**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL**
**CHENNAI**

REGIONAL BENCH – COURT NO. III

## Service Tax Appeal No. 40832 of 2014

(Arising out of Order-in-Appeal No. 38/2014-ST dated 28.01.2014 passed by Commissioner of Central Excise (Appeals), No.1, Foulks Compound, Salem)

**M/s. P & C Constructions (P) Ltd.,** **...Appellant**
P & C Towers,
140, Perundurai Road,
Erode-638 011.

***Versus***

**Commissioner of GST and**
**Central Excise** **...Respondent**
No.1, Foulks Compound,
Anaimedu,
Salem-636 001.

**APPEARANCE:**
Shri Satish Chandrasekaran, Advocate for the appellant
Smt. O.M. Reena, Authorised Representative for the Respondent

**CORAM:**
**HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)**
**HON'BLE MR. M. AJIT KUMAR, MEMBER(TECHNICAL)**

**FINAL ORDER No. 40125/2025**

**DATE OF HEARING: 03.12.2024**
**DATE OF DECISION: 27.01.2025**

**Per: Mr. P. Dinesha**

The assessee who is the Appellant before us, is a provider of construction service whose records for the period 10.04.2004 to 31.11.2007 came to be verified by the Revenue, the shortcomings of verification appears to have been communicated to the appellant *vide* letter dated **21.02.2007** thereby indicating that the sub-work of electrification for the Civil Court Complex at Pondicherry executed by them was liable to service tax under "Erection, Commissioning or Installation Service" [**ECIS** for short]. The above facts have been captured at **para 02.01** of the Show Cause Notice dated 22.10.2012. Thereafter, through various letters/reminders dated 18.07.2011, 27.03.2012, 01.06.2012 and 11.07.2012 it appears that the Revenue requested the payment details through the Superintendent of Central Excise, Erode to which, vide letter dated 11.09.2012 the appellant appears to have furnished a copy of the Agreement wherein the scope of the work order was mentioned. It is only thereafter that the Show Cause Notice dated 22.10.2012 came to be issued proposing *inter alia* the demand of service tax for ECIS along with appropriate interest and penalties. The said Show Cause Notice is clearly issued by invoking the extended period of limitation. From the record, it appears that the appellant by letter dated 15.05.2013 filed its reply to the above Show Cause Notice contending that it had carried out only the sub-work of electrification of the building through competitive tender, which is part and parcel of the main work of construction of the Civil Court building and hence, their work would also fall under the category of "Commercial or Industrial Construction Service" (CICS); the main contractor who has executed the construction activity would be liable for service tax but, however, *vide* Circular No. 80/10/2004 – ST dated 17.09.2004, the said activity stands exempted since the construction was generally government buildings or civil constructions used for residential or office purposes. In the said reply, the appellant has also contended that there was no reason for the department to invoke extended period of limitation since the first letter indicating their liability to tax was dated 21.02.2007 and the Show Cause Notice was issued about five years later; the mere allegation of non-reply, though factually incorrect, could not alone amounts to suppression or fraud with an intent to evade payment of tax.

2. The Adjudicating Authority though received the above reply filed by the notice, however, in the OIO No. 26/2013 ST-ADC, dated 29.07.2013 has confirmed the proposed demands. Strangely, in the said order the Additional Commissioner has not whispered anything about

the earlier letter of the Superintendent dated 21.02.2007 anywhere in the OIO thereby ignoring material particulars on record, but also the plea of the appellant insofar as merits as well as its defense against invoking of the extended period of limitation are concerned. Naturally, aggrieved by the demands in the above OIO, the appellant appears to have preferred first appeal before the Commissioner (Appeals) and, the First Appellate Authority *vide* OIA No. 38/2014-ST, dated 28.01.2014 also having upheld the demands thereby rejecting their appeal, the present appeal has been filed before us.

3. Heard Shri Satish Chandrasekaran, Ld. Advocate for the appellant and Smt. O.M. Reena, Ld. Additional Commissioner for the respondent; we have carefully perused the impugned order as well as OIO along with the Show Cause Notice and we have also gone through the decision/order of Co-ordinate Delhi bench of the Tribunal in the case of **International Metro Civil Contractors Vs Commissioner of Service Tax, Delhi –** 2019 (20) G.S.T.L. 66 (Tri.-Del.), relied upon by the appellant during hearing. After hearing both sides, we find that the following issues are to be decided by us:

"(i) whether the demand against the appellant for an alleged service of Erection, Commissioning and Installation is justified; and

(ii) whether the Revenue has satisfied the tests for invoking the extended period of limitation"?

4. From the records as well as the pleadings of both the parties, we do not find any dispute insofar as the above facts are concerned. The appellant is also not disputing the execution of electrification work, though it contends that it was only a sub work. Similarly, we do not find any dispute as to the first date of communication of the service tax liability, which is 21.02.2007. Though the appellant contends that it had made submissions verbally/orally in response to the above letter, however, we do not propose to accept the same for want of any supporting evidence. But in any case, the fact remains that the above intimation was followed by reminders of various dates and hence, there is no dispute as to the starting point, which is 21.02.2007. The Show Cause Notice issued on 22.10.2012 is undoubtedly beyond the normal period, rather extending the larger period of limitation and hence, it was incumbent on the Revenue to prove that the appellant had suppressed facts with an intent to evade payment of tax. From a reading of

SCN, the allegation against the appellant is that there was no voluntary compliance on its part despite several reminders and that the non-payment of service tax would have gone un-noticed but for the detection at the time of conducting audit by the departmental officers. This observation of the taxability in any case ought to have been considered in the light of Circular No. 80/10/2004 – ST [*Supra*]. We are afraid, the above allegations *ipso facto* would not suffice the invoking of larger period of limitation and nor would the same in anyway amounts to suppression or fraud or even misstatement and hence, we are of the view that the demand of service tax by invoking the extended period of limitation itself stands disproved. The consequent demand would therefore not survive.

5. Hence, we set aside the demand and the impugned order on limitation alone. The Appeal stands allowed with consequential benefits if any, as per law.

(Order pronounced in Open Court on 27.01.2025)

sd/-
**(M. AJIT KUMAR)**
MEMBER (TECHNICAL)

sd/-
**(P. DINESHA)**
MEMBER (JUDICIAL)

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