

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH REGIONAL BENCH AT HYDERABAD
BENCH - DB
COURT - I**

Appeal(s) Involved:

ST/30991/2016-DB

(Arising out of Order-in-Original No. HYD-EXCUS-002-COM-044-15-16 dated 28/01/2016 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad)

VENSA INFRASTRUCTURE LTD

Appellant(s)

Versus

**Commissioner of Service Tax,
Hyderabad**

Respondent(s)

Appearance:

Mr M.V.S. Sridhar Adv for the Appellant.

Mr Pawan Kumar, A.R. for the Respondent.

CORAM:

HON'BLE Mr. M.V.Ravindran, MEMBER (JUDICIAL)

HON'BLE Mr. P. Venkata Subba Rao, MEMBER (TECHNICAL)

Date of Hearing: 24/10/2018

Date of Decision: 21/12/2018

Final Order No. A/31588/ 2018

[Order per: M.V.Ravindran.]

This appeal is directed against order-in-original No. HYD-EXCUS-002-COM-044-15-16 dated 28.01.2016.

2. The relevant facts that arise for consideration are, the appellant herein were earlier known as M/s Ch. Marthanda Rao & Co, were engaged in execution of infrastructure projects and were holding service tax registration certificate. During the course of audit of the accounts, it was noticed that they were engaged in construction of biotechnology park to Andhra Pradesh Industrial Infrastructure Corporation Ltd (herein after referred to as APIICL), high rise buildings for Dakshin Infrastructures Pvt Ltd, construction of housing project for Andhra Pradesh State Housing Corporation Ltd (APSHCL) (Rajiv Gruh Kalpa) and for providing services of construction to M/s Aparna Infra Housing Pvt Ltd, M/s Software Engineers Employees Housing & Welfare Association and to Kothagudem Thermal Power Station (KTPS). All these projects were taken up by them during the period 2006-07 to 2010-11 and they discharged VAT accordingly under works contract.

3. A show-cause notice dated 09.04.2012 was issued to appellant alleging suppression of facts and demanding service tax liabilities under the category of "commercial or industrial construction services", "construction of complex services", "works contract services" and "transportation of goods by road services". Appellant contested the show-cause notice on merits and also on limitation, *inter alia* raising various points. The adjudicating authority after considering the submissions made by the appellant and after following due process of law held that the demands raised are correct and

accordingly confirmed the demands raised along with interest and imposed penalties. The appellant is before the Tribunal against the said order.

4. Learned counsel appearing on behalf of the appellant after taking us through the entire case records submits that they are arguing the appeal on merits as well as on limitation. He would submit that on merits, the total value considered by the show-cause notice for seeking tax under various categories is approximately Rs 74.45 crores and would bifurcate the demands as under:-

- i. Turn over prior to 01.06.2007 Rs 12.35 crores
 - ii. Turnover of the projects which were sub-contracted to M/s Sudhama Projects India Pvt Ltd Rs 49.16 crores
 - iii. Turn over of the projects executed for APIICL, KTPS, APSHCL, M/s Software Engineers Employees Housing & Welfare Association Rs 12.93 crores
 - iv. Turnover for transportation of the goods by road Rs 0.58 lakhs.
- After giving the above breakup, he draws our attention to the submissions made by them before the adjudicating authority as also before the Bench that the contracts executed by them are works contracts i.e. which includes supplies and services both together. As regards the turn-over for the period prior to 01.06.2007, it is his submission that the contracts being works contracts, the tax liability does not arise as per the decision of the Apex Court in the case of CCE & Customs Kerala Vs Larsen & Toubro Ltd [2015 39 STR 913 (SC)]. As regards the turn-over in respect of projects sub-contracted by them to M/s Sudhama Projects India Pvt Ltd., it is his submission that as per the contract entered into with M/s Sudhama Projects, they executed

two projects aparna housing and Dakshin Infrastructure. He would draw our attention to the contract clauses and submit that in both the sub-contracts, the service tax liability was on the sub-contractors and sub-contractors have discharged the service tax liability under works contract services by availing composition scheme. He draws our attention to the copies of the agreements and the declarations from sub-contractors to submits that they have discharged the tax liability on the entire contract which was given on back-to-back basis to M/s Sudhama Projects India Pvt Ltd. As regards the demand of service tax for the amount of Rs 12.93 crores, executed for APIICL, KTPS, APSHCL, and Software Engineer Employees Association, he submits that APIICL, APSHCL had awarded a tender to the appellants for construction of various houses under various projects, these contract were works contracts and are excluded from the service tax liability as these were not of commercial or industrial nature. He would draw our attention to the definition of works contract services under Section 65(105)(zzzza) of the Finance Act 1994 and submit that clause-B of sub-clause (ii) of works contract indicate that if there is construction of a new building or a part thereof, it becomes taxable if the same is primarily for the purposes of commerce or industry. He would submit that the housing projects which were undertaken by them were not for commerce or industry, and takes us through various hand-outs in respect of share holding patterns of APIICL and APSHCL to submit that these corporations are State Govt Corporations and are not for private companies. As regards the services rendered to KTPS, it is the submission that these services are rendered to a thermal power station which generates electricity and the services rendered during

the year 2007-08 and 2008-09 are exempted by 11C Notification No. 45/2010 dated 20th July 2010. He submits that this Notification is for transmissions and distribution of electricity, but transmission and distribution of electricity cannot be effected without generation and distribution of electricity, and hence the Notification which talks about any services rendered in relation to transmission and distribution of electricity gets exempted and services rendered by them to KTPS is exempted from payment of tax. It is his further submission that in respect of APSHCL and APIICL, the service tax liability on works contract, if they are not of commercial nature, is settled by the Larger Bench of the Tribunal in the case of Lanco Infratech Ltd Vs CC, CE & ST Hyderabad [2015 (38) STR 709 (Tri-LB)]. On limitation, it is his submission that as APIICL is fully owned by Govt of Andhra Pradesh, with the main objective of providing infrastructure facilities to industries throughout the State of Andhra Pradesh on behalf of Govt of Andhra Pradesh and they do not fall under the provisions of Service Tax. He would submit that APSHCL and APIICL were time and again stating the same, hence appellants were entertaining a bonafide belief that the services rendered to these two Govt Organisations would not fall under the ambit of service tax liability. As regards the service tax liability on the services rendered for Software Engineer Employees Housing and Welfare Association, it is his submission that the service tax liability would not arise as the dwelling units were used as residential premises; that the adjudicating authority has taken the total contract value of Rs 46.07 lakhs as taxable which is incorrect, as cost of materials needs to be revised, which according to CA's certificate is 70% of the value of Rs 46.07 lakhs. He would submit

that in the case of Software Engineers Employees Housing and Welfare Association, the service tax liability needs to be reworked out assuming that on merits the matter is against them. As regards the service tax liability on the transportation of goods by road, it is the submission that the activity shall not amount to GTA services as they had only transported the goods within the project site. As per the requirement of the activity; materials required for the projects were in a storage place within the site and transported from that place to the place of work for which they had engaged services of various transport and paid them the amount which has been indicated in the balance-sheet as freight charges. It is the submission that this would fall under GTA services. He would rely upon the decision of the Tribunal in the case of Noida Power Company Ltd Vs CCE Noida [2014(33)STR 383 (Tri-Del)] in respect of tax liability on the KTPS and in the case of Kedar Constructions Vs CCE Kolhapur [2015(37) STR 631 (Tri-Mum)] as also following case laws.

1. CCE Vs. Kerala State Electricity Board – (2006) 5 STT 73 (Ker. HC. DB.)
2. Jindal Steel VS. CCE – (2006) 4 STT 257 (CESTAT).
3. Vikram Cement Vs. CCE – (2007) 11 STT 97 (CESTAT).
4. Indian Petrochemicals Corporation Vs. CCE – (2007) 9 STT 242 (CESTAT Ahd. Bench).
5. DNS Contractor Vs. CCE, Delhi-I – 2015 (37) S.T.R. 848 (Tri. – Del).
6. CST Mumbai-1 Vs. Sai Services Station Ltd. 2014 (35) STR 625 (Tri.Mum).
7. JAC Air Services Pvt. Ltd. Vs. Commissioner of Service Tax, Delhi – 2013 (31) STR 155 (Tri.Del)
8. Navyug Alloys Pvt. Ltd. Vs. Commr. Of C. Ex. & Cus., Vadodara-II – 2009 (13) S.T.R. 421 (Tri-Ahmed)

9. MSPL Ltd. Vs Commissioner of Central Excise, Belgum – 2009 (13) S.T.R. 554 (Tri. – Bang.)
10. Government of India Vs. Polisetthy Somasundaram Pvt. Ltd. – 1999 (113) E.L.T. 378 (S.C.).
11. Premier Tyres Ltd. Vs. Collector of Central Excise, Cochin – 1987 (28) E.L.T. 58 (S.C.)
12. Ajay Hasia Vs. Khalid Mujib (AIR 1981) SC 487.
13. APIT Co. Ltd. Vs CST – (2010) 29 STT 262.
14. CCE Vs. Roshan Lal Ravi Decorators – (2008) 15 STT 143 (CESTAT) = 2008 (11) S.T.R. 244 (Tri.- Del)
15. Uniworth Textiles Ltd. Vs. Commissioner of Central Excise, Raipur – 2013 (288) E.L.T. 161 (SC)
16. Tamil Nadu Housing Board Vs. Collector of Central Excise, Madras – 1994 (74) E.L.T. 9 (SC).
17. Padmini Products Vs. Collector of C. Ex – 1989 (43) ELT 195 (S.C.)
18. Collector of Central Excise Vs. Chemphar Drugs & Liniments – 1989 (40) ELT 276 (S.C.)
19. M.P. Water & Power Management Institute Vs. Commissioner of Central Excise, Bhopal – (2009) 20 STT 79 (New Delhi – CESTAT)
20. Sanjay INDL. Corpn. Vs. Commissioner of Central Excise, Mumbai – 2015 (318) E.L.T. 15 (S.C.)
21. Ballset Entertainment P. Ltd. Vs. Commissioner of Service Tax, Delhi – 2018 (10) G.S.T.L. 372 (Tri. Del)
22. Hindustan Steels Ltd. Vs. State of Orissa – (1978) 2 ELT (J159) (SC)
23. Shiv Dutt Fateh Chand Vs. Union of India – (1983) 53 STC 289 (SC)
24. Safety Retreading Co. (P) Ltd. Vs. Commissioner of C. Ex., Salem 2017 (48) S.T.R. 97 (S.C.)

5. Learned AR on the other hand after giving a brief summary of the activities undertaken by the appellant takes us through the findings recorded by the adjudicating authority. He would reiterate the said findings and submit that there is no evidence produced as to the discharge of service tax liability by M/s Sudhama Projects India Pvt Ltd on back-to-back contracts

nor there is any evidence produced regarding the claim of the appellant that 70% of the total value of material cost is various works contracts executed. He would submit that the claim of the appellant's counsel that APSHCL and APIICL are Govt of Andhra Pradesh undertakings and that they were under bonafide belief that services rendered to these organisations are exempted, is not borne out of any evidences; he would submit that nothing prevented the appellants from seeking a clarification. It is his submission that the C.A's certificates etc. which are relied upon were not produced before the lower authorities.

6. In rejoinder, the learned counsel draws our attention to the adjudicating authority's order and submits that they had given detailed C.A's certificate as also various explanations which have been recorded in the submissions made by them; they submitted a certificate from the Chartered Accountant on these items and is recorded in the adjudicating authority's order and draws our attention to the same.

7. We have considered the submissions made by both sides and perused the records, The factual matrix which are undisputed are, appellants herein had entered into works contract with various companies as also APIICL, KTPS and others for executing the jobs undertaken by them. The contracts which were perused by the lower authorities indicated and as recorded in the order-in-original that these contracts were EPC contracts. The period involved in this case is from 2006-07 to 2010-11.

8. The entire case needs be decided based upon the periods involved.

9. For the service tax liability on the amounts received as consideration for executing works contract prior to 01.06.2007, the amount of turn over considered by the lower authorities in the order-in-original is Rs 12.35

crores. It is on record that the work executed on these contracts is works contract and on perusal of the same it is so, and if that be so, the law which is settled by the Apex Court in the case of Larsen and Toubro Ltd would cover the issue in favour of the appellant. Accordingly, we hold that service tax liability prior to 01.06.2007 on the turnover of Rs 12.35 crores is unsustainable and liable to be set aside and we do so.

10. As regards the service tax liability post 01.06.2007, it needs to be addressed individually as under:

- A. Service tax liability on the turnover of Rs 49.15 crores has been worked out by the Revenue Authorities holding that the appellant herein is liable to discharge service tax liability on the works contract executed on behalf of Dakshin Infrastructure Pvt Ltd and Aparna Infra-housing Pvt Ltd. The adjudicating authority in the impugned order has recorded that appellant has produced only self prepared work-sheet, before the audit team, had not produced any other evidence in support of the claim that M/s Sudhama Projects India Pvt Ltd had discharged the service tax liability on the entire works contract which has been awarded to them as sub-contractor. We find from the records that appellant had submitted the details of tax liability discharged by the said M/s Projects India Pvt Ltd. The relevant documents which were filed with the authorities are produced before the Bench. On perusal of the said documents, we find that the contract entered into by the appellant with M/s Sudhama Projects Pvt Ltd indicate clearly that the appellant had agreed to sub-contract the entire work to sub-contractor M/s Sudhama Projects India Pvt Ltd [which subsequently became Poulomi Infra Pvt Ltd]. The said sub-contract entered into by the appellant

with M/s Sudhama Projects in clause No 9 specifically indicates that sub-contractor is required to discharge sales tax and service tax on the completed works as applicable under the relevant Act. Subsequently, a certificate issued by M/s Sudhama Projects (now Poulomi) indicates that service tax liability on the entire contracted value has been discharged and enclosed the details of challan. The service tax liability on the contract executed by Sudhama Projects for the period post 01.06.2007 seems to have been discharged and the reference to challan No. and other payments are given in the statements annexed to the letter. It is to be noted that there is no allegation in the show-cause notice that appellant had marked up value of the contracts, which has been sub-contracted by them to M/s Sudhama Projects. In the absence of any such allegations, the certificate issued by M/s Sudhama Projects clearly indicates that they have paid the service tax liability under works contract under composition scheme for the projects executed by them for the appellant, in our view once the service tax liability due on the entire contract executed by sub-contractor is discharged, there is no reason for demand of any further service tax from the appellant. On this point itself, we hold that the service tax liability demanded from the appellant is liable to be set aside. Learned A.R points out that the certificate issued by M/s Sudhama Projects India Pvt Ltd indicates discharge of approximately Rs 1.77 crores as tax while demand from the appellant is Rs 5.71 crores. We find that this objection is also incorrect as M/s Sudhama Projects have clearly indicated in their certificate that they have discharged the service tax liability based upon composition scheme @ 2% or 4% of the contract value as the

case may be. The difference in our view, is due to the full tax demanded from the appellant and the tax discharged by M/s Sudhama Projects India Pvt Ltd under composition scheme. We do not find any reason to sustain such a demand raised against the appellant and hold that such demand is liable to be set aside and we do so.

B. As regards the turn-over of the projects executed for APIICL, KTPS APSHCL and Software Engineer Employees Housing Association, we find that it needs to be addressed independently.

B.1 As regards the projects executed by the appellant for APSHCL and APIICL for the period 2010-11, the argument of the appellant herein is that the APSHCL and APIICL are govt organisations and the projects executed by them are for non-commercial purposes. Learned counsel had taken us through the definition of works contract and submitted that they had constructed new building which is of non-commercial nature. We have to consider the definition of the works contract for the purpose:

“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, is a taxable service.**

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, (Section 65 (105) (zzzza)).”

It can be seen from the above reproduced definition of works contract that under Section 105(zzzza), works contracts are liable to tax if they are covered under clause (i) and (ii). In the case in hand, the contracts executed by the appellants with APSHCL and APIICL are works contract, an undisputed fact. The said contracts would definitely be covered under definition of works contract services under the Finance Act 1994 as it satisfied clause (i) of the said definition. We find that to tax such contracts, the services has to also get covered under (i) and (ii). We refer to clause (b) in (ii) which would indicate that when there is construction of new building or a civil structure or a part thereof, primarily for the purpose of commerce or industry, then only, the same gets covered under Section 65(105(zzzza) and liable to be taxed. In the case in hand, we find that there is no allegation or any finding indicating that the buildings constructed by appellant for APSHCL and APIICL were for the purposes of commerce or industry. We find that in the absence of any such finding, the decision of the Larger Bench of the Tribunal in the case of Lanco Infratech would cover the issue in favour of the appellant. In the said judgement, the larger bench went into details of the taxability or otherwise of works contracts prior to and post 01.06.2007, analysing all the provisions of the Finance Act, in paragraph 21 (b) (ii) held as under:

“Turnkey/EPC project contracts, enumerated in clause (e), Explanation (ii) in Section 65(105)(zzzza) of the Act is a descriptive and *ex abundant cautela* drafting methodology. In the light of the decision in *Alstom Projects India Ltd.*, fortified by the Special Bench decision (dated 19-3-2015) in *Larsen & Toubro Ltd.* reference, a turnkey/EPC contract is taxable prior to 1-6-2007 as well. On and since 1-6-2007, turnkey/EPC contracts must be classified on the

basis of the essential character of the service provided thereby, with the aid of classification guidelines set out in Section 65A(2) of the Act. Consequently, a turnkey/EPC contract must be classified under any of the clauses (a) to (d), Explanation (ii), Section 65(105)(zzzza). The bundled bouquet of services provided as turnkey/EPC contract, classifiable as Commercial or Industrial Construction Service (CICS) prior to 1-6-2007, would be classifiable under clause (b), Explanation (ii), Section 65(105)(zzzza) on and from 1-6-2007 and would not be exigible to Service Tax if the rendition of service thereby is primarily for non-commercial, non-industrial purpose, in view of the exclusionary clause in clause (b) of the definition of WCS.

This is the only possible and harmonious interpretation possible of the several clauses under Explanation (ii) of Section 65(105)(zzzza), a distinct taxable service defined with constituent elements thereof substantially drawn from elements of pre-existing taxable services like ECIS, CICS or COCS; and other services when bundled to amount to turnkey/EPC;”

(Emphasis supplied)

It can be seen from the above reproduced conclusion that from 01.06.2007, though works contracts are taxable, they would not be excisable if the services thereby is primarily for non-commercial, non-industrial purposes. In the case in hand, we have already recorded that there is no allegation nor there is any finding as to the commercial nature of the buildings or the civil structure, constructed by the appellant for APSHCL and APIICL. Thus, on this ground, the demands raised on the appellant needs to be set aside. As regards limitation, we find that appellant approached APIICL on the service tax issue and the letter written by APIICL indicates that appellants were informed that they being State Govt entity are not required to service tax liability. In our view appellant could have entertained a bonafide impression that once State Govt entity indicates/informs them that service tax liability is not dischargeable, they need not discharge any service tax liability. On limitation also, the demands fails for APIICL and APSHCL up to 2009-10.

B.2 As regards the service tax liability of the consideration received by the appellant for executing the projects given to them by KTPS, we find that such project was for laying foundation of the boiler of KTPS.

Appellant had claimed the benefit of Notification No. 45/2010 dated 20.07.2010 which has been issued under Section 11C of the Central Excise Act 1944 with retrospective effect. The said notification reads as under:

“Whereas, the Central Government is satisfied that a practice was generally prevalent regarding levy of service tax (including non-levy thereof), under section 66 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as ‘the Finance Act’), on all taxable services relating to transmission and distribution of electricity provided by a person (hereinafter called ‘the service provider’) to any other person (hereinafter called ‘the service receiver’), and that all such services were liable to service tax under the said Finance Act, which were not being levied according to the said practice during the period up to 26th day of February, 2010 for all taxable services relating to transmission of electricity, and the period up to 21st day of June, 2010 for all taxable services relating to distribution of electricity;

Now, therefore, in exercise of the powers conferred by section 11C of the Central Excise Act, 1944 (1 of 1944), read with section 83 of the said Finance Act, the Central Government hereby directs that the service tax payable on said taxable services relating to transmission and distribution of electricity provided by the service provider to the service receiver, which was not being levied in accordance with the said practice, shall not be required to be paid in respect of the said taxable services relating to transmission and distribution of electricity during the aforesaid period.”

It can be seen that the above Notification exempts service tax payable on taxable services relating to transmission and distribution of electricity provided by service provider to service receiver. The very same Notification was considered by the Bench of the Tribunal in the case of Kedar Constructions [2015 (37)STR 631] wherein the Bench was considering the activity of the appellant therein of construction of sub-station and also for maintenance of sub-station. The Bench was seized as to whether the service tax liability under commercial and industrial construction services would be exempted under Notification No. 45/2010 or otherwise and in Paragraph No 5 & 6, held as under:

“5. We notice that out of the total demand confirmed of ₹ 2,04,14,368/-, bulk of the demand of ₹ 1,90,47,124/- pertains to Commercial or Industrial Construction service rendered to Maharashtra State Electricity Transmission Co. Ltd., Maharashtra State Electricity Distribution Co. Ltd., Sunil Hi-Tech, Suraj Constructions, V.B. Bhike, etc. for transmission of electricity. Vide

Notification 45/2010-S.T., all taxable services rendered ‘in relation to’ transmission and distribution of electricity have been exempted from the purview of Service Tax. The expression ‘relating to’ is very wide in its amplitude and scope as held by the Hon’ble Apex Court in *Doypack Systems P. Ltd.* - 1988 (36) E.L.T. 201 (S.C.). Therefore, all taxable services rendered in relation to transmission/distribution of electricity would be eligible for the benefit of exemption under the said Notification for the period prior to 27-2-2010.

6. As regards the demand for the period w.e.f. 27-2-2010, the said exemption is available if the taxable services are rendered for transmission of electricity. As held by the Hon’ble Apex Court in the case cited supra the expression “for” means ‘for the purpose of’. As per the definition of transmission (given in the Electricity Act, 2003), it covers a very wide gamut of activities including sub-station and equipments. Therefore, the various activities undertaken by the appellant, though classifiable under Commercial or Industrial Construction prior to 1-6-2007 or under works contract service on or after 1-6-2007, would be eligible for the benefit of exemption as held by this Tribunal in the case of *Noida Power Co. Ltd., Pashchimanchal Vidyut Vitran Nigam, Purvanchal Vidyut Vitran Nigam and Shri Ganesh Enterprises* cited supra. Therefore, the confirmation of Service Tax demand in respect of the construction, maintenance or repair activities undertaken by the appellant so far as it relates to the transmission/distribution of electricity cannot be sustained in law. As regards the other demands which has been confirmed in respect of construction of transformer station for the sugar factory or GTA service etc. the appellant is not disputing the tax liability and therefore, in respect of the other activities of the appellant which are not related to either transmission”

(emphasis supplied)

It can be seen from the above reproduced ratio that the demand on the appellant for rendering services to KTPS, being rendered to generation of electricity which is must for transmission of electricity, is covered by the ratio and 11C Notification.

Further, in the case of *Noida Power Co. Ltd.*, the principal Bench was also called upon to analyse the very same Notification wherein the Bench held in paragraph No 5 as *under*:

“5. On true and fair analysis of the Exemption Notification dated 22-6-2010 and the immunity Notification dated 20-7-2010, the conclusion is compelling that all taxable services provided in relation to distribution of electrical energy are exempt from the liability to Service Tax. The expression “in relation to” is of wide import and indicates all activities having a direct and proximal nexus with distribution of electrical energy. Distribution of electricity energy cannot be effectively accomplished without installation of sub-stations, transmission towers and installation of meters to record electricity consumption for periodic billing and recovery of charges.”

On holistic reading of the ratio of the Tribunal, it is clear that any activity in relation to transmission and distribution of electric energy and any services provided in relation to such activity is exempt from service tax. It is nobody's case that KTPS is not producer of thermal electrical energy and electricity being an item that cannot be stored requires immediate transmission and distribution. In our view this activity of rendering service to KTPS would be covered by retrospective Notification No 45/2010 dated 20/07/2010. In view of this, we hold that service tax liability fastened upon the appellant for the services rendered to KTPS is also unsustainable and liable to be set aside and we do so.

B.3 As regards the service tax liability on the services rendered to Software Engineers Employees Housing and Welfare Association, wherein the turnover of 46.07 lakhs is involved we find that there is nothing on record to show that the said Software Engineers Employees Housing and Welfare Association was for non-commercial and non-industrial purposes and in our view, the turn-over needs to be taxed under works contract services. However, the service tax liability needs to be limited to only 30% of the value of the total consideration received as we find from the C.A's certificate that the materials used for executing such a contract could be of value of 70% of the contract amount. This view of ours is fortified by decision of Apex Court in the case of Safety Retreading Co. (P) Ltd Vs Commissioner of Central Excise Salem [2017(48)STR 97 (SC)]. Upholding the tax demand, but reducing it to 30% of the value of the contract, we hold that appellant has to discharge the service tax liability along with interest on this amount. We find that on this issue, penalty imposed is unwarranted and we set aside the same.

B.4. As regards the service tax liability on the question of transportation of goods by road, we find that the learned counsel has not made out any case. It is undisputed that an amount of Rs 57.84 lakhs was paid by the appellant to various persons indicating such payment is for transportation of materials. The argument of the learned counsel that the transportation of materials was within the site and hence not taxable is unacceptable in the absence of any evidence to show that it was so. On a specific query from the Bench, learned counsel submitted that they do not have the evidences right now but will be able to produce if the Bench directs. We find that at this juncture, there is no reason to adjourn the matter for producing evidence and we hold that in the absence of any evidence, the service tax liability of Rs 6,89,387/- on the amount paid for transportation of goods by road needs to be upheld along with interest and also the penalty imposed thereon.

11. In view of the foregoing finding and in the facts and circumstances of this case, we dispose of the appeals as indicated herein above.

(order pronounced in open court on 21/12/2018)

P. Venkata Subba Rao
MEMBER (TECHNICAL)

M.V.Ravindran
MEMBER (JUDICIAL)

Neela Reddy