

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA**

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 76913 of 2017

(Arising out of Order-in-Original No. 10/COMMR/ST-II/KOL/2017-18 dated 04.07.2017 passed by the Commissioner of C.G.S.T. and C.X., Kolkata South, G.S.T. Bhawan, 180, Rajdanga Main Road, Shantipally, Kolkata – 700 107)

Commissioner of C.G.S.T. and Central Excise : **Appellant**
Kolkata South Commissionerate,
180, Shantipally, Rajdanga Main Road,
Kolkata – 700 107

VERSUS

M/s. Aircon Engineering Services : **Respondent**
Regd. Office: 104, Bakulbagan Road, Kolkata – 700 025
Other Office: 26A, Elgin Road, Kolkata – 700 020

APPEARANCE:

Smt. K. Kalpana, Authorized Representative, for the Appellant / Revenue

None for the Respondent

CORAM:

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

FINAL ORDER NO. 77896 / 2025

DATE OF HEARING / DECISION: 09.12.2025

ORDER: [PER SHRI ASHOK JINDAL]

The Revenue is in appeal against the impugned order.

2. The facts of the case are that intelligence was developed by the Directorate General of Central Excise Intelligence (DGCEI) that the respondent were engaged in providing various taxable services, such as 'industrial and commercial construction service', 'works contract service', 'manpower recruitment service', to various service receivers like NBCC Vibgyor Tower, West Bengal Housing Board, Reliance Telecom Ltd., L&T, Indian Oil, WBSEDCL, WBSETCL, etc., for the last many years and bills were raised for

providing taxable services from their Bakultala office. However, it was noticed that the respondent were not depositing Service Tax properly though they were collecting Service Tax from the above mentioned clients.

2.1. Accordingly, the registered premises and other premises of the respondent were searched on 18.07.2013 by the DGCEI, Kolkata. The above search operation resulted in the recovery and seizure of various incriminating documents and balance sheets for the period from 2008-09 and 2009-10.

3. From scrutiny of the records and statements furnished by the Representative and Partner of the respondent, it appeared to the Revenue that the respondent was evading payment of Service Tax, by collecting the same from their clients and not depositing the same in the Government exchequer and also by short payment / irregular payment of Service Tax on the services rendered by them to their clients.

4. The respondent submitted a statement showing the balance sheet reconciliation along with quantification of their Service Tax liability for the period from 2008-09 to 2010-11. From that, it appeared that during the material period, the respondent had provided both taxable as well as exempted services to their various clients in connection with works contract service and manpower supply service. Considering the balance sheet and reconciliation statement provided by the respondent and the figures shown in their running bills, it appeared that the figures did not tally with the various statements / returns submitted by the respondent. Moreover, in spite of several requests, the respondent

did not submit a single copy of invoice or the remaining work orders. Therefore, figures of the gross amount received by the respondent during the material period, prepared on the basis of the seized documents and reconciliation statement submitted by the respondent, was taken into account as the taxable income towards provision of taxable services by the respondent during the period from 2008-09 to 2010-11.

5. On the basis of the above, a Show Cause Notice was issued, alleging suppression of facts and non-payment of Service Tax during the impugned period on taxable services, which had been recovered by the respondent from their clients.

5.1. The matter was adjudicated vide the impugned order wherein the Id. adjudicating authority has recorded in their findings that certain work orders executed by the respondent are exempt from payment of Service Tax and for the remaining, he has calculated the liability as per the figures available in Form 26AS. On all the figures, the respondent wanted to pay Service Tax under the composition scheme and therefore, as per the composition scheme, the Id. adjudicating authority calculated the total tax liability of the respondent as Rs.66,60,110/- in respect of 'works contract service' and Rs.8,16,858/- in respect of 'manpower supply service'. It has also been recorded in the impugned order that the assessee filed their application under the VCES on 31.12.2013 and paid an amount of Rs.60,74,500/- towards Service Tax and an amount of Rs.2,49,213/- towards interest; challans were also produced; the payment of Rs.20 lakh on 26.07.2013 as recorded in the Show Cause Notice was also made by them on 26.07.2013

included in the payment under VCES. It was also recorded by the Id. adjudicating authority that the respondent did not suppress anything when they declared their tax dues under the VCES and that considering the fact that they had cleared such tax dues within the due date, they remained no outstanding liability on their part; as per the calculation done by the Id. adjudicating authority, it was found that the respondent had paid more than their tax dues under the VCES, while in terms of Section 109 of the Service Tax Voluntary Compliance Encouragement Scheme, 2013, the excess amount paid by the assessee was not refundable. In view of this, the Id. adjudicating authority has dropped the proceedings against the respondent.

5.2. Against the said order, the Revenue is before us, on the ground that the Id. adjudicating authority has granted the benefit of the composition scheme to the respondent, which is erroneous and illegal; the respondent had admitted that only few of the materials were provided whereas steel items and cement were provided by their clients free of cost; while availing the benefit of 67% abatement, the respondent had considered the material used therein, but failed to produce any evidence towards supply of such materials to their clients during the entire proceedings of the instant case. It is further challenged that the Id. adjudicating authority has considered the payment of Service Tax under the VCES scheme, but has not discussed as to whether the said Service Tax dues as declared by the respondent were one and the same as the one which has been investigated and determined by the DGCEI, Kolkata in the impugned Show Cause Notice.

Therefore, it is the prayer of the Revenue that the impugned order be set aside.

6. Heard the Ld. Authorized Representative of the Revenue.

7. We find that in the impugned order, the Id. adjudicating authority has discussed each and every aspect of the case and given his detailed findings thereon, which are reproduced hereinbelow: -

"10. DISCUSSION AND FINDINGS:

10.1. In terms of Service Tax Trade Notice No. 1/2014 dated 29.09.2014 issued under Government of India, Ministry of Finance Notification no. 20/2014-ST(NT) dated 16.09.2014 notifying new jurisdiction of Service Tax Commissionerate, the M/s Aircon Engineering Services having their registered office at 104, Bakulbagan Road, Kolkata-700025 and another office at 26A, Elgin Road, Kolkata-700 020, having Service Tax Registration No. AAJFA9139PST001, came to fall under the jurisdiction of Service Tax-II Commissionerate,

10.2. In exercise of the power conferred by the Principal Chief Commissioner, CGST & CX, Kolkata gone through Central Excise Trade Notice No.3/2017 dated 29.06.2017, the show cause notices issued under the provisions of the Central Excise Act, 1944 or the Finance Act, 1994 in respect of assesses/taxpayers pertaining to the erstwhile Kolkata-V Central Excise Commissionerate, Kolkata Service Tax-II Commissionerate and Kolkata-I (Taratala I & II Division, Range-IV, V and VI and part of Range-III of Tiljala Division) Central Excise Commissionerate are being adjudicated by the respective Central Excise Officers of Kolkata South CGST & CX Commissionerate. Accordingly, the

present Show Cause Notice has been taken up for adjudication by the undersigned.

10.3. The assessee was provided with enough time and opportunity to submit their reply and documents. They were also provided with opportunity to be heard in person. Accordingly, I hold that sufficient natural justice was extended to them.

I have gone through the records, relied upon documents, the defense reply and the allegation leveled in the instant SCN.

The SCN alleges that

i) the assessee has provided works contract service. They are paying service tax at concessional rate under Works Contract (Composition scheme for payment of service tax) Rules, 2007 without exercising any option prior to payment of service tax as required under the said Rules and not paid service tax of Rs (7,43,71,054-21,61,882) i.e. Rs.7,22,09,172/- during the period 2008-09 to 2010-11

ii) the assessee provided manpower supply service and realized an amount of Rs.83,27,271/- but they have not paid service tax of Rs.9,06,344/- during the year 2008 to 2010

The assessee has submitted the copies of 26AS, a reconciliation statement showing the project wise value, amount of bill raised, copies of work order, letter of acceptance and relevant copy of agreement during the period in dispute which have been taken into consideration.

Before going into the details of this issue I find it necessary to discuss the origin of the demand. I find SCN alleges that the assessee has not submitted the

relevant copies of invoices/bill inspite of several summons have been issued. I find the quantification has been made on the basis of gross bill/amount raised/received as enumerated below;

Table 1

Sl. No.	Year	Name of the assessee	Work order No. & date/ Description of works	Gross bill raised	Figure taken from
1	2008-09	Larson & Turbo Ltd.	05.03.2008/Construction of 400/220KVA G.I.S. Sub-Station at Gurgaon of Total value of Rs. 692.90 lakh.	40965678	RA Bill
	2009-10			3356299	Assessee's statement
	2010-11 (Up to 31.12.2010)			24968023	Order value minus (RA bill Assessee's statement)
	2008-09	DO	11KV Distribution Line in Rann of Catch Gujrat valued at Rs. 390 lakh	39000000	List of Works
	2009-10				completed in last 3 years
2010-11 (Up to 31.12.2010)					
2	2008-09	Reliance Ltd.	R/213 dated 05.08.2008	42598	Assessee's statement
	2009-10			0	
	2010-11 (Up to 31.12.2010)			0	
3	2008-09	WBHIDCO	97/HIDCO/GM(E)III/02 (Road Work) dated 02.07.2009	0	Assessee's statement
	2009-10			0	
	2010-11 (Up to 31.12.2010)			1057480	
4	2008-09	West Bengal Housing Board, S.N. Banerjee Road, Kolkata	825/JD(EW)01/HB dated 29.08.2008.	32137232	Assessee's statement
	2009-10			64745994	
	2010-11 (Up to 31.12.2010)			21263115	
5	2008-09	NBCC	NBCC/GM/NN/Vibgyor/2008/780 dated 11.12.2008	14536717	Figure of NBCC
	2009-10			57913998	
	2010-11 (Up to 31.12.2010)			0	
6	2008-09	Indian Oil Nabarun Group Housing Co-operative Society	Nab-21-2009-10 (Road work) dated 15.05.2009	0	Assessee's statement
	2009-10			158000	
	2010-11 (Up to 31.12.2010)			0	
7	2008-09	WBSEDCL	Nil dated 29.07.2009	0	Assessee's statement
	2009-10			70233	
	2010-11 (Up to 31.12.2010)			0	
8	2008-09	WBSETCL	51" dated 10.10.2008	163478	Assessee's statement
	2009-10			78769	
	2010-11 (Up to 31.12.2010)			0	
9	2008-09	WBSEB	WBSLB CLD Building of Danesh Shekh Lane, Howrah of valued Rs. 597.56 lakh	59756000	list of works completed in the last three years
	2009-10			0	
	2010-11 (Up to 31.12.2010)			0	
10	2008-09	Flurys swiss confectionary Pvt. Ltd., 18, Park Street, Kolkata-16		0	
	2009-10			0	
	2010-11 (Up to 31.12.2010)			0	
11	2008-09	Radge Valley		918595	From RA bill statement
	2009-10			0	
	2010-11 (Up to 31.12.2010)			0	
12	2008-09	Power Grid Corporation of India		531677	From RA bill statement
	2009-10			0	
	2010-11 (Up to 31.12.2010)			0	
13	2008-09	BHEL	12	2360941	Figure from BHEL
	2009-10		11	2596873	
	2010-11 (Up to 31.12.2010)		13	3369457	
14	2008-09	NBCC, Noida	NBCC/GM-RBG(E&I)/CRPF/2008/ 4157 dated 17.01.2008 valued at Rs. 277640000	8193154	From RA bill statement
	2009-10			121074560	-do-
	2010-11			148372286	Work Order valued minus RA Bill

10.4. Discussion on project at Sl. No. 1 of Table under para 4.3 of SCN (05.03.2008/Construction of 400/220KVA G.I.S. Sub-Station at Gurgaon of Total value of Rs. 692.90 lakh.) and 11KV Distribution Line in Rann of Catch Gujrat valued at Rs. 390 lakh.

The demand has been raised on two different work orders under this Sl. No. I will discuss the taxability of each work order separately.

I find that the first work was for construction of 400/220 KVA G.S.I. Sub Station at Gurgaon under Work Order. The SCN has justified the inclusion of Rs.4,09,65,678/-referring to one RA bill, Rs.33,56,299 referring to the assessee's statement. The SCN then subtracted these two values from the total value of the work order. However, the SCN ultimately demanded tax on the entire value of the work order.

The assessee has contested that their liability is to be calculated only on the basis of the 26AS figure because only that much amount was received by them during the material period.

Looking into the related documents I find that the demand on this account has been raised in an atrocious manner. Primarily I have failed to understand the logic and legality of segregation of values as has been done in the instant case when the demand has been raised on the entire value. In fact such segregation has proved that the department did not have any proof that the assessee received the entire amount. Most unfortunately the values reflected under different narration have no documentary evidence supporting the same. The SCN has not annexed any RA Bill in support of the segregated value. There is only one consolidated statement annexed which can hardly be considered as a RA Bill. The stunning fact remains that the

figure reflected in the annexed statement does not tally the figure reflected in the body of the SCN in Table under Para 4.3. Abundance of such insensitive and lackadaisical attitude in quantification becomes more evident when one notes that the demand was raised for a period when taxation was guided on the basis of received amount. Thus, the SCN had the onus to show that the assessee received the entire amount reflected in the work order. In spite of not having such proof the raising of the demand becomes untenable. The assessee has accepted that they have received Rs.33,56,299 only and in support of this claim they have submitted Form 26AS. The assessee is liable to pay tax on this amount. The rest of the demand in this regard fails to survive.

I find that the second work was for civil construction of 11KV Distribution Line in Rann of Catch Gujrat valued at Rs.3,90,00,000. The SCN has justified the demand referring to the list of works completed in last 3 years claimed to be submitted by the assessee. From the records I find that the so called statement is signed on 18.7.13 by the assessee. However, the SCN has nothing in it to show why such statement was prepared and submitted by the assessee. The suspicion deepens if one looks into the letter dated 10.9.2013 issued by DGCEI and the response of the assessee dated 23.9.2013. If the annexed statement was voluntary in nature and was obtained from the assessee against specific query DGCEI would not have any reason to ask for veracity of the statement. The response of the assessee dated 23.9.2013 challenged the inclusion of this work in their portfolio. It is clear that investigation could not prove anything contrary to that because if it were so the same would have been accommodated in the SCN. In fact from the issuance date of the SCN it becomes clear that no investigation was done in this regard; even if it was undertaken it certainly

yielded nothing. The assessee has justified their stance by highlighting the fact that no such amount is reflected in their 26AS. I thus, find that the manner and method applied in the SCN to include this amount as taxable lack all the necessary ingredients to survive the legal test. Under such circumstances I find the demand in this regard fails to survive.

10.5. Discussion on project at Sl. No. 2 of work order no. R/213 dated 05.08.2008 of Rs.42,598/- and Sl. No. 3 of work order no.97/HIDCO/GM(E)III/02 (Road Work) dated 02.07.2009 of Rs.10,57,480/-;

The assessee has accepted the liability for the work orders appended from sl. no. 2 &3 and thus, I find that it would be superfluous to discuss the issues in detail. The assessee is liable to pay s tax on these issues.

10.6. Discussion on project at Sl. No. 4 of work order no. 825/JD(EW)01/HB dated 29.08.2008 for Rs(3,21,37,232+6,47,45,994+2,12,63,115) i.e. Rs.11,81,46,341/-;

The SCN has justified the inclusion of Rs.11,81,46,341/-referring 81,46,341/-referring to the assessee's statement. I find that in terms of Form 26AS the assessee has received Rs.(3,21,37,232+6,47,45,994+4,12,63,115) i.e. Rs.13,81,46,341/- against this project during the period. At this juncture it is to be found out whether the same is taxable. From the work order it is evident that the same was issued in relation to construction of residential complex. The proceeds received as advance from construction of residential complex remained exempted till 31.6.2010 vide Notfn No. 36/2010- ST dated 28.6.2010. In the instant case it is evident from Form 26AS that out of Rs.13,81,46,341/- the assessee received an amount

of Rs.3,44,19,448/- only after 31.6.2010. This amount becomes taxable under works contract service in terms of the change in definition of Construction of Residential complex service. The assessee is thus liable to pay tax on Rs.3,44,19,448/-.

10.7. Discussion on project at Sl. No. 5 of work order no. NBCC/GM/NN/Vibgyor/2008/780 dated 11.12.2008 for Rs(1,45,36,717+5,79,13,998) I.e. Rs.7,24,50,715/-; I find from 26AS the assessee has received Rs. (1,45,36,717+ 6,48,63,232) i.e. Rs.7,93,99,949/- towards provision of service to NBCC Vibgyor during the year 2009-10. The assessee has accepted their liability. Thus further discussion in details on the issue is not required.

10.8. Discussion on project at Sl. No. 6 of work order no.Nab-21-2009-10 (Road work) dated 15.05.2009for Rs.1,58,000/-, Sl. No. 7 of work order no. Nil dated 29.07.2009 of WBSSEDCL for Rs.70,233/- and Sl. No. 8 of work order no.51" dated 10.10.2008 of WBSSETCL for Rs (1,63,478 + 78,769) i.e.Rs.2,42,247/-;

The assessee has accepted the liability for the work orders appended from sl. no. 6 to 8. and thus, I find that it would be superfluous to discuss the issues in detail. The assessee is liable to pay s tax on these issues.

10.9. Discussion on project at Sl. No. 9 of work order no. WBSLB CLD Building of Danesh shekh lane valued Rs.597.56 lakh;

The SCN has justified the demand for the project under Sl. No.9 referring to the list of works completed in last 3 years claimed to be submitted by the assessee. From the records I find that the so called statement is signed on 18.7.13 by the assessee. However, the SCN has nothing in it to

show why such statement was prepared and submitted by the assessee. The suspicion deepens if one looks into the letter dated 10.9.2013 issued by DGCEI and the response of the assessee dated 23.9.2013. If the annexed statement was voluntary in nature and was obtained from the assessee against specific query DGCEI would not have any reason to ask for veracity of the statement. The response of the assessee dated 23.9.2013 challenged the inclusion of this work in their portfolio. It is clear that investigation could not prove anything contrary to that because if it were so the same would have been accommodated in the SCN. In fact from the issuance date of the SCN it becomes clear that no investigation was done in this regard; even it was undertaken it yielded nothing. The assessee has justified their stance by highlighting the fact that no such amount is reflected in their 26AS. I thus, find that the manner and method applied in the SCN to include this amount as taxable lack all the necessary ingredients to survive the legal test. Under such circumstances I find the demand in this regard fails to survive.

10.10. Discussion on Sl. No. 10 - Nothing to discuss since there is no demand against this Sl. No. Inclusion of this sl. No. shows how little care was invested while raising the SCN.

10.11. Discussion on demand at Sl. No. 11 for service to Rose valley on Rs.9,18,595/- and Sl. No. 12 for service to Power Grid Corporation on Rs.5,31,677/-;

The SCN has justified the inclusion of Rs.9,18,595/- towards service to Rose valley at sl. No.11 and Rs.5,31,677 to Power Grid Corporation referring to one RA bill statement at sl.no.12.

The assessee has contested that their liability is to be calculated only on the basis of the 26AS figure.

The SCN has not annexed any RA Bill in support of the value. There is only one consolidated statement annexed which can hardly be considered as a RA Bill. From the records in these cases as well I find that the so called statement is signed on 18.7.13 by the assessee. However, the SCN has nothing in it to show why such statement was prepared and submitted by the assessee. The confusion deepens if one looks into the letter dated 10.9.2013 issued by DGCEI and the response of the assessee dated 23.9.2013. If the annexed statement was voluntary in nature and was obtained from the assessee against specific query DGCEI would not have any reason to ask for veracity of the statement. The response of the assessee dated 23.9.2013 challenged the inclusion of this work in their portfolio. It is clear that investigation could not prove anything contrary to that because if it were so the same would have been accommodated in the SCN. In fact from the issuance date of the SCN it becomes clear that no investigation was done in this regard; even it was undertaken it yielded nothing. The assessee has justified their stance by highlighting the fact that no such amount is reflected in their 26AS. I thus, find that the manner and method applied in the SCN to include this amount as taxable lack all the necessary ingredients to survive the legal test. Under such circumstances I find the demand in this regard fails to survive.

10.12. Discussion on Manpower supply at Sl. No. 13 to BHEL on Rs (23,60,941+25,96,873+33,69,457) i.e. Rs.83,27,271/-;

I find that this issue was stirred in course of summons proceedings on 18.07.2013 and the assessee accepted tax liability on this amount. In

their reply they have remained silent in this regard. Such silence is nothing but tacit acceptance of them on the tax liability in this regard. The assessee is thus liable to pay s tax on this issue.

10.13. Discussion on project at Sl. No. 14 of work order no.NBCC/GM-RBG(E&I)/CRPF/2008/4157 dated 17.01.2008 for Rs.27,76,40,000/-;

The SCN has justified the inclusion of Rs.81,93,154/- and Rs.12,10,74,560 referring to the RA bill. The SCN then subtracted these two values from the total value of the work order. However, the SCN ultimately demanded tax on the entire value of the work order.

The assessee has contested that their liability is to be calculated only on the basis of the 26AS figure because only that much amount was received by them during the material period.

Looking into the related documents I find that the demand on this account again has been raised in a manner which can hardly be justified. In this case as well I have failed to understand the logic and legality of segregation of values as has been done in the instant case when the demand has been raised on the entire value. In fact such segregation has proved that the department did not have any proof that the assessee received the entire amount. Most unfortunately the values reflected under different narration have no documentary evidence supporting the same. The SCN has not annexed any RA Bill in support of the segregated value. There is only one consolidated statement annexed which can hardly be considered as a RA Bill. The stunning fact remains that the figure reflected in the annexed statement does not tally the figure reflected in the body of the SCN in Table under Para 4.3. Abundance of such insensitive and lackadaisical attitude in

quantification becomes more evident when one notes that the demand was raised for a period when taxation was guided on the basis of received amount. Thus, the SCN had the onus to show that the assessee received the entire amount reflected in the work order.

I find that in terms of Form 26AS the assessee has received Rs.22,49,02,373/-against this project. At this juncture it is to be found out whether the same is taxable. From the work order it is evident that the same was issued in relation to construction of residential complex. The proceeds received as advance from construction of residential complex remained exempted till 31.6.2010 vide Notfn No. 36/2010-ST dated 28.6.2010. In the instant case it is evident from Form 26AS that out of Rs.22,49,02,373/- the assessee received an amount of Rs.4,67,57,372/-only after 31.6.2010. This amount becomes taxable under works contract service in terms of the change in definition of Construction of Residential complex service. The assessee is thus liable to pay tax onRs.4,67,57,372/-.

10.14. In this regard I have gone through the certificate issued by the Statutory Auditors of the assessee which was submitted by them on 07.03.17. The contents of the Certificate reveal that the assessee was never involved in providing service to M/s WBSEB, M/s Flurys Swiss Confectionary, M/s Power Grid Corporation of India as has been alleged in the SCN and the consideration from M/s L & T was limited to Rs.33,56,299/- in 2009-10, M/s NBCC Ltd. at Gujrat was limited to Rs.22,49,02,373/- during the period from 2008-09 to 2010-11. 1, thus, find that the discussion / inference made above conforms with the financial records of the assessee.

10.15. Quantification of tax liability

On going through the SCN I find that in course of raising the demand there was complete absence of mathematical accuracy, coherent reasoning and carefulness expected in such exercise. I have failed to understand how an assertion like the following one can be made.

On scrutiny of the ST-3 Returns it is seen that they have deposited Service Tax to the Govt. exchequer in the category of Works Contract Service at the rate of 4.12% after availing abatement 67% on the Gross value as per following table:...

The table clearly shows that after availing 60% abatement the assessee paid s tax at full rate.

Careless attitude in the SCN becomes magnified as it goes on to argue that the assessee was not eligible to follow composite scheme and thus, they were not eligible to avail any abatement at all. On the basis of such inventive logic the demand was raised applying full rate on the amount claimed to have been received by the assessee during the impugned period. The SCN should have noted that no legal provision during the material period endorsed such calculation for tax in relation to Works Contract services.

Discomfort level increases as one looks into the prevailing provisions. Prior to 1.7.2012 the assessee had the option to pay s tax following the abatement of 67% provided under Notification 1/2006 for construction service. In the instant case the assessee paid tax in terms of this notification. As the work orders that are found to be taxable are in relation to provision of construction service the assessee could have availed 67% abatement on the amount received. Instead of that they availed abatement of 60% and thus their tax payment was

in favour of revenue at least up to 30.6.2010. Since 1.7.10 construction of residential complex became classifiable under works contract services when the provider had no right to sale a part or the whole complex.

On the basis of the above discussion I find that during the impugned period the assessee was liable to pay tax as has been determined herein below.

From the discussion made above it is clear that during the impugned period the assessee provided two services: (i) Works Contract Service and (ii) Manpower supply services.

Tax liability relating to Works Contract service:

Service	Name of the clients	Work order no.	Gross taxable value 2008-09	Gross taxable value 2009-10	Gross taxable value 2010-11
Works Contract	Larsen & Toubro Ltd	LTCD/DLRO/GUR/SKC/EI&C/2008/01 dt.05.03.2008	NIL	3356299	NIL
	Reliance Ltd	R/213 dated 05.08.2008	42598	NIL	NIL
	WBHIDCO	Work Order No.97/HIDCO/GM(E)111/02 dt.02.07.2009.	NIL	NIL	1057480
	WBHB	825/JD(EW)-1/HB dt 29.08.2008.	NIL	NIL	34419448
	NBCC VIBGYOR	NBCC/GM/NN/Vibgyor/2008/780 dt.11.12.2008	14536717	64863232	NIL
	IOC, Nabarun	Nab-21-2009-10(Road work) DT.15.05.2009	NIL	158000	NIL
	WBSEDCL	Nil dated 29.07.2009	NIL	70233	NIL
	WBSETCL	Work Order no-51 dt.10.10.2008	163478	78769	NIL
	NBCC, Noida	NBCC/GM-RBG(E&I)/C RPF/2008/4157 DATED 17.01.2008	NIL	NIL	46757372
Total			1,47,42,793	6,85,26,533	8,22,34,300

10.16.

In 2008-09 as per the 26AS the assessee received Rs. 1,47,42,793/-. This is taxable and in this case as this amount represents the total receipt this value should be considered as cum tax value. The tax liability on this comes to Rs.6,94,545/-.

[(1,47,42,793/104.944) X100X4.944%-6,94,545/-]

(4.944% is the effective rate when the abatement is 60% and rate of tax is 12.36%)

In 2009-10 as per the 26AS the assessee received Rs.6,85,26,533/-. This is taxable and in this case as this represents the total receipt this value should be considered as cum tax value. The tax liability on this comes to Rs.27,11,576/-.

$[(6,85,26,533/104.12) \times 100 \times 4.12\% - 27,11,576/-]$

(4.12% is the effective rate when the abatement is 60% and rate of tax is 10.30%).

In 2010-11 as per the 26AS the assessee received Rs.8,22,34,300/-. This is taxable and in this case as this represents the total receipt this value should be considered as cum tax value. The tax liability on this comes to Rs.32,53,989/-

$[(8,22,34,300/104.12) \times 100 \times 4.12\% - 32,53,989]$

(4.12% is the effective rate when the abatement is 60% and rate of tax is 10.30%)

Thus, the total liability against Works Contract service for the impugned period =
Rs(6,94,545+27,11,276+32,53,989) i.e.
Rs.66,60,110/-.

10.17. Regarding Man power supply service;

Service	Gross taxable value 2008-09 TOTAL	Gross taxable value 2009-10	Gross taxable value 2010-11
MANPOWER SUPPLY	23,60,941	25,96,873	33,69,457

In 2008-09 the assessee received Rs.23,60,941/-. This is taxable and in this case as this represents the total receipt this value should be considered as cum tax value. The tax liability on this comes to Rs.2,59,712/-

$[(23,60,941/112.36) \times 100 \times 12.36\% - 2,59,712]$

In 2009-10 the assessee received Rs.25,96,873/-. This is taxable and in this case as this represents the total receipt this value should be considered as cum tax value. The tax liability on this comes to Rs.2,42,500/-

$$[(25,96,873/110.30) \times 100 \times 10.30\% - 2,42,500]$$

In 2010 11 the assessee received Rs.33,69,457/-. This is taxable and in this case as this represents the total receipt this value should be considered as cum tax value. The tax liability on this comes to Rs.3,14,646/-

$$[(33,69,457/110.30) \times 100 \times 10.30\% = 3,14,646]$$

Thus, the total liability against Manpower supply service for the impugned period= Rs (2,59,712 +2,42,500+3,14,646) i.e. Rs.8,16,858/-

Thus during the impugned period the assessee had tax liability altogether of Rs(66,60,110 +8,16,858) i.e.Rs.74,76,968/- during the period in dispute.

The SCN acknowledges that the assessee had paid Rs.21,61,882/- and reflected the same in their ST-3 return. Thus, the assessee had an outstanding liability of Rs.(74,76,968 - 21,61,882) i.e. Rs.53,15,086/-.

I find the assessee filed VCES for Rs.60,74,500/- on 31.12.2013 while they paid an amount of Rs.60,74,500/- towards service tax and interest of Rs.249,213/-,total Rs.63,23,713/- vide challan no.00001dt.26.07.2013, 00014dt.31.12.2013, 30147dt.16.09.2014 and 30094 dt.30.12.2014. In fact payment of Rs.20 lakh on 26.7.2013 mentioned in the SCN is included in the payment of VCES.

From the exercise undertaken above I find that the assessee did not suppress anything when they declared the tax due under VCES. Considering the

fact that they have cleared such tax due within due date along with interest there remained no outstanding liability. The above calculation shows that the assessee has paid more than their tax due under VCES. In terms of Section 109 of Service Tax Voluntary Compliance Encouragement Scheme, 2013 the excess amount paid by the assessee is not refundable.

10.18. The SCN has proposed penalty under 76, 77 and 78. That while making such proposal the legal provisions have been ignored is proved from the fact that statute does not allow imposition of penalty under 76 and 78 simultaneously. As the entire payment pertains to VCES no penalty is imposable under 76 or 78. Regarding imposition of penalty under Sec 77 for not registering their Manpower supply service I find that though all the payments under VCES were made either under works contract or Commercial contract service the payment made by the assessee under VCES has cleared the liability in this regard as well. Consequently no penalty is applicable under 77 though it remains a fact that prior to applying for surrender of registration they did not apply for amending their registration.”

8. The Id. adjudicating authority has taken into consideration the declaration made by the respondent under the scheme of VCES. In fact, the Revenue, in their grounds of appeal, has shown that the respondent has filed the VCES claim, which is for the outstanding dues for the period in question. In these circumstances, the grounds taken by the Revenue in their grounds of appeal are frivolous.

9. Moreover, the Id. adjudicating authority has also considered all the documents and on the basis of such documents, it has been found that certain services provided by the respondent are exempt from payment of Service Tax and certain services were taxable, for which the respondent had either paid Service Tax under the composition scheme or at the time of availing the VCES scheme.

10. Therefore, we do not find any infirmity in the impugned order and the same is upheld.

11. The appeal filed by the Revenue is dismissed.

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

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd