IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH – COURT NO. 1
Service Tax Appeal No. 76015 of 2016

(Arising out of Order-in-Original No.ST/Shillong No. 06/2016 dated 31.03.2016 passed by Commissioner of Central Excise & Service Tax, Shillong)

M/s. National Project Construction Corporation Ltd. **: Appellant**
NER(IBBW) Office, House No.-2,
Sonai Road, Apanjan Pally, Silchar-788 006 (Assam)

VERSUS

Commissioner of Central Excise and Service Tax, **: Respondent**
Shillong
Morellow Compound, M.G.Road, Shillong-793 001.

With

Service Tax Appeal No. 76155 of 2016

Sterling & Wilson
Benfish, IT Building, 3rd Floor, G.n.block, Sector-V, Salt Lake City, **Appellant**
Kolkata, West Bengal-700091.

Versus

Commissioner of Central Excise and Service Tax, **Respondent**
Shillong
Morellow Compound, M.G.Road, Shillong-793 001.

With

Service Tax Appeal No.-76156 of 2016

Prasad & Co Ltd. (Project Works) Ltd. **Appellant**
6-3-871/3, " Snehalata" Green Lands Road,Begumpet, Hyderabad-500016,
Andhrapradesh

Versus

Commissioner of Central Excise and Service Tax, **Respondent**
Shillong
Morellow Compound, M.G.Road, Shillong-793 001

With

Service Tax Appeal No.-76157 of 2016
Ramky Infrastucture **Appellant**
Jindal Towers, Block"A", 4th Floor,
21/1A/3, Darga Road, Kolkata-700017, West Bengal

Versus

Commissioner of Central Excise and Service Tax, **Respondent**
Shillong
Morellow Compound, M.G.Road, Shillong-793 001

With

Service Tax Appeal No.-76158 of 2016
M/s. Coastal Project Pvt. Ltd. **Appellant**
Bikahs Bhavan, Flat-VI¸ (II Floor),
Palace Compound, North Agartala-799001,
Tripura

Versus

Commissioner of Central Excise and Service Tax, Shillong **Respondent**
Morellow Compound, M.G.Road, Shillong-793 001

With

Service Tax Appeal No.-76159 of 2016

Vishwanath Projects **Appellants**
3-5-874/A, Flat No. 401,
R.K.Vipanchi Estates,Hyderabad-500029, Andhrapradesh

Versus

The Commissioner of Central Excise and Service Tax, Shillong **Respondent**
Morellow Compound, M.G.Road, Shillong-793 001

With

Service Tax Appeal No.-76160 of 2016

M/s. Deepsun Industrial Corporation **Appellants**
36, Ezra Street, 3rd Floor, Kolkata-700001.

Versus

The Commissioner of Central Excise and Service Tax, Shillong **Respondent**
Morellow Compound, M.G.Road, Shillong-793 001

With

Service Tax Appeal No.-76788 of 2016

M/s. Suprada Construction Co. **Appellant**
3rd Floor, Deep Apartment, Radhamadhab Road,
Silchar-788005, Assam

Versus

The Commissioner of Central Excise and Service Tax, Shillong **Respondent**
Morellow Compound, M.G.Road, Shillong-793 001

APPEARANCE:

Shri Basabraj Chakraborty & Ms. Pranjal Mathur, Advocates for the Appellant

Shri D.Sue, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 76420-76427**/ 2025**

DATE OF HEARING :29.04.2025

DATE OF DECISION:29.04.2025

Order : [Per Shri Ashok Jindal]

All the appeals are having a common issue and arising out of a common order therefore all are disposed of by a common order.

2. The facts of the case are that the appellant namely M/s. National Projects Construction Corporation Ltd. was entrusted with the execution of flood lighting work along the Indo-Bangladesh Border within the state of Tripura & Meghalaya for which appellant has executed Memorandum of Understanding(s) with the Ministry of Home Affairs. The contract was executed on "Deposit Basis" as per CPWD norms and the appellant acted only as an executing agency and supervisory body, with no direct involvement in the actual installation or erection of lighting structures. The work was executed by the independent sub-contractors appointed by the appellant namely NPCC through a separate tendering process.

3. The Revenue is of the view that the said activity undertaken by the appellants falls under the category of "Erection, Commissioning or Installation services". Therefore for the period 2009-10 to 2011-12 Show Cause Notice was issued to the appellant to demand Service Tax under the category of 'Erection, Commissioning or Installation Service".

4. The matter was adjudicated. Demand of Service Tax was confirmed against the appellants.

5. Aggrieved from the said order, the appellants are before us.

6. The Ld. Counsel appearing on behalf of the NPCC submits that admittedly the appellant was entrusted as implementing agency of the project which is covered under the Centrally Sponsored Scheme under the Central grant and not liable to pay service tax as per the Circular

No. 125/7/20-ST dated 30.07.2010. Therefore, no Service Tax is payable by the NPCC.

7. With regard to other appellants, it is the submission of the appellants that as per the scope of work the appellants were required to construct, improve, develop, manage or control of work, carried out the business of builders and contractors particularly as well as carried out the business of architects, surveyors, estimator, designer and the appellants have executed the work of flood lighting work which includes the amount of purchasing materials and the appellants had purchased have paid those materials and paid applicable VAT and Sales Tax. In that way the activity undertaken by the appellants falls under the category of Works Contract Service as held by the Hon'ble Apex Court in the case of Larsen & Toubro Ltd. v. CCE [2015 (39) S.T.R. 913 (A.C.)] and same was followed by this Tribunal in the case of Vishwanath Projects Limited versus Commissioner of Service Tax, Hyderabad, 2019 (11) TMI 675-CESTAT, Hyderabad. Therefore, demand of Service Tax under the category of "Erection, Commissioning or Installation Services" (ECIS) is not sustainable.

8. On the other hand, Ld. Authorized Representative supported the impugned order.

9. Heard the parties. Considered the submissions.

10. We find that the main appellant namely NPCC was entrusted with the execution of flood lighting work along the Indo-Bangladesh Border within the state of Tripura & Meghalaya for which NPCC had executed Memorandum of Understanding(s) with the Ministry of Home Affairs and the contract was executed on "Deposit Basis" as per CPWD norms, and NPCC acted only as an executing agency and supervisory body. Therefore, no demand of Service Tax is

sustainable against NPCC in terms of Circular No. 125/7/2010-ST dated 30.07.2010. For better appreciation of the fact the Circular No. 125/7/2010 –ST dated 30th July, 2010 is excerpted herein below:

Service Tax on Services provided by state governments under Centrally Sponsored Schemes

taxguru.in/service-tax/services-provided-by-state-governments-under-centrally-sponsored-schemes-css-service-tax-circular-no-12572010.html

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Service Tax Circular No.125/7/2010 – ST, Dated:-30th July, 2010

Services provided by state governments under Centrally Sponsored Schemes (CSS) – regarding.

In the recent past, instances have come to the notice of the Board, where field formations have demanded service tax from State governments or their departments/ agencies, for providing certain services under the centrally sponsored schemes (CSS). To cite an illustration, in the case of the centrally sponsored National Biogas and Manure Management Program operating under Ministry of New and Renewable Energy, State government agencies were involved in setting up of bio-gas plants in villages. Certain expenses incurred by the State governments or their departments/ agencies during the course of setting up of such bio-gas plants were reimbursed by the central government by way of a grant under the CSS. Jurisdictional service tax authorities demanded service tax from the State government department/agency.

saying that the reimbursements received by the concerned State government department/agency (as service provider) are nothing but consideration for installation and commissioning service received from the central government (service receiver).

2. Implicit in this service tax demand is an assumption that the relationship between Central government and the State government is an equivalent of a relationship between principal and the agent. This assumption is questionable as under administrative arrangement, State governments are bound to implement the centrally sponsored schemes on receipt of a grant. The fact that State governments are implementing agencies for the Central government within the framework of CSS does not make them service providers. Consequently, Central government cannot be taken as service receiver. Grant released by the Central government under a centrally sponsored scheme cannot be presumed as consideration for providing a taxable service.

3. Levy and collection of service tax on State government agencies/departments implementing CSS under a central grant, is not legally tenable and therefore in such cases service tax should not be demanded.

4. Trade Notice/Public Notice may be issued to the field formations.

5. Please acknowledge receipt of this Circular. Hindi version follows.

(J. M. Kennedy)

Director (TRU)
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service tax notifications

11. Admittedly the appellant NPCC is only an implementing agency for Central Government therefore, no Service Tax is payable by NPCC.

12. With regard to co-appellants before us it is admitted fact that the work has been executed being a sub-contractor of NPCC which include supply of material and the said issue has been examined by this Tribunal, whether in this circumstances the appellant are liable to pay Service Tax or not wherein this Tribunal has observed as under:

"*15. A plain reading of the above shows that the contract involved both supply of material and installation and commissioning of the equipment with no clear demarcation/vivisection between the service component and the material component thereof. We, therefore, do not agree with Ld. DR that the contract can be vivisected, in this case and the demand has been raised on the entire value of the contract including the material part of it because the appellant failed to provide the break up. Had there been a break up of the material and the service components in the contract itself, the demand would have been raised on the service component ignoring the material. There is nothing on record which is placed before us which shows that there are two different contracts or a single contract with two separate distinct components for supply of material and rendition of services. In view of the above, we find that the contract in question is a composite works contract. Composite works Contract involve both rendition of service and deemed sale/sale of the materials used in rendering such services. The Hon 'ble Apex Court has observed in the case of Larsen & Toubro (supra) that works contract is a separate specie of contract known to the trade and commerce distinct from a contract for supply of goods or a contract for supply of services. In View of the above, we have no hesitation in concluding that the contract in question is a composite works contract and could have been taxed only under the head of "Works Contract Services post 01.06.2007 It is not in dispute that* *the entire period in question is post 01.06.2007. Therefore, the demand if any could have been raised under the Works Contract Service. The demand in this case has been made under Erection, Commissioning and Installation Service. ECIS does not include the contract where transfer of materials is involved. Since the demand has been raised under ECIS and the nature of contract does not fall under this category, the demand on this head it has to fail. Accordingly, the demand is set aside to this extent on this ground alone."*

13. Admittedly, in the matter in hand the appellants have executed works alongwith material, therefore, merit classification of their services "Works Contract Service" as held by the Hon'ble Apex Court in the case of Larsen and Toubro Ltd. wherein it has been held that where the contract in question is a composite contract involving both supply of goods and provision of services in relation to construction or infrastructure projects, such contracts must be assessed under the category of "Works Contract Service" . As in these cases, Service Tax has been demanded under the category of "Erection, Commissioning or Installation Services" (ECIS) whereas the correct classification involves in Works Contract Service, in that circumstances, we hold that the demand of Service Tax under the category of Erection, Commissioning and Installation Services is not sustainable.

14. Consequently, demands confirmed against the appellants under the category of Erection, Commissioning or Installation Services are set aside. As no demand is sustainable, consequently, no penalty can be imposed against the appellants.

15. In these terms, we set aside the impugned order and allow the appeals filed by the appellant.

(Operative part of the order was pronounced in open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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