

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

Division Bench – Court No. – I

Service Tax Appeal No. 2080 of 2012

(Arising out of Order-in-Original No.21/2012-S.Tax (Commr) dt.21.03.2012 passed by
Commissioner of Customs, Central Excise & Service Tax, Guntur)

ABC Engineering Works

Block No.G20, Plot No.23 & 24, 2nd Road,
Autonagar, Vijayawada, AP – 520 007

.....Appellant

VERSUS

**Commissioner of Central Excise &
Service Tax, Guntur**

PB No.331, CR Building, Kannavarithota,
Guntur, Andhra Pradesh – 520 004

.....Respondent

WITH

Service Tax Appeal No. 1657 of 2012

(Arising out of Order-in-Original No.21/2012-S.Tax (Commr) dt.21.03.2012 passed by
Commissioner of Customs, Central Excise & Service Tax, Guntur)

**Commissioner of Central Excise &
Service Tax, Guntur**

PB No.331, CR Building, Kannavarithota,
Guntur, Andhra Pradesh – 520 004

.....Appellant

VERSUS

ABC Engineering Works

Block No.G20, Plot No.23 & 24, 2nd Road,
Autonagar, Vijayawada, AP – 520 007

.....Respondent

AND

Service Tax Appeal No. 2732 of 2012

(Arising out of Order-in-Original No.58/2012-S.Tax dt.29.06.2012 passed by Commissioner
of Customs, Central Excise & Service Tax, Guntur)

ABC Engineering Works

Block No.G20, Plot No.23 & 24, 2nd Road,
Autonagar, Vijayawada, AP – 520 007

.....Appellant

VERSUS

**Commissioner of Central Excise &
Service Tax, Guntur**

PB No.331, CR Building, Kannavarithota,
Guntur, Andhra Pradesh – 520 004

.....Respondent

Appearance

None for the Appellants.

Shri V. Srikanth Rao, AR for the Respondent.

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

FINAL ORDER No. A/30523-30525/2025

Date of Hearing: 31.07.2025

Date of Decision: 28.11.2025

[Order per: A.K. JYOTISHI]

M/s ABC Engineering Works (hereinafter referred to as the appellant) are in appeal vide Appeal No.ST/2080/2012 against OIO dt.21.03.2012 (impugned order), while the department have also preferred an appeal vide Appeal No.ST/1657/2012, against the same OIO, on the grounds that though the Commissioner has rightly held that the cost of the free issued materials viz., Diesel and Explosives received by the appellant has to be included in the gross value of the service, as envisaged under Section 67 of the Finance Act, 1994 read with Service Tax (Determination of Value) Rules, 2006, the orders of the Commissioner treating the cost of free issue materials and bonus as cum- tax value for the purpose of computation of differential amount of Service Tax and thereby reducing the demand of Service Tax by Rs.22,56,120/- does not appears to be legal and proper.

2. The brief facts of the case are that the appellants are registered with the Service Tax Department for site formation, clearance and excavation services and have been engaged by M/s Singareni collieries Company Ltd (SCCL) for rendering services of blast hole drilling, blasting, excavation, loading, transport, spreading and dumping, etc., of overburden at various sites and have been discharging service tax on the value of these services. As per the terms of tender, the appellants were required to quote their rates for providing services excluding the value of diesel and explosives. These two items were provided by the SCCL at the respective project sites. If the appellants use these free items supplied by the Service Recipient

economically as per the bench marks, they receive a bonus. Show cause notices were issued by the Revenue seeking to add the value of the materials supplied (explosives and diesel) free of cost by the service recipient at various sites and consumed/used by the appellants for rendering services and also the bonus payments received by them from SCCL to the value of taxable services rendered.

3. Nobody appeared on behalf of the appellant and therefore, we have perused the records and heard the arguments made by learned AR.

4. In this case, essentially, the appellants have argued that material supplied free of charge by service recipient is not includable in the value of service rendered in terms of section 67 of the Finance Act and it cannot be considered as additional consideration relying on certain judgments including Cemax Engineers Vs CST [2009 (23) STT 389 (Tri-Bang)], Gulf Oil Corp. Ltd Vs CST, Hyderabad and Larsen and Toubro Ltd [2007 (11) STT 27].

5. While the learned AR has reiterated the arguments in the OIO, we find that the issue in this regard is already settled by the Hon'ble Apex Court in the case of M/s Bhayana Builders (P) Ltd [2018 (10) GSTL 118 (SC)] and therefore, the value of free material supplied by service recipient cannot be included. We also note that in another judgment in the case of Intercontinental Consultants & Technocrats Pvt Ltd [2018 (10) GSTL 40 (SC)], it was held that value of free diesel and explosives supplied by service recipient cannot be included in the value of service rendered for the purpose of assessment of service tax under section 67. Insofar as the issue of bonus received by the appellant for efficient use of diesel and explosives is concerned, obviously this amount was not known at the time of provision of service and this was only payable if the said free material supplied are used economically and therefore, has no direct nexus to the service provided and therefore, it cannot be treated as additional consideration. In this regard, we find that Coordinate Bench at Bangalore in the case of AMR India Ltd [2016 (42) STR 329 (Tri-Bang)] and this Tribunal in the case of VPR Mining Infrastructure Pvt Ltd [Final Order No.A/30259/2023 dt.12.09.2023] have held similar view.

6. Therefore, we find that the demand on account of inclusion of value of free material supplied cannot sustain nor on account of inclusion of bonus amount thereon. Therefore, the impugned order is liable to be set aside and is accordingly, set aside.

7. Appeal filed by the appellant i.e., ST/2080/2012 is allowed.

8. Since the entire impugned order has been set aside, therefore, the appeal filed by the department would also not survive and accordingly, the appeal filed by the department i.e., ST/1657/2012 is dismissed.

In Appeal No.ST/2732/2012:

9. The appellants are also in appeal vide Appeal No.ST/2732/2012 against the OIO dt.29.06.2012, whereby the demand has been confirmed against the appellant under Site Formation and Clearance Service (SFCS) and also under Cargo Handling Service (CHS).

10. The brief facts are that the appellants were undertaking certain activities like collection, loading, unloading and transportation of rocks from yard to crusher and crusher to various work sites of one M/s Indu Projects Ltd (IPL) to whom they have also provided SFCS. Thus, demand was made based on scrutiny of ST3 returns, copies of Income Tax returns and ledger copies of the appellant, wherein certain amount received from M/s IPL was not disclosed and there was short payment of service tax. The department also noticed that they were collecting service tax on crushing charges, earth work and excavation and other miscellaneous works from M/s IPL in respect of all the work orders and in fact, they admitted that they have paid service tax in respect of amount received from Ms/ IPL for the year 2007-08 on all works except for transportation. Their argument was that since M/s IPL is a limited company, the service tax on transportation has to be borne by M/s IPL as per Notification No.32/2004. They also took the ground that service tax amount is paid by M/s IMP on total contract and since main contractor has paid the amount on entire contract, there was no liability on them as sub-contractor.

11. Learned AR points out that there is no dispute as regards classification of the services in view of the activities being performed by them. Further, their plea that since the service tax was being paid by the contractor on the

entire amount and therefore, they were not liable to pay any service tax as sub-contractor is not legally tenable in view of various judgments and that they were required to discharge independently service tax on the services being provided by them to their contractor. Further, the services being performed by the sub-contractor are falling SFCS, whereas, services being provided by the main contractor are falling under Construction of Residential Complex Service (CRCS). On the issue of limitation, he has submitted that it is a clear case that appellants were aware that they were providing taxable services and despite that they have not disclosed. Further, the fact that they were actually receiving service tax payable from their contractor and also they were paying service tax in respect of certain services during certain period supports the contention that they were aware of their obligation under the statutory provisions of the Finance Act and that they have deliberately not paid the service tax applicable thereon.

12. Heard learned AR and perused the records.

13. We find that the short question for determination is whether the amount of service tax is payable on these two services or otherwise. We find that the adjudicating authority has examined these aspects in detail and held that service tax is payable under respective categories. We do not find any reason to differ with him on the classification of these services. On the issue of liability, we do not find any merit in the argument of the appellant that they being sub-contractor and the main contractor paying service tax on the entire amount, they need not discharge the service tax liability, as it is settled position that both sub-contractor and contractor are required to pay service tax to the extent applicable to them in respect of specified taxable service. In this regard, we place reliance on the judgment in the case of Akash Engineering Services Vs CCT, Visakhapatnam-I [Final Order No.A/30035/2024 dt.24.01.2024]. Therefore, we find that demand has been rightly confirmed against the appellant. Insofar as the limitation is concerned, we find that in this case, the grounds taken into account for invoking the extended period is tenable and therefore, we do not find any infirmity in invoking extended period by the adjudicating authority.

14. Accordingly, the impugned order passed by the adjudicating authority is liable to be upheld and is accordingly, upheld.

(6)

ST/2080, 2732 & 1657/2012

15. Appeal filed by the appellant i.e., ST/2732/2012 is dismissed.

(Pronounced in the Open Court on 28.11.2025)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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