Pradesh v. Nandlal Jaiswal** [1987 (1) SCR 01] that “in complex economic matters every decision is necessarily empiric, and it is based on experimentation” and that the court, while considering the validity of executive action relating to economic matters grant a certain measure of freedom or ‘play in the joints’ to the executive.” Hence there is some force in the contention of Revenue that the discretion of Government to regulate the manner in which the tax exemption is availed cannot be held to be redundant. Regulation helps ensure that the exemption achieves its intended goal. It also ensures that no injury is caused to the trade in the domestic tariff area (DTA), due to inadvertence or by wrongful acts of the beneficiaries of the exemption in the SEZ enclave and is founded upon the fundamental principle of justice and good sense. The presumption in law is that Government makes policy for general good and does not seek to cause harm for one section of trade while extending benefit to another. In a competitive world the impugned exemption notification affects not only those who are eligible to avail its benefit directly i.e. the SEZ units but also units in the DTA who face competition from similar goods sold by SEZ in the DTA as permitted by policy. Any undue cost advantage to the SEZ units/ developers as a consequence of the unregulated availing of exemption could impact DTA units. Hence as recognized in the RK Garg judgement (supra), Government in order to address a complex policy issue and to provide a level playing field to DTA units vis-à-vis the SEZ units, should be able to regulate the manner of SEZ units availing duty exemption so as to avoid its misutilization and for better accountability. As stated by Revenue the Department, in the absence of notification conditions would not be able to verify the consumption of service since the consumer is a unit located inside the SEZ. The SEZ authorities will also not be able to verify the actual and proper availing of exemption by the said unit since consumption takes place

outside SEZ, leading to a gap in verification. Hence in the absence of proper procedural safeguards being put in place in the exemption notification, the policy is capable of being misused.

15.3.4 The judgment of a Coordinate Bench of this Tribunal in **M/s. Vision Pro Event Management** (supra) pertains to exemption under Notification No. 4/2004-S.T., dated 31-3-2004. The issue was whether the appellants in that case were eligible for the service tax exemption under the Notification No. 4/2004 for consumption of the services within such Special Economic Zone, from the whole of service tax leviable thereon under Section 66 of the said Act. In the present case Notification 9/2009-Service Tax, dated 03/03/2009 as amended by Notification No. 15/2009-ST dated 20.5.2009 does not seek to restrict the benefit of exemption only for consumption of the services within such SEZ. It states that the exemption claimed by the developer or units of Special Economic Zone shall be provided by way of refund of service tax paid on the specified services used in relation to the authorised operations in the Special Economic Zone, except for services consumed wholly within the Special Economic Zone. The facts and law are hence distinguished.

15.3.5 We however note that the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in **M/s GMR Aerospace Engineering Ltd Vs. Union of India** [Writ Petition No.13546 of 2018, Date:27-12-2018 / 2019 (31) GSTL 596 (AP)] examined the specific and larger question as to whether the availability of exemptions under Section 26 of the SEZ Act would depend not only upon the terms and conditions prescribed under Section 26 (2), but also upon the terms and conditions prescribed in the notifications issued under various enactments such as Customs Act, 1962, Customs Tariff Act, 1975, Central Excise Act, 1944, Central Excise Tariff Act, 1985, Finance Act, 1994 and Central Sales Tax

Act, 1956 etc., enlisted in clauses (a) to (g) of sub-section (1) of Section 26 of the Act. The Hon'ble High Court held that the benefit of exemptions granted under the notifications issued under Section 93 of the Finance Act, 1994, are available to any one and not necessarily confined to a unit in a special economic zone. Section 93 of the Finance Act, in that sense is a general power of exemption available in respect of all taxable services. But Section 26 (1) is a special power of exemption under a special enactment dealing with a unit in a special economic zone. Therefore, the notifications issued under Section 93 of the Finance Act, 1994 cannot be pressed into service for finding out whether a unit in a SEZ qualifies for exemption or not. The Hon'ble Supreme Court in **Union Of India Vs M/S GMR Aerospace Engineering Limited**, [SLP (Civil) Diary No(s).22140/2019, dated: 26 July, 2019] examined the SLP arising out of the Hon'ble high Courts final judgment and order dated 27-12-2018 in WP No. 13546/2018 and saw no reason to interfere with the impugned judgment and dismissed the SLP. It has been held by the Hon'ble Supreme Court in the case of **SS Nadar Vs Tamil Nadu** [(2002) 8 SCC 361] that simpliciter dismissal of the SLP in another case does not create a binding precedent and does not amount to pronouncement of law. However the issue having been decided in favour of the assessee, judicial discipline and propriety demands we follow the same, hence the appeal succeeds and the need for examining whether the case of Mose Bar is covered under WCS does not arise. In the case of Mangalore SEZ pipeline the objection was technical in nature. RPP has the requisite certificates and hence the demand in this regard also does not survive.

16. INTERIOR DESIGN SERVICE

S.No	Name of the Project	Order in original	Submissions of RPP
1.	CPCL	OIO.No. 11/2013	Period of Dispute is 2004-2009 i.e. prior to the 'Negative List' in Service Tax law, from 01.07.2012. The Total Service Tax Demand is Rs. 18,01,084/-.
2.	Puzhal	OIO.No. 19/2015	

16.1 Submissions by Revenue: With reference to the work undertaken at Chennai Petroleum Corpn. Ltd., the activity is landscape development work along the main road in the factory premises. This activity is covered under the expressions 'in any other manner' and 'beautification of spaces' which includes landscape design and development, as per the definition relating to interior decoration services. The aforesaid services are not one of those enumerated in the definition of WCS. With reference to similar work done at Puzhal, the submissions as above hold good. The tax demands are therefore in order.

16.2 Submission by RPP: Period of Dispute is 2004-2009 i.e. prior to the 'Negative List' regime and the Total Service Tax Demand is Rs. 18,01,084/-. The Assessee submits that the phrase "in any other manner" in the definition has to be read in the context of the words preceding it, i.e. advise, consulting, technical assistance. The phrase "any other manner" cannot have an unlimited import to include any activity remotely related to beautification of spaces or landscape development, applying the ejusdem generis principle of interpretation. Furthermore, since abatement has been given in OIO, reference is drawn to real value promoters as discussed in detail supra.

16.3 Discussion: While any person involved in providing service related to planning, design or beautification of space whether man made or otherwise including a landscape designer will be covered under section 65 (59) of the Finance Act 1994, the actual work carried out has not been brought out in the SCN or the impugned order in detail for us to examine and come to a

conclusion. The matter in both cases needs to be verified along with the contract / work order to understand the intention of parties, are also whether the project involve a Composite Contract. The matter hence merits to be remanded for a decision afresh based on facts and for issue of a reasoned order.

17. SITE FORMATION AND CLEARANCE

S.No	Name of the Project	Order in original	Submissions of RPP
1.	CHP Drainage	OIO.No. 11/2013	Period of Dispute is 01.10.2010 to 31.03.2012 i.e. prior to the introduction of the 'Negative List' in Service Tax law, from 01.07.2012. The Total Service Tax Demand is Rs.9,55,915/-
2.	SIMA	OIO.No. 19/2015	

17.1 Submissions by Revenue: In respect of Cauvery High-Tech Park, the activity carried out is stated to involve earth work, levelling and grading of areas, which is covered by the definition of site formation. As for the services rendered to SIMA, as per the OIO, the primary work was site grading and other works like barbed wire fencing, road culverts etc. were ancillary in nature. RPP has contested stating that the contract in SIMA is contrary to what is stated in the OIO. Hence, RPP may be asked produce a copy of the contract under an affidavit to prove their stand. The fact that the payment for the work done in 'CHP drainage' was received as an arbitral award is not relevant. All the same, it represents consideration for services rendered.

17.2 Submission by RPP: Period of Dispute is 01.10.2010 to 31.03.2012 and the Total Service Tax Demand is Rs.9,55,915/-. With regard to CHP Drainage, RPP submits that show cause notice did not specify the category under which the said contract will be taxed. This is evidenced from the impugned OIO where the commissioner has conceded that SCN does not specify the category of service. However, order has proceeded to evaluate the contract and classify it under Site Formation and clearance. Show cause notice

is the foundation for any adjudication proceedings and any order which is travelling beyond Show cause notice is bad in law. Thus, the demand for 'CHP drainage' may be dropped on this ground itself. With regard to SIMA the Appellant, M/s RPP submits that the Copy of the contract as requested is being submitted. Hence, the demand may be dropped. It is further submitted that amount received as part of arbitral award for 'CHP drainage' is not subject to service tax as it is not consideration for service and did not contain the service tax element.

17.3 Discussion: We find from the work order of project CPH drainage that the work relates to levelling and grading work and would be rightly classifiable under clause (97A) of section 65 of the Finance Act, 1994, as Site Formation and Clear Service. The SCN levels the allegation at para 06 under the heading 'site formation and clearance' etc and also refer to Section 65 (97A) in this regard. Hence, it cannot be said that the SCN was defective and incapacitated RPP from giving an effective reply. RPP has not challenged the classification seriously. Their contention is that they have not received any consideration for the same as the progress ended with an arbitral award which did not include the service tax element. A payment or award which is received, towards the execution of the contract involving express or implied contractual reciprocity, towards supply of specific goods or services constitutes a consideration for a supply and is taxable irrespective of by what name it is called. The argument that the arbitral award did not have a service tax component and is hence not liable to tax is not acceptable as the primary liability to pay tax is on the service provider. They may at times, not be able to recover the same from the service recipient for any reason whatsoever. However, the government is entitled to collect the tax from the service provider, irrespective of their inability to pass on the liability to the service recipient. The award should be considered as being cum-duty, as held by a

Coordinate Bench of this Tribunal in **Panther Detective Service versus commissioner of C. Ex., Kanpur** [2006-TMI-647-CESTAT], the principal has been laid out by the Hon'ble Supreme Court in **Commissioner of C. Ex. Vs Maruti Udyog Ltd.** [2002 (141) ELT 3 SC], and the service tax calculated backwards to be paid along with appropriate interest. Further as per Revenue the appellant had not made available a copy of the contract relating to SIMA to the original authority. A copy of the contract should have been made available to the Department as and when called for. As the basic facts and documents like that of the contract are within the special knowledge of the assessee the initial burden of rebuttal is on the assessee. Section 106 of the Indian Evidence Act., 1872 gives statutory recognition to this universally accepted rule of evidence. In fact adverse inference could be drawn against the assessee if he had suppressed documents and evidence, which were exclusively within his knowledge and keeping. However we feel that the appellant can be given one more opportunity to produce the documents required by the Department and the matter regarding the SIMA contract merits to be remanded for a decision afresh.

18. Appeals filed by the Department: The appeals filed by the department were considered by us in the discussions above and the decisions taken for the individual services include the said appeals. The decisions are summarised below.

19. Having considered and decided the appeals filed by M/s RPP and Revenue after carefully going through their replies and oral submissions service wise, we summarise the same as under;

A) The appeals against OIO's pertaining to 'Dredging service' discussed at para 7 above have been decided in favour of RPP on merits and their appeal succeed.

B) The appeals of the rival parties relating to (i) Works Contract (ii) Residential Construction (iii) Erection and Commissioning and Installation (iv) Commercial Construction and dealt with at paras 9, 11, 12 and 13 are all remanded for reconsideration and a fresh decision by the Original Authority on the terms as indicated at para 14.1 above. However, the dispute regarding (v) Civil Supplies relating to projects of TNCSC dealt with at para 10 above has been finally decided in RPP's favour (para 14 II ix). The appeal of RPP relating to TNCSC hence succeeds.

C) Appeals related to OIO's pertaining to the 'SEZ' issue which has been decided in favour of RPP at para 15 above. The appeal of RPP hence succeeds.

D) Appeals pertaining to the OIO's relating to 'Interior Design Service' at para 16 and 'Site Formation and Clearance' at para 17 above are remanded back to the Original Authority for a decision afresh.

With regard to the matters remanded to the Original Authority for de novo adjudication, the lower authority shall follow the principles of natural justice and afford a reasonable and time bound opportunity to the appellant to state their case both orally and in writing if they so wish, before issuing a speaking order in the matter. The appellant should also co-operate with the adjudicating authority in completing the process expeditiously and in any case within ninety days of receipt of this order. For those matters in which RPP has succeeded in their appeal, consequential relief, if any, is allowed as per law. The appeals filed by M/s. RPP Infra Projects Ltd. and by the Department are disposed of accordingly.

(Pronounced in open court on 30.05.2024)

(M. AJIT KUMAR)
Member (Technical)

(P. DINESHA)
Member (Judicial)