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

Division Bench – Court No. – I

Service Tax Appeal No. 26316 of 2013

(Arising out of Order-in-Original No. 9/2013 (ST) Commr dt.29.01.2013 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad-I)

M/s ECI Engineering & Construction Company Ltd ......**Appellant**
3rd Floor, Plot No.70, Anshu Colors,
Road No.1,Jubilee Hills, Hyderabad – 500 033

VERSUS

Commissioner of Central Tax Rangareddy - GST ......**Respondent**
Posnett Bhavan, Tilak Road, Ramkoti,
Hyderabad, Telangana – 500 001

Appearance
Shri Y. Sreenivasa Reddy, Advocate for the Appellant.
Shri A. Rangadham, AR for the Respondent.

Coram: **HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)**
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30452/2025

Date of Hearing: 01.07.2025
Date of Decision: 31.10.2025

[Order per: A.K. JYOTISHI]

M/s ECI Engineering & Construction Company Ltd (hereinafter referred to as Appellant) are in appeal against the OIO dt.29.01.2013, whereby, demand for the period April, 2006 to March, 2010 has been confirmed.

2. The brief facts of the case are that the appellants are work contractors engaged in construction of roads, dams, electrical projects, etc. Based on certain report received from CAG office, department recorded certain statements and alleged that they had provided ‘Commercial or Industrial Construction service’ (CICS) till March, 2007 and thereafter, ‘Works Contract Service’ (WCS).

3. Learned Advocate has mainly contested the confirmed demand on the following grounds:

A. Demand of service tax on work contracts executed prior to 01.06.2007 is not sustainable keeping in view the judgment of Hon'ble Supreme Court in the case of Larsen & Toubro Ltd [201 (39) STR 913 (SC)], as also, various judgments of this Bench as well as Coordinate Benches, as under:

   i. Swarnandhra IJMII Integrated Township Development Company Pvt Ltd Vs CCE, Hyderabad-IV [2022 (64) GSTL 556 (Tri-Hyd)]
   ii. Navayuga Engineering Co. Vs CCE, Visakhapatnam [2017 (51) STR 285 (Tri-Hyd)]
   iii. PES Engineers Pvt Ltd Vs CCE, Hyderabad [2017 (7) GSTL 57 (Tri-Hyd)]

B. WCS provided by them in relation to bridges and dam are outside the purview of service tax as per the definition of the term 'works contract' itself and hence, all the constructions in respect of dam in a hydroelectric projects and canals in power project are in relation to main activity of construction of canal/dam. He is relying on the following judgments:

   i. PES Engineers Pvt Ltd Vs CCE, Hyderabad (supra)
   ii. Continental Constructions Ltd Vs CCE, New Delhi [2018 (12) GSTL 109 (Tri-Del)]
   iii. MCM Services Pvt Ltd Vs CST, Delhi [2017 (52) STR 388 (Tri-Del)]

C. Appellants are eligible for benefit of Notification No.45/2010-ST as the said construction is for generation of electricity, which is further transmitted and such services in relation to transmission are exempted as held by this Tribunal in the case of Vensa Infrastructure Pvt Ltd Vs CST, Hyderabad [2019 (31) GSTL 460 (Tri-Hyd)].

D. Construction of Road is exempted from service tax even if it is a part of a composite contract, keeping in view the Circular No. B1/6/2005-TRU dt.27.07.2005. Reliance is placed on the following judgments:

i. CST, Ahmedabad Vs Shilpa Constructions Pvt Ltd [2010 (19) STR 830 (Tri-Ahmd)]
ii. IVRCL-Navayuga-Sew JV Vs CST, Hyderabad [2020 (34) GSTL 468 (Tri-Hyd)]
iii. Vashushilpi Projects & Consultants Pvt Ltd Vs CCE, Bhopal [2013 (31) STR 712 (Tri-Del)]

E. Supply of RMC cannot be brought under the category of service and it would only amount to sale. He has relied on the case of M/s GMK Concrete Mixing Pvt Ltd Vs CST, Delhi [2012 (25) STR 357 (Tri-Del)].

F. Appellant being sub-contractor, where the main contractor has given work on back-to-back basis and the main contractor being exempted from payment of service tax in relation to the work and, therefore, the sub-contractor will also remain exempted. He has relied on the decision of Larger Bench of the Tribunal in the case of Lanco Infratech Ltd Vs CCE & ST, Hyderabad [2015 (38) STR 709 (Tri-LB)].

G. Appellants are entitled for composition scheme even when they have not categorically opted for the same, as decided by the Coordinate Bench of the Tribunal in the case of Areva T&D India Ltd Vs CCE & ST, Chennai [2021 (10) TMI 187 – CESTAT Chennai] and in any case, appellants were paying service tax by claiming abatement under Notification No. 1/2006-ST dt.01.03.2006.

H. On the grounds of limitation also, since they were filing returns and paying service tax as per their understanding, the extended period cannot be invoked. He has relied on various judgments as under:

i. Uniworth Textiles Ltd Vs CCE, Raipur [2013 (288) ELT 161 (SC)]
ii. Continental Foundation JV Sholding, Naptha HP Vs CCE, Chandigarh-I [2007 (216) ELT 177 (SC)]
iii. Southern Power Distribution Co. of AP Ltd Vs CCT, Tirupati [2022 (9) TMI 625 – CESTAT Hyderabad]
iv. M/s IVRCL Assets & Holdings Ltd Vs CC, CE & ST, Hyderabad [2021 (2) TMI 790 – CESTAT Hyderabad]

4. Learned AR has reiterated the findings of the adjudicating authority.

5. Heard both sides and perused the records.

6. We find that the adjudicating authority has decided the SCN where he has held that service tax is payable even for the period prior to the introduction of WCS under the category of CICS as it involved transfer of property. He has also held that contract is composite contract and the essential characteristic of this contract is flowing from CICS/WCS and they are commercial in nature. It was also held that the exclusion of road is only a part of integrated work entrusted to assessee and therefore, cannot be identified as a separate entity. He also held that both contractor as well as sub-contractor are leviable to service tax separately and also upheld the invocation of extended period. We note that the entire SCN is based on audit report dt.12.10.2010 of Accountant General (C&RA) Audit, Andhra Pradesh and the appellant's statement dt.15.09.2011. We find that the SCN has, inter alia, noted certain factual matrix like appellants having entered into agreement with M/s Meenakshi Power Ltd for civil work for construction of Middle Kolab Small Hydroelectric Scheme (2 x 12.5 MW), which, inter alia, included the work relating to construction of power canal, intake structure, power house, outdoor switchyard, road works, etc. Similarly, they entered into agreement with M/s Hayen Hydel Power Co Pvt Ltd for civil work for Chamamathi Small Hydro Power Project in Assam, where work included construction of power canal, intake pool, power house, construction of office buildings, stores, staff and security buildings, etc. The appellants also entered into contract with M/s Bongaigaon Refinery & Petrochemicals Ltd (BRPL), Assam, where the work was construction of BT road from BRPL Staff Quarters to BRPL Refinery entrance at Dhaligaon, Assam, which was for exclusive use of M/s BRPL and it was part of DHDT project of the firm. Similarly, they have entered into certain contract with M/s BRPL for construction of pipeline and another contract with M/s Stewards & Lloyds Ltd for laying of RCC M30 at Raw Water Reservoir at BRPL Refinery.

7. It is observed that insofar as demand for the period prior to March, 2007 is concerned, since it is essentially in the nature of works contract where the material portion was also involved and therefore, in view of the judgment in the case of Larsen & Toubro Ltd (supra), no service tax is leviable for the period prior to 01.06.2007 irrespective of their classification proposed under CICS by the department. We find force in the judgments

cited in this regard and relying on the same, demand of Rs.91,72,146/- is set aside.

8. Insofar as the period post 01.06.2007, we have gone through various work orders executed between the appellant and the different clients like M/s Meenakshi Power Ltd, M/s Hayen Hydel Power Co Pvt Ltd, M/s Bongaigaon Refinery & Petrochemicals Ltd & M/s Stewards & Lloyds Ltd and we find that the main reason for denying the benefit of various exemptions was on the grounds that each component cannot be separately considered for exemption as they are part of a composite contract for execution of certain work. The appellants are mainly contesting that these are the works related to construction of canal and dam, which are otherwise exempted and similarly, even for construction of sub-station, since it is specifically covered in terms of Notification No. 45/2010, the same would also not be liable to service tax. We find that the SCN has not given details as to the exact nature of the activity being undertaken by the appellants and a generic description has been given about the entire scope of work covered by the agreement between the appellant and their clients. We, however, find that in respect of works executed for M/s Meenakshi Power Ltd, the adjudicating authority held that the contract was for civil work of construction of Middle Kolab Small Hydroelectric Scheme and therefore, it was essential for construction of civil structure. He has not examined the scope of work so as to decide whether they are eligible under specific exclusion from the definition of WCS or in terms of any other exemption. A contract may be for execution of work, which has specified scope of work for different activities and each of these activities, if they involve material portion also, would be covered within the scope of WCS and the definition of WCS itself excludes construction of dams, canals, roads, etc., from its purview. Therefore, if there is a verifiable component indicating that they were engaged in providing services in relation to construction of dam, canal, road, etc., then they would be eligible for the exclusion from the purview of the scope of WCS itself. The invocation of section 65A(2)(b) of the Finance Act, 1994, by the adjudicating authority is misplaced as the scope of work itself clearly defines different component of work and each of these works would have the services in the nature of WCS. We also find that the adjudicating authority has not extended the benefit by not accepting their submission that weirs was nothing but small dam, relying on the judgment in the case

of M/s Ramky Infrastructure Ltd and Others Vs CST, Hyderabad [2013 (29) STR 33 (Tri-Bang)], wherein, it was held that the term 'dam' has not been defined in the notification and therefore, the construction of dam cannot include construction of canals, channels, etc. We also find that the term 'dam', although not defined but is generally understood as a structre which is built across a stream, river or estuary to retain water for the purpose of human consumption, irrigation or industry or, inter alia, to increase available water stored for channelling hydroelectric power. The auxiliary work of dam may include spillway, control and discharge of surplus water, intake structure, tunnels, and pipelines and therefore, dam is a central structure in a multi-purpose scheme aimed at conservation of water resources and may have several auxiliary works. Therefore, if the dam is excluded from the purview of the service tax ordinarily, it should also exclude all the auxiliary works undertaken in connection with dam. This needs to be examined in the context of various claims made by the appellant after going through the contract, as also, actual work undertaken by them. In other words, if any of these structures were intended primarily either for storing water or take the water to the hydroelectric power project, it would be considered as a part of dam or canal itself. However, if it is a standalone activity not relatable to either any canal or any dam, then it would not be covered within the expression of the word 'dam'.

9. Insofar as construction of road for M/s BRPL, the adjudicating authority has rejected the submission of the appellant and held that the construction of road cannot be taken as independent component as this is very much part of the construction of complex. He relied on the judgment of CST, Ahmedabad Vs M/s Shilpa Constructions Pvt Ltd [2010 (19) STR 830 (Tri-Ahmd)], wherein, the issue was whether road being part of a composite contract gets excluded from the purview of CICS/WCS or otherwise and it was noted by the Tribunal that in view of Board Circular dt.27.07.2005 the admitted fact was that the contract was purely for construction of road and therefore, it was held that it will be eligible for exemption. In the present appeal, the contract is for construction of road between M/s BRPL staff quarters and BRPL refinery, however, it is not clear whether it is for exclusive use of BRPL employees or public at large. If the road is shown in the contract for construction of any complex, then it would be considered as very much part of the construction as a part of complex, itself as an

integrated development of the complex and therefore, not eligible for exclusion. This aspect can be examined only after going through the detailed contract, maps, etc.

10. Insofar as the issue of sub-contractor or contractor being liable to service tax or otherwise being exempted, we find that there are no details available whether they were paying service tax or were otherwise exempted. Moreover, even if they were exempted from service tax or were paying service tax it was in their independent capacity, whereas, sub-contractor was providing service to the contractor and therefore, we do not find any infirmity in holding that a sub-contractor is required to discharge his service tax liability, if any, independently of the fact whether the principle contractor has also discharged the service tax on the same activity, relying on the judgment of CST, New Delhi Vs Melange Developers Private Limited [2020 (33) G.S.T.L. 116 (Tri. - LB)].

11. Insofar as the scope of work and supply of Ready Mix Concrete (RMC), we find that it is not a simple case of delivering RMC mix at a designated place but it also required to be laid and levelled by them using their own RMC. Therefore, it cannot be considered as a case of simple sale merely because they have discharged VAT on the same. It is a case of providing service i.e., WCS of laying cement flooring.

12. Insofar as the issue of limitation is concerned, we find that while the demand is clearly on the basis of C&AG report and also the statement given by the appellants, which only provided certain details, therefore, there is nothing on record to suggest that these information were withheld deliberately with an intent to evade payment of tax. No substantive ground has been adduced by the department about any malafide intent and therefore, we are inclined to accept that there could have been bonafide belief that the nature of works being performed by them were very much covered within the exclusion of WCS and hence, not levibale to service tax, as also the fact about their being entitled for benefit of Notification No. 45/2010 was not restricted only to the transmission or distribution company but also to any person providing service to transmission and distribution company as held by this Bench in the cases cited, supra. We also note that the department has issued the Notification No.45/2010 under section 11C in relation to ambiguity prevailing for the period prior to March, 2010 in

respect of construction of sub-station and other works related to distribution and transmission of electricity. This in itself supports the contention of the appellant that there were divergent views relating to transmission and distribution of electricity for which notification under section 11C had to be issued by the Government. Therefore, there is merit in the argument that there is no scope for invoking extended period or for imposition of penalty under section 78.

13. In view of the above discussions, it is held as under:

a) Demand for the period prior to 01.06.2007 is set aside.

b) Demand in respect of construction of power canal, intake pool, intake structure, power house, outdoor switchyard, road works, etc., will have to be decided in terms of contracts entered between the appellant and the various companies to establish that these works were either related to construction of dam or canal or otherwise and demand has to be re-determined accordingly.

c) Construction of BT road from BRPL Staff Quarters to BRPL refinery would have to be decided in terms of nature of contract in view of the observations made by us, supra.

d) Laying of RCC M30 at raw water reservoir will not be considered as sale of RCC Mix in the given factual matrix and will be a service.

e) Invocation of extended period will not sustain in view of the factual matrix and submissions as well as case laws cited by the appellant. Similarly, the penalty under section 78 of the Finance Act, 1994 will also not sustain.

14. We, therefore, find that since in most of these cases, the SCN itself has not categorically brought out the scope of work nor the adjudicating authority has examined these works in the context in which the contracts have been signed considering the nature and scope of contract, therefore, it would be necessary for the adjudicating authority to go through each and every contract involved in execution of these works and thereafter, decide the leviability of service tax or otherwise, keeping in view the observations, supra. However, the demand will have to be restricted to the normal period only. Also, in the case of confirmation of demand within normal period,

abatement, if any, available for WCS during the relevant period would also be admissible irrespective of whether the appellants had opted for the same or otherwise during the material time.

15. Thus, except to the extent of demand set aside, rest of demand is remanded back to the adjudicating authority for re-determination keeping in view the observations and decisions, supra.

16. Appeal is allowed partly by way of remand.

(Pronounced in the Open Court on 31.10.2025)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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