

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Division Bench
Court - I

Appeal No.	Appellant	Respondent	Order-in-Appeal No.
ST/834/2009	CCCE & ST, Hyderabad - II	IVRCL Infrastructure Projects Ltd	OIA No: 38 & 39/2009 (H-II) S.Tax dated 20.07.2009 passed by CCCE & ST (Appeals-II), Hyderabad
ST/835/2009			

Appearance

Smt B.V. Siva Naga Kumari, Commissioner/AR for the Appellant.

Shri V. Sridhar & Shri G. Prahlad, Advocates for the Respondent.

Coram:

Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 11.09.2018

Date of Decision: 21.12.2018

FINAL ORDER No. A/31601-31602/2018

[Order per: M.V. Ravindran]

1. These two appeals are filed by the Revenue against the Orders-in-Appeal No. 38 & 39/2009 (H-II) S.Tax dated 20.07.2009.

2. Heard both sides and perused the records. On perusal of records, it transpires that the issue is regarding taxability of the amount received as consideration by the respondent herein, during the period 16.06.2005 to 31.03.2007 in respect of construction of various activities undertaken by the respondent at a site of M/s Reliance Industries Ltd (RIL). By a contract, the respondent herein entered into an agreement for construction of embankment for approach roads and peripheral cum reclamation bund. After detailed investigation, lower authorities were of the view that services rendered by the respondent to RIL as per the agreement dated 16.03.2005 they had rendered services of "site formation and clearance, excavation and earth moving and demolition services". Respondent contested the show cause notice on merits arguing that the said services would not get covered

under "site formation services" and are into rendering of services of construction of transport terminals and are eligible for Notification No. 17/2005-ST dated 07.06.2005. The adjudicating authority did not agree with the contentions so raised and confirmed the demands raised along with penalty. The first appellate authority, on an appeal by assessee, held that the assessee was correct in his contention that the activity undertaken by them would fall under the category of "construction of transport terminals" and is exempted by Notification No. 17/2005-ST.

3. Revenue authorities are aggrieved by such order. It is the submission of the learned departmental representative that the findings of the first appellate authority that, this is nothing but construction of transport terminals, is incorrect and the definition of transport terminal is different than what is being sought to be addressed by the first appellate authority; that the issue whether the transport terminal is covered or not for the tax is decided by the judgment of the Tribunal in the case of Afcons Infrastructure Ltd [2015 (37) STR 850].

4. Learned counsel, Mr. Prahlad, submits that both the lower authorities have relied upon the agreement entered by the appellant with RIL and he produces the copy of the said agreement. He submits that the said agreement is nothing but a works contract and specifically takes us to various clauses in the agreement. It is his submission that the contract/agreement is for supply and installation of reinforced cement concrete pipes as also for construction of embankment for approach roads for which materials were procured by the assessee. He submits that during the relevant period the respondent/assessee had paid VAT to the Government of Andhra Pradesh under the provisions of AP VAT considering the contract as a works contract. It is his submission that now the law is

settled inasmuch, the contract if it contains supply and service portion would be a works contract and prior to 01.06.2007 the same is not taxable under any head, as held by the Apex Court in the case of State of Kerala Vs Larsen & Toubro Ltd [2015 (39) STR 913 (SC)].

5. On careful consideration of the submission made and on perusal of the contract between respondent/assessee and RIL, we find that the said contract is for supply and installation of reinforced cement concrete and various other embankment work which includes supply of material. It is seen from agreement that Respondent has agreed to supply materials like pipes, concreting items like cement, coarse aggregates, fine aggregates, etc. The respondent/assessee and M/s RIL has considered this as a works contract and RIL has deducted an amount as TDS towards VAT on composition scheme as required under APVAT Act, 2005. The certificate produced by the respondent's counsel indicates so. In our view, since the contract entered by the respondent with RIL indicates it as works contract, the question of charging service tax on the amount received as and fall under site formation services would not arise as has been decided by an Apex Court in the case of Larsen & Toubro Ltd (supra).

6. In view of the foregoing, we hold that appeals filed by the revenue are devoid of merits.

(Pronounced in the Open Court on 21.12.2018)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)