

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

Division Bench
Court - I

APPEAL No. ST/559/2010

*(Arising out of **Order-in-Original** No. 54/2009-ST, dated 21.12.2009 passed by
CCCE&ST, Hyderabad)*

IVRCL INFRASTRUCTURES &
PROJECTS LIMITED

..

APPELLANT

Vs

CST, HYDERABAD ST

..

RESPONDENT

Appearance

Shri G. Natarajan, Advocate for the appellant

Shri A.V.L.N. Chary, Superintendent/AR for the Respondent.

Coram:

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

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

Date of Hearing: 05.02.2019

Date of Decision: 05.02.2019

FINAL ORDER No.A/30167/2019

[Order per: Mr. M.V. Ravindran)

1. This appeal is directed against Order-in-Original No. 54/2009-ST,
dated 21.12.2009.

2. Heard both sides and perused the records.

3. On perusal of records, it transpires that the appellant herein was awarded a contract by the Government of Rajasthan for “Execution of Clear Water Transmission Main from RICO Industrial Area to SEZ Boundary, Jaipur”. Appellant executed the contract during the period December 2007 to July 2008 and received consideration for the same from the Govt. of Rajasthan. Revenue authorities issued a show cause notice dated 01.06.2009 for the demand of service tax under the category of Works Contract Service on the ground that this is a transfer of property and the services rendered will be covered under the Works Contract Service. Appellant contested the show cause notice on the ground that the work executed by them is ultimately consumed by SEZ and hence the benefit of notification No. 4/2004 ST, dt. 31.0-3.2004 be extended to them; they also raised a point that the project which was executed by them was not of a commercial nature. Adjudicating authority, after following due process of law, did not agree with the contentions raised and confirmed the demands raised along with interest and imposed penalties. The Adjudicating authority has confirmed the demands under the category of Works Contract Services.

4. Ld. Counsel, at the outset, submits that the issue is covered by the judgment of the Larger Bench of the Tribunal in the case of Lanco Infratech Limited [2015(38)STR 709 (Tri.-LB)]. Subsequently, he draws the attention of the Bench to the work order, when the contract was executed by them, by Rajasthan Government and submits that the project is for transmission

of drinking/potable water to the SEZ area. He would submit that this is not accepted by the Adjudicating authority despite the fact that the issue is covered by the judgment of the Larger Bench of the Tribunal.

5. Ld. DR submits that the water which is transmitted by the execution of the project is for commercial purposes and SEZ is going to charge the amount from the users which are developed in that area. It is his further submission that the project which has been awarded to appellant is for implementing the pipeline only upto the boundary of the SEZ and not into the SEZ area and hence the benefit of notification No. 4/2004-ST is not applicable.

6. After considering the submissions made by both sides and perusal of the tender documents and the work orders issued by Public Health Engineering Department, Government of Rajasthan, we find that the said tender and work order specifically talks about the project for transmission of potable drinking water to be transferred upto the SEZ boundary. The said project specifically states that appellant has to comply with this work of transmission of clear transfer of water to the boundaries of SEZ.

7. Having noticed that this stated position is not disputed by both sides, we find that the issue seems to be clearly covered by the Larger Bench decision of the Tribunal in the case of Lanco Infratech Limited (supra). In

the said judgment, the Larger Bench framed the issues, as stated by Ld. Counsel, and the issue No. B at Para 7 is reproduced herein below:

“ Whether construction of canals for irrigation purposes and laying of pipelines including s part of lift irrigation systems undertaken for the Government/Government undertakings is liable to Service Tax under WCS as turnkey projects including engineering, procurement and construction or commissioning projects under clause (e) of Explanation (ii) in the definition of WCS or is excluded from the ambit of WCS since it is in respect of a “Dam” and thus stands excluded from WCS, as defined.”

8. After framing the said issue, the Larger Bench in para 21 has specifically stated as under:

“Issues (B) (C) and (D)

- (i) Construction of canals for irrigation or water supply, construction or laying of pipelines/conduits for lift irrigation conceived and integrated into a dam project, must be classified as works contract “in respect of dam” and is thus excluded from the scope of “Works Contract Service” defined in Section 65(105)(zzzza) of the Act, in view of the exclusionary clause in the provision.
- (ii) 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 Limited fortified by the Special Bench decision (dated 19.03.2015) in Larsen & Toubro Ltd. reference, a turnkey/EPC contract is taxable prior to 01.06.2007 as well. On and since 01.06.2008, 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 01.06.2007, would be classifiable under clause (b). Explanation (ii), Section 65(105)(zzzza) on and from 01.06.2007 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 turkey/EPC.

- (iii) Construction of canals/pipelines/conduits to support irrigation, water supply or for sewerage disposal, when provided to Government/Government undertakings would be for non-commercial, non-industrial purposes, even when executed under turnkey/ERPC contractual mode and would fall within the ambit of clause (b). Explanation (ii) of Section 65(105)(zzzza); and would consequently not be eligible to Service Tax, in view of the exclusion enacted in clause (b).”

9. It can be seen that the above reproduced ratio of the Larger Bench of the Tribunal squarely covers the issue in the case in hand. Though this point was not raised by the appellant before the adjudicating authority, since the issue is already covered by the Larger Bench decision, we hold that this being the question of law, can be applied in the present case.

10. Accordingly, on the facts and circumstances of the case, we hold that the impugned order is unsustainable and liable to be set aside and we do so.

11. Impugned order is set aside and the appeal stands allowed.

(Dictated and pronounced in open Court on 05.02.2019)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)