

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH – COURT NO. 4

Service Tax Appeal No. 54782 of 2023

(Arising out of Order-in-Appeal No. 18-19/ST/DLH/2022 dated 31.10.2022 passed by the Commissioner (Appeals-I), Central Tax, GST & Central Excise, New Delhi)

M/s Techno-Grid Contracts

Appellant

Present Address: C/1/325 C, Palam Vihar,
Gurgaon, Haryana-122017

Old Address: H-149, Old Gupta Colony
Guru Tej Bahadur Nagar,
New Delhi-110009.

Versus

Commissioner (Appeals-I)

Respondent

Central Tax, GST & Central Excise, Delhi
Room No. 134, C.R. Building, I.P. Estate,
New Delhi-110109.

And

Service Tax Appeal No. 54812 of 2023

(Arising out of Order-in-Appeal No. 18-19/ST/DLH/2022 dated 31.10.2022 passed by the Commissioner (Appeals-I), Central Tax, GST & Central Excise, New Delhi)

M/s Techno-Grid Contracts

Appellant

Present Address: C/1/325 C, Palam Vihar,
Gurgaon, Haryana-122017

Old Address: H-149, Old Gupta Colony
Guru Tej Bahadur Nagar,
New Delhi-110009.

Versus

Commissioner (Appeals-I)

Respondent

Central Tax, GST & Central Excise, Delhi
Room No. 134, C.R. Building, I.P. Estate,
New Delhi-110109.

Appearance:

Present for the Appellant: Shri Devesh Tripathi, Shri Mohd. Faraz Anees,
Shri Shivender Sharma & Shri Shubham Geol, Advocates and Shri P.
Pathak, Consultant

Present for the Respondent: Shri S.K. Meena, Authorized Representative

CORAM:

Hon'ble Dr. Rachna Gupta, Member (Judicial)

Hon'ble Ms. Hemambika R. Priya, Member (Technical)

Date of Hearing : 09/04/2025
Date of Decision : 05/08/2025

Final Order Nos. 51127-51128/2025

Dr. Rachna Gupta:

M/s Techno-Grid Contracts, the appellants, are registered with service Tax department from 04.09.2006 for providing 'Commercial or Industrial Construction Service' taxable under section 65(105)(zzq) of the Finance Act 1994.

2. An investigation against the appellant was initiated by the Anti Evasion branch for verification of proper discharge of service tax vide letter dated 26.10.2012. Pursuant thereto the appellant vide letter dated 13.02.2013, submitted copy of ST-2 registration certificate, copy of ST-3 returns for the period 2008-09 to 2010-11, copy of Balance sheet for the period 2007-08 to 2011-12, copy of contract, copy of ITR for 2007-08 to 2011-12. On perusal of those documents, it was observed that the appellant had filed the ST-3 returns under "Construction of Residential Complex Service" despite being registered for providing "Construction service other than residential complex, including commercial/industrial buildings or civil structures".

2.1 Further investigation revealed that during the period 2007-08 to 2011-12 & 2012-13 appellant had entered into contracts with:

- (i) M/s Parsvnath developers for being awarded work for Storm Water Drain Work for Project Parsvnath City, Daruhera and also in Panipat and Rohtak ;

- (ii) M/s AIPL Ambuja for being awarded work for construction of seven villas 250 sq. yard each at Dreamcity, Amritsar;
- (iii) M/s CHD Developers Pvt. Ltd. for whom appellant executed work of construction of sewer line, storm water drainage and water supply for CHD City at Sector 45, Karnal, Haryana.

2.2 Department formed the opinion that these works are the part of the projects being constructed by main contractor hence are chargeable to service tax. Appellant had received payments against providing taxable services which are appropriately classifiable under 'Commercial or industrial construction service' defined under Sec 65(105) (zzq).

2.3 Further as per contract with M/s Parsvnath Developers Limited, it was observed that the appellant had received free of cost materials like cement, pipe etc. but has not provided the details regarding the same. Under such circumstances the benefit of concessional notifications like Notification No. 01/2006-ST dated 01/03/2006, Notification No. 12/2003-ST dated 20.06.2003 and Works Contract (Composition scheme) appeared to the department, to be inadmissible to the appellant.

2.4 Department alleged that the appellant has suppressed the gross taxable income by filling improper ST-3 returns without including the value of free material and did not file ST-3 returns for 2011-12.

2.5 With these observations that two Show Cause Notices (SCN) were issued:

- i) SCN bearing No. 283/2013-14 dated 23.04.2013 for the period 2007-08 to 2011-12.
- ii) SCN bearing no. 33/2014-15 dated 28.04.2015.

2.6 The service tax liability for the period 2007-08 to 2011-12 & 2013-14 for an amount of Rs. 1,04,28,773/- and Rs. 40,93,688/- respectively has been proposed to be recovered along with proportionate interest and appropriate penalties. The proposals were initially confirmed vide Order-in -Original bearing No. 15-16/2021 dated 14.12.2021. Appeal against both the orders have been dismissed vide the common Order-in-Appeal bearing No.18-19/2022 dated 31.10.2022. Being aggrieved the appellant is before this Tribunal.

3. We have heard Shri Devesh Tripathi, Shri Mohd. Faraz Anees, Shri Shivender Sharma and Shri Shubham Goel, learned Advocates for the appellant and Shri P. Pathak Consultant and Shri S.K. Meena, Authorized representative for the department

4. It is submitted on behalf of the appellant that appellant has registration under 'Construction Service other than residential complex, including commercial/industrial building or civil structure'. However, appellant was under bona fide belief that since, the contracts pertained to services to be rendered to township and residential premises and not for Commercial or Industrial Premises, such infrastructural developmental services namely sewerage system, storm water drainage system, water supply did not attract levy of service tax. Hence registration for any other activity including the one in question was not taken. However, during the

period from 2008-09 to 2010-11 they had been regularly submitting their ST-3 returns.

4.1 It is submitted that perusal and examination of the impugned SCNs reveals that no basis what so ever has been discussed to support the contention/allegation that services were appropriately classifiable under 'Commercial or Industrial Construction service' (CICS) is defined under Section 65 (105) (zzq), Construction of Complex service (CCS) is defined under Section 65 (105) (zzzh) and Work Contract Service (WCS) is defined under Section 65 (105) (zzza). The SCNs do not specify/segregate quantum of service tax liability under each of service tax categories i.e. CICS, CCS and WCS. In respect of contract dated 17.06.2009 for construction seven villas at Dream City, Amritsar, it is submitted that services do not come within the ambit of definition of CCS (Residential Complex), the number of units being less than 12.

4.2 In the impugned order though reference is made regarding contract of M/s Ambuja Housing & Urban Infrastructure Ltd. specifically indicating that it was a composite contract and the appellant was required to pay VAT for material consumed, still the service is wrongly classified under CCS instead of Works Contract Service [WCS]. It is also submitted that detailed reply along with case laws was submitted but the appellate authority, in defiance to settled legal position, by simply going by contents of SCNs and without considering and dealing with the submissions and case laws, has confirmed the demand. In view of settled legal position that computation/determination of service tax liability without

specifying the service, demand is liable to be set aside. Reliance is placed on following case laws:

- (i) **2015 (40) STR 1034 (Tri-Del) - Shubham Electricals V/s Commissioner of C. Ex. & ST, Rohatak maintained by Hon'ble Delhi High Court 2016 (42) STR J312 (Del);**
- (ii) **2012 (25) STR 11 126 (Mad.) - Commissioner V/s Coramandel Fertilizers Ltd.;**
- (iii) **2018 (8) GSTL 440 (Tri-All) -Dharanbir Singh & Co V/s Commissioner of Customs, C. Ex. & ST, Noida;**
- (iv) **2011 (22) STR 571 (Tri-Bang) - United Telecoms Ltd. V/s Commissioner of Service Tax, Hyderabad.**

4.3 Finally it is submitted that the appellant had bonafide belief that activity and nature of service related to infrastructural development work, does not attract levy of service tax liability. The very fact has been admitted in the SCN itself. Also the appellant had regularly submitted ST-3 Returns during the period of dispute hence it gets established there was no intent to suppress the facts. Since all the relevant facts were in the knowledge of the Department, Balance Sheet being public document and in view of plethora of decisions, extended period is not invocable. With these submissions, the order under challenge is prayed to be set aside and the appeal is prayed to be allowed.

5. While rebutting the submissions made on behalf of the appellants Id. Departmental Representative, at the outset, has reiterated the discussions and findings given in the Order-in-Original and Order-in-Appeal. It is submitted that the Appellant has received Free of Cost Materials (FOC) from the service receiver, but they failed to produce segregated values/calculations as is the prerequisite for the beneficial provisions. There is an admission of

the appellant before the Commissioner (Appeals) that the reconciliation statement cannot be compiled from the figures given in the financial statements. In absence of specific value of goods involved, the calculation has been rightly done by the department taking the whole amount into consideration and considering the services as pure services.

5.1 Learned Authorized Representative also submitted that the Appellant had never disclosed the facts to the Department which came to the notice of the Department only at the time of investigation. The Appellant is working under self-assessment system. They are bound by service tax law to correctly assess their service tax liability and thereafter to file their ST-3 returns properly. Since the appellant neither assessed the correct amount of service tax nor has shown the actual amount in the relevant ST-3 returns, thus violated the provisions of section 70 of the Act. It is rightly held that the appellant has willfully suppressed the facts from the department with intention to evade the payment of service tax. Therefore, extended period and penalty under Section 78 is invokable.

6. Having heard both the parties and after perusing the record we observe and hold as follows:

The appellant has alleged the show cause notice to be a vague document. We observe that SCN does not specify the amount/segregate the quantum of alleged demand of service tax pertaining to each of the service categories i.e., CICS, CCS and WCS. The period of demand includes pre-negative list as well as

post negative list regime. For the disputed period pertaining to the pre-negative list regime, the department was under an obligation to propose the subject demand of service tax under the specific service category.

The show cause notice is the foundation on which the department has to build up its case. If the allegations in the show cause notice are not specific on the contrary, are vague and lack details that is sufficient to hold that the assessee was not given proper opportunity to meet the allegations indicated in the show cause notice. Such show cause notice is liable to be rejected.

We draw our support from the decision of Hon'ble Apex Court in the case **of M/s Brindavan Beverages Pvt. Ltd.** reported as **2007(213) ELT 487 Supreme Court.**

7. It is also observed that Commissioner (Appeals) has been silent regarding the contentions raised by the appellant for wrong classification. There is no denial, even in the show cause notice, that the appellant had received free construction material from one of its client i.e. M/s Parsvnath Developers Ltd. but, apparently, the value thereof is included in the taxable value for want of details regarding the same. The issue of inclusion of value of free material stands already decided by the Hon'ble Apex Court in **Bhayana Builders case** reported as **(2018) 3 SCC 782**. It was held that where service provider receives free of cost goods/material from the service recipient and no amount is charged for such goods/material, The value thereof cannot be included in the taxable value.

8. Reference is also made to the Circular issued by Central Board of Indirect Taxes and Customs (CBIC) which has clarified the following:

"It is further clarified that while calculating the value of the supply made by the component manufacturer, the value of moulds and dies provided by the original equipment manufacturers (OEM) to the component manufacturer on FOC basis shall not be added to the value of such supply because the cost of moulds/dies was not to be incurred by the component manufacturer and thus, does not merit inclusion in the value of supply in terms of Section 12(2)(b) of the CGST Act.

Under the erstwhile regime as well, the courts have dealt with the similar issue. The CESTAT, New Delhi has ruled that the value of free of cost diesel provided by the recipient should not be included in the value of service rendered (transport of mining service). The department had appealed against the decision before the Supreme Court and the appeal was dismissed.

Hence it is held that the value of free material supplied by M/s Parsvnath Developers is wrongly included and tax has wrongly been demanded on the said value.

9. With respect to the appellant's client namely CHD and Ambuja, the benefit of abatement has been denied. We do not find any reason for such denial in the order under challenge. The activity carried out by the appellant for all of its client is composite in nature. Admittedly the transaction involves transfer of goods along with supply of labour. The composite contract are known as works contract services w.e.f. 01.06.2007 The Hon'ble Apex Court in the case of **M/s Larsen Toubro Ltd.** reported as **2015 (39) STR 913** has held that the liability of service tax in case of work contract services does not arise prior 01.06.2007. Post 01.06.2007

the works contract services cannot be classified as any service simpliciter. It was held as:

"24. A close look at the Finance Act, 1994 would show that the five taxable services referred to in the charging Section 65(105) would refer only to service contracts simpliciter and not to composite works contracts. This is clear from the very language of Section 65(105) which defines taxable service as any service provided. All the services referred to in the said sub-clauses are service contracts simpliciter without any other element in them, such as for example, a service contract which is a commissioning and installation, or erection, commissioning and installation contract."

10. Further, under Section 67 of the Finance Act, 1994, the value of a taxable service is the gross amount charged by the service provider for such service rendered by him.

11. This would unmistakably show that what is referred to in the charging provision is the taxation of service contracts simpliciter and not composite works contracts, such as are described in the facts of the present cases. It is also noticed that no attempt to remove the non-service elements from the composite works contracts has been made by the department to deduct, from the gross value of the works contract, the value of property in goods transferred in the execution of said works contract.

12. In view of this specific observation and **L&T** decision and the admitted claim of the appellant that they are not providers of 'commercial or industrial construction service", it is held that appellant is wrong held liable to pay service tax on value of the construction contracts executed prior to 1st June, 2007.

13. Insofar as demand for subsequent period till 30th September, 2008 is concerned, it is seen that neither of the two show cause notices addressed levability of tax for rendering 'works contract service'. On the contrary, the submission of the appellant that they had been providing 'works contract service' had been rejected by the Appellate authority. Therefore, even as the services rendered by them are taxable for the period from 1st June, 2007 to 30th September, 2008 but the narrow confines of the show cause notices do not permit confirmation of demand of tax on any service other than 'commercial or industrial construction service'. The SCNs are already held to be rejected. It is already established in the aforesaid judgment of the Hon'ble Supreme Court in **L&T** case (supra) that the entry under Section 65(105)(zzd) is liable to be invoked only for construction simpliciter. Therefore, there is no scope for vivisection to isolate the service component of the contract."

14. This Tribunal also in the case of **M/s. Jambeshwar Construction Co Vs. Commissioner of Central Excise and Service Tax-Jaipur-II- 2019 (3) TMI 39 CESTAT New Delhi**, the Hon'ble CESTAT has held as under:

"8. The perusal of the Show Cause Notice indicates that the demand for the service tax has been raised under the category of Construction of Residential Complex Services. In view of the Apex Court decision in the case of Larsen and Tubro (supra) the liability for service tax, if at all, can be raised only under the category of WCS. Perusal of the decisions relied upon by the learned Consultant for the appellant leads us to the position that the demand raised under the Construction of Complex Services cannot be upheld in view of the Apex Court decision."

"6 As regards the period after 1.6.2007, since the demand was raised under 'commercial or industrial

construction service, whereas admittedly the service is correctly classifiable under work contract service, demand raised under wrong head of service cannot sustain."

15. In the case of **M/s. Choudhary Stone Crushing Co. Vs. Commissioner of Central Excise and Service Tax-Jaipur-II-2019 (3) TMI 38 CESTAT New Delhi**, the Hon'ble CESTAT has held as under:

"8. For period commencing on 1/06/2007, the composite services would be liable for classification under Works Contract Service only. But we note that Show Cause Notice has proposed the demand for service tax under the category of Commercial and Industrial Construction Service as well as Repair and Maintenance Service."

"5. Following the above decision, we are of the considered opinion that the demand of service tax under commercial or industrial construction service (residential complex) cannot sustain after the period 1.6.2007. The levy of service tax prior to 1.6.2007 cannot also sustain by application of the decision of the Hon'ble Supreme Court in the case of **Larsen & Toubro Ltd. 2015 (39) STR 913 (SC)**.

16. While dealing with the contention of appellant about extended period of limitation it is observed that the impugned SCN dated 23.04.2013, covering the period from April, 2007 to March, 2012, was served upon the Appellant 26.04.2013. However, as per the above-mentioned provision of the Finance Act, 1994, time limit for issuance of SCN was just 18 months from the relevant date which is 18 months from the due date/actual date of filing the return.

17. It is observed that appellant has duly got itself registered with Service Tax Department; Appellant has timely filed ST-3 Returns for the FY 2008-09 to 2010-11; Issue involved in the present case i.e., related to composite contracts and the same was interpretational in nature and bunches of disputes on this issue got settled only after the Landmark Judgment dated 20.08.2015

tendered by the Hon'ble Apex Court in the case of **Larsen & Toubro** Ltd. (supra).

18. It is a well-settled law that for invocation of extended period, the material facts are required to be suppressed or mis-stated with intention to evade payment of tax/duty. However, in the instant case, as per above observations, there appears no malafide intention nor any suppression of facts on the part of the Appellant that too to evade the payment of service tax. The appellant is already exonerated from the charges based whereupon the adjudicating authority below had confirmed the demand. Therefore, invocation of extended period of limitation in the present case does not sustain at all. In this regard, reliance can be placed upon judgment of Hon'ble CESTAT, Mumbai in the case of **Cosmic Dye Chemical Vs. CCE** reported in **1995 (75) ELT 721 (SC)**, wherein it has been held as under:

"For invoking extended period of limitation there should be an intent to evade duty. The mis-statement or suppression must be willful".

And also reliance can be placed in the case of **Anand Nishikawa Co. Ltd. Vs. CCE, Meerut** reported in **2005 (188) ELT 149 (SC)**, wherein it has been held as under:

"Suppression of facts can have only one meaning that the correct information was not disclosed deliberately to evade payment of duty, when facts were known to both the parties. The omission by one to do what he might have done not that he must have also would not render it suppression. It is settled that mere failure to declare does not amount to willful suppression. There must be some positive act from the side of the assessee to find willful suppression."

19. In the light of entire above discussion, we hereby set aside the order under challenge/Order-in-Appeal dated 31.10.2022.

Consequent thereto, the appeal stands allowed with all consequential benefits.

(Pronounced in open Court on 05.08.2025)

(Dr. Rachna Gupta)
Member (Judicial)

(Hemambika R. Priya)
Member (Technical)

RM