IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 76225 of 2014

(Arising out of Order-in-Original No. V(15) 59-ST/Adjn./2013/4621 dated 13.06.2014 passed by Commissioner of Central Excise and Service Tax, Patna Commissionerate)

M/s. NHPC Ltd. **: Appellant**
Bihar Rural Road Projects, NHPC Limited, 2nd Floor, Vidyut Bhawan-II, Bailey Road, Patna-800001 (Bihar)

VERSUS

The Commissioner of Central Excise & Service Tax, Patna **: Respondent**
3rd Floor, Central Revenue Building (Annexe), Beerchand Patel Path, Patna-800001.

with

Service Tax Appeal No. 75872 of 2019

(Arising out of Order-in-Original No. 13/ST/Commissioner/2018 dated 27.12.2018 passed by Commissioner of Central Excise and Service Tax, Patna Commissionerate)

M/s. NHPC Ltd. **: Appellant**
Bihar Rural Roads Maintenance Office, BSNL office, Old Trunk Exchange Building, Budh Marg, Old Call Centre, Patna, Bihar-800001.

VERSUS

The Commissioner of Central Excise & Service Tax, Patna **: Respondent**
CTTC Building, 3rd to 5h Floor, Sanchar Parishar, Buddha Marg, Patna-800001.

with

Service Tax Appeal No. 75137 of 2023

(Arising out of Order-in-Appeal No. 148/Pat./S.Tax/Appeal/2022-23 dated 26.12.2022 passed by Commissioner of Central Excise and Service Tax, Patna Commissionerate)

M/s. NHPC Ltd. **: Appellant**
Bihar Rural Roads Maintenance Office, BSNL office, Old Trunk Exchange Building, Budh Marg, Old Call Centre, Patna, Bihar-800001.

VERSUS

The Commissioner of Central Excise & Service Tax, Patna **: Respondent**
2nd Floor Central Revenue Building (Annexe), Birchand Patel Path, Patna-800001.

APPEARANCE:

Shri Arun Kumar Agrwal & Ms. Pinky Agarwal, CA for the Appellant

Shri Prasenjit Das, Autorized Representative for the Respondent

CORAM:

HON'BLE SHRIASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 76766-76768 / 2024

DATE OF HEARING :08.08.2024

DATE OF DECISION:

Order : [Per Shri Ashok Jindal]

All the appeals are having a common issue therefore, all are disposed of by a common order.

Appeal No. ST/76225/2014 pertains to the period 2008-09 to 2011-12 whereas the Show Cause Notice has been issued on 10.10.2013 by invoking extended period of limitation.

Appeal No. ST/75872/2019 pertains to the period 2012-13 to 2014-15 whereas Show Cause Notice has been issued on 18.9.2017 by invoking extended period of limitation.

And Appeal No. ST/75137/2023 pertains to the period 2015-16 to 2017-18 whereas the Show Cause Notice has been issued on 29th September, 2020 by invoking extended period of limitation.

2. The facts of the case are that on the basis of CERA Audit, it was observed that as per "Tripartite Agreement" dated 01.08.2004 executed amongst the appellant, Governor of Bihar through Secretary, Rural Development Department, Government of Bihar and the President of India through Joint Secretary, Ministry of Rural Development, Government of India, the appellant was appointed as implementing agency for the construction/up-

gradation/commissioning and maintenance of different road projects in Bihar under the Pradhan Mantri Gram Sadak Yojna (PMGSY). The appellant was entrusted with the said work against the agency fee @10 per cent of the total project cost. It is alleged that the work of supervision and project management is covered under the definition of 'Consulting Engineers Service' and therefore, appellant is required to pay Service Tax under the category of 'Consulting Engineering Service'. Therefore, the Show Cause Notice dated 11.10.2013 was issued to the appellant for the period 2008-09 to 2011-12 to demand Service Tax under the category of Consulting Engineering Service by invoking extended period of limitation.

3. In appeal no. ST/75872/2019, the Show Cause Notice dated 18.09.2017 was issued to the appellant to demand Service Tax from the appellant under negative regime holding that the activity undertaken by the appellant falls under Section 65B(44) of the Act and the activity undertaken by the appellant is not covered under negative list as specified under Section 66D of the chapter 4 of the Finance Act. Therefore, the appellant is liable to pay Service Tax for the period 2012-13 to 2014-15. The said Show Cause Notice was also issued by invoking period of limitation.

4. In appeal no. ST/75137/2023, another Show Cause Notice was issued to demand Service Tax from the appellant under negative regime in terms of Section 65B (44) of the Act and alleging that the activity undertaken by the appellant does not cover under negative list as specified at Section 66D of chapter 5 of the Finance Act, 1944 vide Show Cause

Notice dated 29.09.2020 for the period 2015-16 to 2017-18 upto June, 2017.

5. The appellant contested the issue in the first appeal that the activity undertaken by the appellant does not fall under Consulting Engineering Service but the Adjudicating Authority confirmed the demand.

6. For remaining appeals, for the subsequent period it is his contention that the activity undertaken by the appellant falls under negative list at serial no. 13 of notification no. 25/2012 Service Tax dated 20th June, 2012 which exempts service provided by way of construction, erection, Commissioning, installation, completion, fitting out, repairs, maintenance, renovation or alteration of road, bridge, tunnel or terminal for road transportation for used by general public.

7. But the Adjudicating Authority confirmed the demand alongwith interest and penalties were also imposed against the appellant.

8. Aggrieved from the said orders, the appellant is before us.

9. Today, when the matter was called the Ld. Consultant for the appellant draw our attention to the various clauses of the Tripartite agreement and submits that the appellant is working as an executing agency on behalf of the State Government and the Central Government for construction of the road in the State of Bihar under Prime Minister Gram Sadak Yojna and getting a mark up of 10% as their supervisory fees. The same does not fall under the category of Consulting Engineering Service. In that circumstance, they are not liable to pay Service Tax

under Consulting Engineering Service for the period 2008-09 to 2011-12. It is his further submission that for the subsequent period, their activity is exempt in terms of notification no. 25/2012 dated 20th June, 2012, Serial No. 13. Therefore, they are not liable to pay Service Tax.

10. In that circumstances, impugned order is to be set aside.

11. On the other hand, the Ld. Authorized Representative relied on the decision of this Tribunal in the case of M/s. Ircon International Ltd. Vs. Commr. Of C.Ex. & Service Tax, 2017 (4) TMI 903-CESTAT, Kolkata, to say that on the identical activity this Tribunal held that the appellant is liable to pay Service Tax.

12. Therefore, the appeals are to be dismissed.

13. Heard the parties.

14. Considered the submissions in detail. To decide the issue, the contents of the agreement is essential to examine, the relevant extracts of the contract are as under:

13. "*PROCUREMENT OF WORKS*

NHPC shall endeavour to execute the works within the estimated cost of the package. If the tendered amount is less then the estimated amount the the balance amount shall count towards payment to NHPC. Tendering of all works will be in strict conformity with the PMGSY Guidelines and as per Standard Bidding Document. All Tenders shall be invited and awarded by NHPC in accordance with the PMGSY Guidelines adopting following procedures:

(1) Only those works will be put to tender where the Government of Bihar had made available the requisite land free of encroachments and eNCRUMBANCES.

(2) The Government of Bihar shall arrange for appropriate security, where required, for the project personnel at the working locations during the period of completion of Project.

(ii) Only the Standard Bidding Documents prepared by NRRDA and adopted by the Government of Bihar in accordance with the Guidelines on the subject or modifications agreed to by NRRDA, on the recommendations of GOVERNMENT OF BIHAR, shall be used for inviting and processing tenders.

(iii) Invitations to bid shall be advertised in at least two widely circulated national daily newspapers as well as in local news papers at least 30 days prior to the deadline for the submission of bids. The invitation of bids shall also be displayed on PMGSY website www.pmgsy.org.

(iv) No special preference will be accorded to any bidder either for price or for other terms and conditions when competing with local bidders, State-owned enterprises, small-scale enterprises or enterprises from any given State

(v) The Notice Inviting Tender shall be issued centrally from the Main Project Office of NHPC or from the Registered Office of NHPC for all cleared packages (subject to Para 3.0 (1) above) in one

batch on Standard Format The bids will be received, processed and evaluated centrally and Agreement and work order shall also be approved centrally in the Main Project Office/ Registered Office of NHPC in accordance with the tendering and contracting procedures given in the Guidelines.

(vi) Before award of works, the NHPC will intimate BRRDA and NRRDA of the package wise details of the award, including contractor details and approved bid details (for construction and for maintenance).

(vii) NHPC shall endeavour to execute the works within the estimated cost of the package. In case, there is a tender premium (the difference between the estimated construction cost and approved bid cost for all works of the NHPC tendered in that batch), a detailed proposal justifying the ease shall be sent to Government of Bihar through NRRDA for its satisfaction and approval. Based on the approval by the Government of Bihar, Government of India will release the net tender premium to the NHPC before the works are awarded."

14. We have gone through the Tripartite Agreement interred by the appellant and the Governor of Bihar and the President of India. The clauses of the agreement are extract clear below for proper appreciation of the fact.

"*5.1*

QUALITY MONITORING

The NHPC shall ensure that the provisions of the Quality Control Handbook are applied to PMGSY funded works. The 1 tier of quality control will be executed at the Project Implementation Unit (PIU) level. The implementation of the provisions of the Quality Control Handbook shall be recorded in the Quality Control Registers maintained at the work sites in two parts, one by the Contractor and one by the PIU. Payment shall not be made to the Contractor unless the test results have been found to be satisfactory.

There shall be an Independent Quality Coordinator (IQC) of a senior rank at the Main Project Office of NHPC supported by qualified senior engineers with adequate expertise in quality monitoring, to act as the 2 tier of quality control. This tier will oversee and supervise the first tier quality control arrangement, and coordinate all quality control and assurance activities.

5.2 Before awarding works, the NHPC will intimate to BRRDA/NRRDA the detais of the Quality Control System operationalised at PIU and IQC levels.

5.3 A three-tier set up envisaged for Quality Assurance for PMGSY funded works will, therefore, be as follows:-

(a) The first uer shall be the PIU/Senior Engineer of the PIU in charge of th work. The Contractor shall establish Quality Control laboratories and get the contractually stipulated tests condcoted. The test results shall be recorded in the prescribed Quality Control Registers. Engineers of the PIU shall winess

the carrying out of a portion of tests as prescribed in the Quality Control Hand Book. All the concemed officers shall record their observations in the Quality Control Registers.

(b) The second tier shall comprise periodic inspection by the IQC and his staff engaged by the NHPC, independent of the PIUs.

(c) The third tier shall comprise National Quality Monitors (NQMs) appointed by the NRRDA for the purpose, who shall be retired Senior Engineers with State/Central Organizations. The IQC will be responsible for reporting compliance on the observations of NQMs and observations of NRRDA in this regard.

6.0 PERSONNEL OF NHPC

(a) NHPC has to deploy sufficient number of technical and support personnel for satisfactory and timely execution of the project.

(b) The profiles of the key personnel/the team leader and the head of implementing units in the district shall be furnished to NRRDA/BRRDA before commencing work.

7.0 DOCUMENTS PREPARED BY THE NHPC TO BE THE PROPERTY OF THE GOVERNMENT OF BIHAR

All plans, drawings, specifications, designs, reports, other documents and software prepared by the NHPC for the State Government/Ministry of Rural Development under this Agreement shall become *and remain the property of the Government of Bihar. The NHPC shall, not later than 15 days upon completion, termination or expiration of this Agreement, whichever is earlier, deliver all such documents etc, to the BRRDA, together with a detailed inventory thereof. The NHPC may retain a copy of such documents and software.*

8.0 ACCOUNTING, INSPECTION AND AUDITING

The NHPC (1) shall keep accurate and systematic accounts and records in respect of implementation of the project in accordance with accepted accounting principles and in such form, manner (including entry in OMMS) and detail as may be specified by NRRDA, so as to identify all relevant time charges and cost, and the basis thereof, and (in) shall permit the Ministry of Rural Development of its designated representative periodically, and up-to one year from the expiration or termination of this Agreement, to inspect the same and make copies thereof as well as to have them audited by auditors appointed by NRRDA at the con of NRRDA.

9.0

RELEASE OF FUNDS

9.1

For un-interrupted/successful execution, as agreed by the Government of Bu Ministry of Rural Development shall release funds directly to the NPC, accordance with the Guidelines of the PMOSY in instalments and on requirement projected by the

NHPC. These instalments would be in suitable percentages on (a awarding of contracts and (b) physical progress of works and expenditure of previously released funds. NHPC shall keep such funds in separate single account in accordance with PMGSY Guidelines. The release of funds will be subject to NHPC fulfilling the conditions for receiving the funds as contained in the Guidelines of PATGSY, as may be amended from time to time NIPC shall be responsible for furnishing Utilization Certificates/ Audit Reports to the Ministry of Rural Development in respect of funds released to it. The interest accruse on such funds with NIPC as well as amounts received by NIPC towards liquidated damages shall also count towards payment to NHPC. The NHPC shall release payments to all contractors from the single account.

9.2 The Government of Bihar shall separately provide funds for routine maintenance of the constructed roads for the five years maintenance period. The Government of Bihar shall ensure sufficient budget provision to meet the maintenance requirement, and shall release the grants-in-aid to BRRDA for each financial year which, in turn, shall release the amount to NHPC as and when required, but not later than 30 days from the date of requisition.

9.3 RELEASE OF PROJECT COST

Release to the NHPC will be as follows:

a) 10% of the value of proposals shall be released as soon as the works are tendered. The NMPC shall *place the tender notices in the Tendering module of OMMS and apply for release on that basis,*

b) Further 40% of tendered amount of packages chargeable to PMGSY would be released as soon as works are awarded, subject to cumulative payment of 50% of the tendered amount.

c) The balance 50% of tendered amount shall be released as follows

Two instalments of 22.5% of tendered amount each on utilisation of 80% of the total available funds. Total available funds would be the sun of the previous instalment and the balance available with the NHPC at the time of release of the previous instalment including interest and other accruals.

The remaining 5% shall be released after handling over completed roads. All the districts allotted to the NHPC shall be a single unit for purpose of release of funds. However, the last instalment of 5% will be released package-wise.

(d) Payment towards arbitration awards, if any, shall be released by Ministry of Rural Development to NHPC in terms of the award and will be adjusted against future allocations to Government of Bihar.

10.0 TAXES AND DUTIES

All new or variations in statutory taxes/ levies, duties, cess, entry tax cineged by any Government (Contral / State) and/or any other local bodies/authorities on NHPC and or its Contractors in respect of execution of "Project of this Agreement *and Service Tax on Consultancy Fee of NHPC (including any variation thereof) shall form the integral part of the "Project" cost, and shall reimbursed to NIPC by Ministry of Rural Development on the basis of documentation.*

However the imposition(s) in the form of penalty or rate enhancement because of negligence / delay, with regard to taxes and duties, on behalf of NHPC or is contractors shall not be adjusted towards the project cost and are not payable to NHPC.

11.0 NIPC's FEE

11.1 NHPC's fee shall be 10% of the total Project Cost of awarded works (construction

and five years' maintenance) and will be borne by the Ministry of Rural Development. Project cost means all expenditure incurred as per PMOSY Guidelines from the commencement of the work contract to its completion. The fee shall be paid in instalments, 2.0% of the total of the district allocation on signing of this Agreement and the Government of Bihar intimating NHPC the list of road works. Three fourth of the balance fee calculated on the basis of awarded works shall be released in quarterly instalments based on percentage of financial progress determined in accordance with criteris already laid down by NRRDA. The remaining One-fourth shall be released annually in five equal sub-instalments during the maintenance period."

15. From the tenor of the agreement, we find that the appellant is appointed as principal contractor for construction and maintenance of road. For getting the work done, the appellant shall appoint various sub-contractors for different types of projects who shall raise the invoices on the appellant and the appellant shall make the payment of bills to them. In term of the agreement, the Government of Bihar agreed to appoint the appellant for construction and maintenance of project on its behalf as an executing agency in terms of PMGSY Guidelines. The appellant agreed to construct road and maintain them for 5 years. The appellant is responsible for taking all action required for executing agency under its obligation as per PMGSY guidelines, starting from preparation of DPR to execution of work within the estimated cost of package including monitoring the progress of works & submission of periodical progress reports, maintenance of full information on contractors, quality control, accounting etc. until handover of possession upon successful completion of the project and maintenance thereafter for a period of five years. The appellant is responsible for performance, due diligence, efficiency, economy, sound management practices, and employment of safe and effective equipment, machinery, materials and methods etc. If any, defect is pointed out shall be removed by the appellant.

16. The appellant is entrusted with the execution of the entire project of construction of rural roads for the specified districts and appellant appointed various sub-contractors for different sub-projects to complete and handover the main project.

17. From the activity undertaken by the appellant, it is clear that the responsibility of entire work of construction and maintenance of said road is with the appellant and it is not limited to providing only technical assistance. While infrastructure construction works were specifically excluded from the scope of "commercial construction services" in terms of CBEC circular no. 147/16/2011-ST dated 21.10.2011 that even the sub-contractors providing works contract services to the main contractors would also be entitled to exclusion from the service tax ambit.

18. We further take note on the fact that the responsibility of the appellant is not limited to engineering support, designing and planning etc but till the completion of the entire project which is a turnkey project of construction of road and its maintenance.

19. Therefore, we have to examine the definition under Section 65(31) which defines 'Consulting Engineers' which means any professionally qualified engineers and body corporate or any other form who either directly or indirectly render any advice consultancy or technical assistance in any manner to a person in one or more disciplines of engineering. The consulting engineering service is thoroughly distinct from the construction and maintenance service to the extent that former should posses an expertise, acquire by qualifications in the field of engineering, to plan, design and provide consultancy and technical assistance in the project undertaken. On the other hand, construction service involves responsibilities of actual construction and building projects and associated cost of construction,

including reviewing and maintaining costs to ensure construction project stays within estimated budget.

19. Therefore, the Consulting engineering service may be part of the services of construction and maintenance, since, the main activity of the appellant is construction of road and maintenance thereof, it may be called as bundled service and if any service tax is to be payable by the appellant is to be payable under construction of road and maintenance thereof which is exempt from payment of service tax.

20. The Ld. Authorized Representative having relied on the decision of the M/s. Ircon International Ltd. (Supra) wherein the terms of agreement has been explained here in below:

"*1. The brief facts of the case are that the appellant are engaged in providing taxable services of Consulting Engineer. During the period 2009-2010 to 2013-2014 they were appointed as the implementing agency for the construction/up-gradation/commissioning and maintenance of different road projects in Bihar under Pradhan Mantri Gram Sadak Yojna (PMGSY). They received agency fee @10 percent of the total project cost. This was over and above the project cost received by them. The Revenue issued Show Cause Notice demanding service tax on the agency fee received by the appellants treating the services rendered by the appellants as Consulting Engineer Service, for which they received agency fee of 10 percent. The demand was adjudicated and confirmed by the Commissioner along with interest and penalty of equivalent amount* *under Section 78 of the Finance Act, 1994 besides penalties under Section 77 and penalty under Sections 66.67 and 68 of the Act for failure to maintain records*

2. Ld. Advocate appearing on behalf of the appellant submits that M/s IRCON International Ltd. was selected by the Govt. of India for construction/commissioning and maintenance of the project roads as per PMGSY guidelines in Bihar. He further stated that prior to July, 2012 their activities were not chargeable to service tax However, after issuance of Mega Notification No. 25/2012 Entry No. 13 of the said Notification provides exemption for the construction of roads. He further stated that agency fee was part of the project cost and hence, service tax could not be levied on the same because it was exempted under the aforesaid notification. In this regard he invited attention to the terms of the Tripartite Agreement, especially Clause 11.01 & 11.02

3. Ld. AR appearing on behalf of the Revenue submits that the appellants were not constructing or maintaining any roadways themselves but were only supervising the project. Referring to the terms of the agreement, he submitted that 10% agency fee was on top of the project cost for the road project. He also submitted that in the trial balance the appellants had not shown any income from contract in the expenditure schedule and that they had not incurred any expenditure on the purchase of road construction materials, labours payment, hiring of equipments of construction of roads, cost of transportation, storage, loading and unloading *construction materials in relation to the construction of the road*

4. Heard both the parties and perused the record.

5. The issue to be decided whether agency fee received by M/s IRCON is bundled alongwith the cost of road project or is a separate fee received by them for providing consulting engineer service. The admitted facts are that there was a Tripartite Agreement dated 31.08.2004 for the construction/up- gradation/commissioning and maintenance of different road projects in the state of Bihar under PMGSY Under the agreement, IRCON was selected as executing agency for construction/up- gradation/commissioning of the project. The following clauses of the above agreement are relevant for interpretation of the issue at hand

1.0" Executing Agency

1.1. The IRCON shall be responsible for taking all actions required of an Executing Agency for districts under its charge as stipulated in the PMGSY Guidelines. The IRCON shall establish a Main Project Office at Patna or any other Central location in the State and intimate Bihar Rural Roads Development Agency (BRRDA) and National Roads Development Agency (NRRDA), which is an Agency of Ministry of Rural Development.

9.0. Release of Funds

9.1. For un-interrupted/successful execution as agreed by the Government of Bihar, Ministry of Rural Development shall release funds directly to the IRCON, in accordance with the Guidelines of the PMGSY in instalments and on requirement projected by the IRCON. These instalments would be in suitable percentages on (a) awarding of contracts and (b) physical progress of works and expenditure of previously released funds. IRCON shall keep such funds in separate single account in accordance with PMGSY Guidelines. The release of funds will be subject to IRCON fulfilling the conditions for receiving the funds as contained in Guidelines of PMGSY, as may be amended from time to time. IRCON shall be responsible for funishing Utilisation Certificates/Audit Reports to the Ministry of Rural Development in respect of funds released to it. The interest accrued on such funds with IRCON as well as amounts received by IRCON towards liquidated damages shall also count towards payment to IRCON. The IRCON shall release payments to all contractors from the single account.

11.0 IRCON's Fee

IRCON's fee shall be 10% of the total Project Cost of awarded works (construction an years maintenance) and will be borne by the Pastry of Rural Development. Project cost means all expenditure incurred as per PMGSY Guidelines from the commencement of the work contract to its Completion The fee shall be paid in installment 2.0% of the total of the district allocation on signing of this Agreement and the Government of Bihar intimating IRCON the list of read works. Three-fourth of the *balance fee calculated on the basis of awarded works shall be released in quarterly instalments based on percentage of financial progress determined in accordance with criteria already laid down by NRRDA. The remaining One-fourth shall be released annually in five equal sub-instalments during the maintenance period.*

11.2 IRCON's fee shall cover the cost of preparation of the DPR, cost involved in inviting (excluding cost of advertisement of tenders in newspapers) and deciding tenders, al administrative and project management expenses including deployment of the Teams for execution of the project work, and the first and second levels (project level counterpart) of quality monitoring as per PMGSY Guidelines. The IRCON would intimate the SQC of the BRRDA and NRRDA of the quality monitoring arrangements as per PMGSY Guidelines and instructions. The cost of advertisement of tenders in newspapers shall form part of Project cost"

6. Under Section 65(31) of the Act defines the service provider (consultancy agency) as under- "consulting engineer means any professionally qualified engineer or [any body corporate or any other firm) who, either directly or indirectly, renders any advice, consultancy or technical assistance in any manner (to any person) in one or more disciplines of engineering"

7. The definition of the activity given under Section 65(105)(g) is as under:

"taxable service" means any [service provided or to be provided) To any person, by a consulting engineer in relation to advice, consultancy or technical assistance in any manner in one or more disciplines of engineering including the discipline of computer hardware engineering

Explanation - For the purposes of this sub-clause, it is hereby declared that services provided by a consulting engineer in relation to advice, consultancy or technical assistance in the disciplines of both computer hardware engineering and computer software engineering shall also be classifiable under this sub-clause."

21. And this Tribunal came to the conclusion that from the Tripartite agreement we find the activity of the appellant by virtue of tasks handled by them is in nature of technical assistance, and squarely falls in the definition of 'Consulting Engineer' under Section 65(31) of the Act. It was also observed that the activity performed by the appellant is technical assistance in the form of supervising the contract and ensuring of execution of the project by way of getting the same constructed through contractors. The appellants are neither the owner of the constructed roads nor do they construct the road themselves. They have merely provided the technical capabilities and expertise in the management and supervision of projects relating to construction of roads, for which they have received the agency fees. It is also clear from the Clause 11.2 of the agreement that M/s. IRCON's fee covers the cost of the preparation of DPR, cost involved in inviting and

deciding tenders but the cost does not cover the cost of advertisement of tenders in the news paper. In the same clause it is mentioned that latter shall form part of the project cost, which clearly shows that M/s. IRCON's fee is not part of the project cost.

22. The findings by the Tribunal in the case of IRCON is self contradictory wherein it has been observed that the appellant are providing expertise in management and supervision of project related to construction of road for which they receive agency fees. On the other hand, it is found that the appellant is rendering "Consulting Engineering Service". From the tenor of the agreement, as the main project is of construction of road and appellant is only supervising the said activity, in that circumstance, it cannot be said that the appellant is providing Consulting Engineering Service. Therefore, we had a different opinion from the decision of M/s. Ircon International Ltd. (Supra).

23. Further, we take note on the fact that for the subsequent period, post 1.6.2012, when the negative list regime came into force, as we are of the opinion that the service provided by way of construction, erection, commissioning, installation, completion and repairs and maintenance and renovation of core alteration of road is exempt at sl. no. 13 in terms of notification no. 25/2012 Service Tax dated 20th June, 2012, the appellant is not liable to pay service tax.

24. As we are having a contrary view to the Tribunal in the case of IRCON International (Supra)

therefore, we hold that extended period of limitation is not invokable. In these cases, all the Show Cause Notices has been issued to the appellant by invoking extended period of limitation which is also a Government of India undertaking. Therefore, no malafide intentions can be alleged against the appellant. In that circumstance, extended period of limitation is not invokable.

25. In view of this we hold that whole of the demand is barred by limitation in all the appeals. Accordingly, the appellant succeeds on limitation.

26. Therefore, we set aside the impugned order and allow the appeals on limitation, with consequential relief, if any.

(Pronounced in the open court on ____________)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RG