CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT NO. – I

Service Tax Appeal No. 21610 of 2014
(Arising out of Order-in-Appeal No. 15/2014 (H-II) S.Tax dated 18.02.2014 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals-II), Hyderabad)

SREC Projects Pvt Ltd., .. **APPELLANT**
203, Nilgiri Block,
Aditya Enclave,
Ameerpet, Hyderabad,
Telangana.

VERSUS

Commissioner of Central Tax .. **RESPONDENT**
Hyderabad -II
Kendriya Shulk Bhavan,
L.B. Stadium Road,
Basheerbagh, Hyderabad,
Telangana – 500 004.

APPEARANCE:
Shri Y. Sreenivasa Reddy, Advocate for the Appellant.
Shri J. Rajanish, Authorized Representative for the Respondent.

CORAM: HON'BLE Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30514/2026

Date of Hearing: 15.09.2026
Date of Decision: 15.09.2026

[ORDER PER: P.V. SUBBA RAO]

This appeal is filed by M/s SREC Projects Pvt Ltd., (the appellant) to assail the order dated 18.02.2014 passed by the Commissioner (Appeals-II) in which he upheld the order dated 28.09.2012 passed by the Additional Commissioner and rejected the appellant's appeal. The Additional Commissioner had, in his order, confirmed demand of Rs. 19,69,111/- as Service Tax under Section 73 of the Finance Act, 1994 (Act) along with interest under Section 75 of the Act and imposed penalties under Section 77 & 78 of the Act. After hearing both sides, we find that the demand in this case is for the period 13.03.2006 to 30.03.2007 under the head of 'construction of residential complex service' under Section 65(105)(zzzh) of the Act. Accordingly, the demand was proposed and confirmed after allowing abatement under Notification No. 18/2005 dated 07.04.2005 and 1/2006-ST dated 01.03.2006 as the appellant's contracts included the use of material in rendering the service.

2. Later, with effect from 01.06.2007, "Works Contract Service" itself has been made a taxable service by inserting clause 65(105)(zzzza) in the Act . The question as to whether the "Works Contract Services" provided before 01.06.2007 could be charged under other heads or otherwise has been decided by the Hon'ble Supreme Court in the case of Commissioner of Central Excise & Customs, Kerala Vs Larsen & Toubro Ltd., [2015 (39) STR 913 (SC)]. It has been held that Works Contract Services are a separate species of contract and they could be charged to service tax only under the head of Works Contract Service, such service could not be taxed under another head and other heads cover only services simpliciter. Revenue's submission that abatement was allowed under various notifications was also rejected by the Supreme Court. Relevant portion of this judgment is reproduced below:

> 11. By the Finance Act, 2007, for the first time, Section 65 (105)(zzzza) set out to tax the following:-
>
> "(zzzza) to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.
>
> Explanation : For the purposes of this sub-clause, "works contract" means a contract wherein,-
>
> i) Transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and
>
> ii) Such contract is for the purposes of carrying out,-
>
> a) Erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of

fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or

b) Construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or

c) Construction of a new residential complex or a part thereof; or

d) Completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or

e) Turnkey projects including engineering, procurement and construction or commissioning (EPC) projects;"

12. Section 67 of the Finance Act 1994 was amended to read as follows:-

"Valuation of taxable services for charging Service tax –

(1) Subject to the provisions of this Chapter, service tax chargeable on any taxable service with reference to its value shall,—

(i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;

(ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money, with the addition of service tax charged, is equivalent to the consideration;

(iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner."

16. At this stage, it is important to note the scheme of taxation under our Constitution. In the lists contained in the 7th Schedule to the Constitution, taxation entries are to be found only in lists I and II. This is for the reason that in our Constitutional scheme, taxation powers of the Centre and the States are mutually exclusive. There is no concurrent power of taxation. This being the case, the moment the levy contained in a taxing statute transgresses into a prohibited exclusive field, it is liable to be struck down. In the present case, the dichotomy is between sales tax leviable by the States and service tax leviable by the Centre. When it comes to composite indivisible works contracts, such contracts can be taxed by Parliament as well as State legislatures. Parliament can only tax the service element contained in these contracts, and the States can only tax the transfer of property in goods element contained in these contracts. Thus, it becomes very important to segregate the two elements completely for if some element of transfer of property in goods remains when a service tax is levied, the said levy would be found to be constitutionally infirm. This position is well reflected in Bharat Sanchar Nigam Limited v. Union of India, (2006) 3 SCC 1, as follows:-

"No one denies the legislative competence of the States to levy sales tax on sales provided that the necessary concomitants of a sale are present in the transaction and the sale is distinctly discernible in the transaction. This does not however allow the State to entrench upon the Union List and tax services by including the cost of such service in the value of the goods. Even in those composite contracts which are by legal fiction deemed to be divisible under Article 366(29-A), the value of the goods involved in the execution of the whole transaction cannot be assessed to sales tax. As was said in Larsen & Toubro v. Union of India[(1993) 1 SCC 364] : (SCC p. 395, para 47) :-

"The cost of establishment of the contractor which is relatable to supply of labour and services cannot be included in the value of the goods involved in the execution of a contract and the cost of establishment which is relatable to supply of material involved in the execution of the works contract only can be included in the value of the goods." For the same reason the Centre cannot include the value of the SIM cards, if they are found ultimately to be goods, in the cost of the service. As was held by us in Gujarat Ambuja Cements Ltd. v. Union of India [(2005) 4 SCC 214] , SCC at p. 228, para 23:-

"This mutual exclusivity which has been reflected in Article 246(1) means that taxing entries must be construed so as to maintain exclusivity. Although generally speaking, a liberal interpretation must be given to taxing entries, this would not bring within its purview a tax on subject- matter which a fair reading of the entry does not cover. If in substance, the statute is not referable to a field given to the State, the court will not by any principle of interpretation allow a statute not covered by it to intrude upon this field." (at paras 88 and 89)

17. We find that the assessees are correct in their submission that a works contract is a separate species of contract distinct from contracts for services simpliciter recognized by the world of commerce and law as such, and has to be taxed separately as such. In Gannon Dunkerley, 1959 SCR 379, this Court recognized works contracts as a separate species of contract as follows:–

"To avoid misconception, it must be stated that the above conclusion has reference to works contracts, which are entire and indivisible, as the contracts of the respondents have been held by the learned Judges of the Court below to be. The several forms which such kinds of contracts can assume are set out in Hudson on Building Contracts, at p. 165. It is possible that the parties might enter into distinct and separate contracts, one for the transfer of materials for money consideration, and the other for payment of remuneration for services and for work done. In such a case, there are really two agreements, though there is a single instrument embodying them, and the power of the State to separate the agreement to sell, from the agreement to do work and render service and to impose a tax thereon cannot be questioned, and will stand untouched by the present judgment." (at page 427)

24. A close look at the Finance Act, 1994 would show that the five taxable services referred to in the charging Section 65(105) would refer only to service contracts simpliciter and not to composite works contracts. This is clear from the very language of Section 65(105) which defines "taxable service" as "any service

provided". All the services referred to in the said sub-clauses are service contracts simpliciter without any other element in them, such as for example, a service contract which is a commissioning and installation, or erection, commissioning and installation contract. Further, under Section 67, as has been pointed out above, the value of a taxable service is the gross amount charged by the service provider for such service rendered by him. This would unmistakably show that what is referred to in the charging provision is the taxation of service contracts simpliciter and not composite works contracts, such as are contained on the facts of the present cases. It will also be noticed that no attempt to remove the non-service elements from the composite works contracts has been made by any of the aforesaid Sections by deducting from the gross value of the works contract the value of property in goods transferred in the execution of a works contract.

25. In fact, by way of contrast, Section 67 post amendment (by the Finance Act, 2006) for the first time prescribes, in cases like the present, where the provision of service is for a consideration which is not ascertainable, to be the amount as may be determined in the prescribed manner.

26. We have already seen that Rule 2(A) framed pursuant to this power has followed the second Gannon Dunkerley case in segregating the 'service' component of a works contract from the 'goods' component. It begins by working downwards from the gross amount charged for the entire works contract and minusing from it the value of the property in goods transferred in the execution of such works contract. This is done by adopting the value that is adopted for the purpose of payment of VAT. The rule goes on to say that the service component of the works contract is to include the eight elements laid down in the second Gannon Dunkerley case including apportionment of the cost of establishment, other expenses and profit earned by the service provider as is relatable only to supply of labour and services. And, where value is not determined having regard to the aforesaid parameters, (namely, in those cases where the books of account of the contractor are not looked into for any reason) by determining in different works contracts how much shall be the percentage of the total amount charged for the works contract, attributable to the service element in such contracts. It is this scheme and this scheme alone which complies with constitutional requirements in that it bifurcates a composite indivisible works contract and takes care to see that no element attributable to the property in goods transferred pursuant to such contract, enters into computation of service tax.

27. In fact, the speech made by the Hon'ble Finance Minister in moving the Bill to tax Composite Indivisible Works Contracts specifically stated:-

> "State Governments levy a tax on the transfer of property in goods involved in the execution of a works contract. The value of services in a works contract should attract service tax. Hence, I propose to levy service tax on services involved in the execution of a works contract. However, I also propose an optional composition scheme under which service tax will be levied at only 2 per cent of the total value of the works contract."

28. Pursuant to the aforesaid speech, not only was the statute amended and rules framed, but a Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 was also notified in which service providers could opt to pay service tax at percentages ranging from 2 to 4 of the gross value of the works contract.

29. It is interesting to note that while introducing the concept of service tax on indivisible works contracts various exclusions are also made such as works contracts in respect of roads, airports, airways transport, bridges, tunnels, and dams. These infrastructure projects have been excluded and continue to be excluded presumably because they are conceived in the national interest. If learned counsel for the revenue were right, each of these excluded works contracts could be taxed under the five sub-heads of Section 65(105) contained in the Finance Act, 1994. For example, a works contract involving the construction of a bridge or dam or tunnel would presumably fall within Section 65(105)(zzd) as a contract which relates to erection, commissioning or installation. It is clear that such contracts were never intended to be the subject matter of service tax. Yet, if learned counsel for the revenue is right, such contracts, not being exempt under the Finance Act, 1994, would fall within its tentacles, which was never the intention of Parliament.

42. It remains to consider the argument of Shri Radhakrishnan that post 1994 all indivisible works contracts would be contrary to public policy, being hit by Section 23 of the Indian Contract Act, and hit by Mcdowell's case.

43. We need only state that in view of our finding that the said Finance Act lays down no charge or machinery to levy and assess service tax on indivisible composite works contracts, such argument must fail. This is also for the simple reason that there is no subterfuge in entering into composite works contracts containing elements both of transfer of property in goods as well as labour and services.

44. We have been informed by counsel for the revenue that several exemption notifications have been granted qua service tax "levied" by the 1994 Finance Act. We may only state that whichever judgments which are in appeal before us and have referred to and dealt with such notifications will have to be disregarded. Since the levy itself of service tax has been found to be non-existent, no question of any exemption would arise. With these observations, these appeals are disposed of.

45. We, therefore, allow all the appeals of the assessees before us and dismiss all the appeals of the revenue.

3. In view of the above, we find that the demand of service tax on Works Contract Service rendered by the appellant cannot be sustained and is liable to be set aside. We accordingly, allow the appeal and set aside the impugned order. The appellant will be entitled to consequential reliefs, if any.

(Dictated and pronounced in open court)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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