

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

Division Bench – Court No. – I

Service Tax Appeal No. 30372 of 2017

(Arising out of Order-in-Original No. HYD-SVTAX-000-COM-121-16-17 dt.24.10.2016
passed by Commissioner of Service Tax, Hyderabad)

**Commissioner of Central Tax
Secunderabad - GST**

11-5-423/1/A, Sitaram Prasad Towers,
Red Hills, Hyderabad – 500 004

.....Appellant

VERSUS

Sri Comfort Air Products and Services

12-5-21/1, South Lalaguda, Tarnaka,
Secunderabad, Telangana – 500 017

.....Respondent

Appearance

Shri B. Subhas Chandra Bose, AR for the Appellant.

Shri R. Narasimha Murthy, Advocate for the Respondent.

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

FINAL ORDER No. A/30123/2026

Date of Hearing: 03.11.2025

Date of Decision: 27.02.2026

[Order per: A.K. JYOTISHI]

The Department is in appeal against the Order dt.24.10.2016 passed by the Commissioner, whereby, the entire proceedings resting with SCN dt.20.10.2015 was dropped (impugned order). The department has taken various grounds in support of their contention that the impugned order is not legal and proper as Commissioner has not considered certain aspects while deciding the issue.

2. The brief facts of the case are that the respondents i.e., M/s Sri Comfort Air Products & Services, are, inter alia, engaged in providing various taxable services like Works Contract Service (WCS), Management, Maintenance or Repair service (MMRS), Erection, Commissioning & Installation Service (ECIS), Business Auxiliary Service (BAS) and Goods Transport Agency Service (GTA). It was noticed that the respondents were executing work orders relating to supply of outdoor units/indoor units of Air-

Conditioning Systems (AC) and their installation and thereafter, based on scrutiny of work orders for the period 2010-11 to 2014-15, it was noticed that they had executed two types of works viz., installation of AC systems and HVAC works. Further, in respect of installation of AC systems, the respondents executed two categories of work viz., (a) High Side Work consisting of supply of outdoor units and indoor units of AC systems and (b) Low Side Work consisting of, inter alia, lifting, shifting, positioning and commissioning of units, supply and installation of copper refrigerant piping, PVC drain piping, control-cum-transmission wiring and also pressure testing and commissioning of the total VRV system and central control wiring. Further, the second category of work orders consist of only low side work/service contract and in respect of HVAC work, the work order consists of supply, installation, testing and commissioning of ducts, boxes, dampers, air diffusers, etc. Insofar as high side work is concerned, the respondents were paying Excise duty/VAT and is not the subject matter of the dispute, whereas, in respect of low side work/HVAC works, the respondents were discharging the service tax liability on 33% of the value of the said works during the period 01.04.2010 to 30.06.2012 and on 40% of the said value during the period 01.07.2012 to 31.03.2015 under the category of WCS.

3. The department is of the view that the aforesaid method of payment was not correct inasmuch as they were not eligible for abatement of 33%/40% of the value of low side work/HVAC work as the said value did not include the value of the plant, machinery, equipment, etc., and therefore, the service tax should have been paid on the full value.

4. Learned AR for the department is mainly contesting that there are clearly two parts in the agreement, whereas, one part for supply/sale of AC systems is being treated as sale, however, other part of the work order, which essentially deals with the activity of installation, commissioning, etc., and also incidental elements of piping, wiring, ducting, etc., is covered under the category of service. Essentially, his argument is that one aspect is clearly identified activity i.e., supply of AC systems, whereas, the second aspect is relating to service as only installation, commissioning, etc., are involved and even if certain materials have been used, they are incidental for the purpose of installation and commissioning. Therefore, the work orders for low side work/HVAC works would remain to be pure service

contracts and not work service contracts. He has also relied on the ratio and principles laid down by Hon'ble Supreme Court in the case of BSNL Vs UOI [2006 (2) STR 161 (SC)] in support that the work orders for low side works/HVAC works are only for the installation and commissioning of AC equipment and they did not contain/incorporate the supply/sale and consequential transfer of property in the AC systems/units, which were installed/commissioned and therefore, these are not in the nature of WCS. Moreover, the dominant nature of the transaction is that of provision of service.

5. On the other hand, learned Advocate for the respondent justifies the order passed by the Commissioner, which is based on facts and applicable law. He has also submitted that in order to fall under the category of WCS under section 65(105)(zzzza), there has to be a transfer of property in goods involved in the execution of such contracts, which are leviable to tax as sale of goods. He has further submitted that in such contracts, substantial amount of material has been used, which is in the form of piping, wiring, etc., which is an essential component of such works. Without the usage of material, piping/wiring/ducting etc., it would not be possible to execute the said low side works/HVAC works and therefore, the property in such materials would get transferred to the service recipient. He has also pointed out that it is an admitted position that they have paid VAT. He has also relied on the Board Circular dt.22.05.2007, wherein, inter alia, it was clarified that contracts, which are treated as works contract for the purpose of levy of VAT/sales tax shall also be treated as works contract for the purpose of levy of service tax. He has also relied on the judgment of Hon'ble Bombay High Court in the case of Gammon India Vs CCE, Nagpur [2015 (37) STR 225 (Mum)], wherein, the contract was treated as works contract and even though there was separate supply contract for the supply of transmission towers and therefore, it was held that the same could not be held as service contract being a pure labour contract without looking at the terms of the contract. He has also submitted that the reliance placed by the Revenue in the case of BSNL Vs UOI (supra) is not correct and that the same has been misconstrued by the department. He has further submitted that question of substantial quantum of material for classifying composite contract to be works contract is beyond the scope of Finance Act, 1994.

6. Heard both sides and perused the records.

7. The department has mainly contested that when there are clearly two separate contracts, one being for supply/sale of AC systems and the other being work order for installation and commissioning, the latter will be in the realm of pure service of installation and commissioning in spite of certain use of materials required for executing the said installation and commissioning. Therefore, essentially, their argument is that this is a contract, where supply of equipment part is clearly discernable and therefore, installation and commissioning part cannot have element of supply of goods and cannot be treated as works contract and merely because certain goods and material are involved, it will not make it a WCS. They have relied heavily on the judgment of Hon'ble Supreme Court in the case of BSNL Vs UOI (supra). They have also submitted that there is no transfer of property in the goods involved in the low side works/HVAC works and that the decision in the case of Gammon India Vs CCE, Nagpur (supra) relied upon by the Commissioner is distinguishable on facts as in the said case, there is a finding as to the substantial quantum of material involvement in the service contract.

8. We have perused the impugned order and we find that the Commissioner has categorically held that the service provider has been awarded two types of work orders and in the case of installation and commissioning, for which a separate work order has been received, also involves transfer of property in the goods. He also noted that the value of the low side works include supply of certain material on the basis of certain invoices issued to the extent of rendering installation and commissioning and on which VAT has also been paid. Therefore, it was held that even in the case of low side works, there is a transfer of property in goods and therefore, they are eligible for abatement as per Notification No.01/2006 dt.01.03.2006. We find that in the case of Gammon India Vs CCE, Nagpur (supra), wherein, the factual matrix was supply of material as well as labour, even though there was a separate supply contract for supply of transmission towers, the Court held that it cannot be deduced that service contract is pure labour contract without looking into terms of contract. We find that this is not disputed that certain material has been used while installing and commissioning of AC systems, which are sold separately under

the cover of first part of the contract. The only ground on which department is not finding the order acceptable is that once the material i.e., AC system has been sold separately on payment of Central Excise duty/VAT, the second contract for installation and commissioning has to be treated as pure service rather than WCS. We find that it is not in dispute that certain material as piping, wiring, ducting, etc., has been used for installation and commissioning of AC system, though the department has treated these materials as incidental and in substantial quantity, we do not find any basis on which such conclusion has been arrived at. In any AC installation work, there is substantial expenses incurred on ducting, piping, wiring, etc., and it could not be a mere incidental part of the work. It is also not in dispute that these materials are also leviable to VAT. It is also an admitted position that VAT has been paid on the services of installation and commissioning also treating it as deemed sale. Therefore, once the materials are involved in execution of installation and commissioning works, it cannot be treated as mere pure service of installation and commissioning and it would fall within the category of WCS involving both labour and material. Since the adjudicating authority has satisfied himself based on perusal of certain documents to come to the conclusion that there is supply of material, which has been subjected to VAT as deemed sale, therefore, the transaction would be in the nature of WCS, in the absence of any substantive ground to the effect that these were only minor or incidental materials and not substantial materials, we do not find any reason to interfere with the order of the Commissioner.

9. Therefore, in the facts of the case, we do not find any ground to allow the appeal filed by the department and accordingly, the appeal is dismissed.

(Pronounced in the Open Court on 27.02.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)