

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

Division Bench – Court No. – I

Service Tax Appeal No. 3572 of 2012

(Arising out of Order-in-Original No. VIZ-STX-001-COM-107-2012 dt.30.08.2012 passed by
Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam-I)

M/s Chaitanya Constructions

D.No.44-38-12/23/4, AVS Paradise, Srinivasa Nagar,
Akkayyapalem, Visakhapatnam, AP – 530 016

.....Appellant

VERSUS

**Commissioner of Central Excise &
Service Tax, Visakhapatnam - I**

Port Area, Visakhapatnam,
Andhra Pradesh – 530 035

.....Respondent

Appearance

Shri D.V. Subba Rao, Advocate for the Appellant.

Shri M. Anukathir Surya, AR for the Respondent.

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

FINAL ORDER No. A/30244/2025

Date of Hearing: 02.04.2025

Date of Decision: 28.07.2025

[Order per: A.K. JYOTISHI]

M/s Chaitanya Constructions (hereinafter referred to as the appellant) are in appeal against the OIO dt.29.02.2012.

2. The issue, in brief, is that during the period 01.10.2010 to 30.09.2011, the appellants were undertaking certain works, as under:-

- a) Works undertaken for municipal authorities –
 - i. Laying of pipelines;
 - ii. Shifting of pipelines;
 - iii. Maintenance of pipelines.
- b) Works of government department relating to water distribution systems as sub-contractors;
- c) Construction of Elevated Level Storage Reservoir (ELSR) for APIIC (SEZ);
- d) Construction of water supply facilities at industrial growth center for APIIC;

- e) Works undertaken for Military Engineering Services (MES) – Certain civil and electrical works for Korukonda Sainik School;
- f) Certain repairs to Municipal Authority.

The works at (a) to (e) above were classified under Works Contract Service (WCS), whereas, works at (f) above were classified under Management, Maintenance or Repair Service (MMRS).

3. The Adjudicating Authority has confirmed the entire demand holding that services were classifiable under WCS, except for MMRS. While examining the scope of work, the adjudicating authority has gone through the explanations and submissions of the appellant and especially the party wise nature of work done by them. The details are at para 14 of the OIO. The adjudicating authority framed three issues as under:-

- i. Whether the services rendered by the assessees, as discussed above, are classifiable under WCS as defined under section 65(105)(zzza) of the Finance Act, 1994 and whether an amount of Rs.1,25,21,106/- is payable under the WCS rendered during the period from 01.10.2010 to 30.09.2011 under section 73(1) of Chapter V of the Finance Act, 1994;
 - ii. Whether the services rendered by the assessees to Municipal Corporation VSP viz., 'Urgent repairs to 500 mm dia GRP pumping main (HLR) at Opp Sita towers and Balaji Harmonium Apartment in Factories layout', are classifiable under MMRS as defined under section 65(105)(zzq) of the Finance Act, 1994 and whether service tax of Rs.12,033/- is payable under the MMRS rendered during the period from 01.10.2010 to 30.09.2011 under section 73(1) of Chapter V of the Finance Act, 1994;
 - iii. Whether penalty is imposable on them under section 76 and section 77 of the Finance Act, 1994, for failure to pay service tax payable by the due dates prescribed on the service tax amounts mentioned at (i) and (ii) above and for non-filing of returns.
4. In relation to issue at (i) above, the adjudicating authority, inter alia, held that the contention of the appellants that in relation to the said work there was no commercial angle and the works were for government

departments in view of the fact that as per explanation to section 65(105)(zzzza) of the Finance Act, only the contracts for the purpose of carrying out the constructions in respect of sub-clause (ii) (b) of the explanation are governed by the condition 'primarily for the purpose of commerce or industry'. Whereas, the work mentioned in sub-clause (ii) (a), (c), (d) and (e) of the explanation are not subject to this limitation. In this case, the work undertaken by the assesseees are classifiable under sub-clause (ii) (a) of the explanation and therefore, this ground is not considered relevant. He also examined the eligibility under section 98 of the Finance Act, and held that since in the factual matrix, the services were not restricted to just management, maintenance of repair, the benefit of exemption cannot be extended.

5. In respect of issue at (ii) above, he has not explained in detail as to why it is not a composite contract and held that the scope of work is in the nature of management, maintenance of repair of immovable property of M/s GVMC and therefore, upheld the demand.

6. In respect of issue at (iii) above, he held that since the appellants have not paid service tax by due dates, they are liable for penalty under section 76 and also under section 77 of the Finance Act.

7. Heard both sides and perused the records.

8. We find that as far as classification of the composite contract is concerned, the same has been correctly adopted by the adjudicating authority as WCS, except for MMRS. We find that as far as the issue of laying of pipelines and shifting of pipelines in respect of GVMC and Graphite India Ltd are concerned, the adjudicating authority has held that these were primarily used for commerce. However, this is not relevant as these works are in the nature of Erection, Commissioning or Installation Services (ECIS) and not construction services, whereas, these services are held to be covered under construction service and not under ECIS. Reliance has been placed on the judgment of Larger Bench in the case of Lanco Infratech Ltd Vs CCE & ST, Hyderabad [2015 (38) STR 79 (Tri-LB)]. Moreover, it has also been held by the Coordinate Benches that laying of pipeline for municipalities and drinking water facility are not leviable to service tax. Reliance is placed on the following judgments

- a) CCE, Thiruchirappalli Vs Indian Hume Pipes Co Ltd [2015 (40) STR 214 (Mad)]
- b) Angraj Civil Projects Pvt Ltd Vs CCE & ST, Lucknow [2020 (34) GSTL 574 (Tri-All)]
- c) IVRCL-Navyuga-SEW JV Vs CST, Hyderabad [2020 (34) GSTL 468 (Tri-Hyd)]

9. Similarly, we find that the activities of construction of water distribution system irrespective of whether it has been provided as contractor or as sub-contractor is in the nature of construction services and are not taxable as such constructions are for government department or municipalities and are in relation to drinking water supply. Insofar as the issue of demand of service tax on services provided to APIIC, in their capacity as SEZ developer, the services provided to SEZ are exempted by virtue of section 26(1)(e) of SEZ Act, 2005 read with Rule 31 of SEZ Rules, 2006 and Notification No.09/2009-ST till 28.02.2011 and under Notification No.17/2011-ST from 01.03.2011. We also note that in this case, Office of Development Commissioner has issued certificate certifying the fact that appellants are appointed as contractor by the Developer and that the execution of the work is for the authorized operations and hence exemptions can be extended. Therefore, it is obvious that the subject services were provided to SEZ developer and that the said services were required for authorized operations of SEZ unit. Therefore, even if there is deviation in following prescribed procedure for claiming exemption, the same cannot be a ground for demanding duty in view of provisions under section 26(1)(e) of SEZ Act. We find force in the reliance placed by the appellant in the case of GMR Aerospace Engineering Ltd Vs UOI [2019 (31) GSTL 596 (AP)] as further upheld by Hon'ble Supreme Court in UOI Vs GMR Aerospace Engineering Ltd [2023 (6) CENTAX 155 (SC)].

10. Similarly, the demand on construction of water supply facilities at the industrial growth center for APIIC, is also not tenable as APIIC is a public authority and their primary objective is promotion of industries and not to engage in commerce. We find that reliance placed by the appellant on the following cases laws is relevant.

- a) CCE, Nashik Vs Maharashtra Industrial Devl. Corpn. [2018 (9) GSTL (Bom)]
- b) Karnataka Industrial Areas Dev. Board Vs CCT, Bangalore North [2020 (40) GSTL 33 (Tri-Bang)]
- c) BG Shirke Construction Technology Pvt Ltd Vs CCE & ST, Pune-III [2020 (43) GSTL 242 (Tri-Mumbai)]
- d) Gujarat Adani Institute of Medical Sciences Vs CCE & ST, Rajkot [2023 (10) CENTAX 88 (Tri-Ahmd)]

11. Insofar as the services rendered to Military Engineering Services (MES), it is noted that it was in relation to Sainik School run by them and such building cannot be used for commerce and hence repairs of such building are beyond the scope of service tax. We find that as per the definition of WCS, construction services in relation to properties, not primarily for commerce, are beyond the scope of levy of service tax and even repair services in relation to non-commercial government building are kept outside the scope of levy for the period 16.06.2005 to 30.06.2012.

12. Therefore, we find that in the factual matrix, the demand confirmed by the adjudicating authority is not proper and legal and cannot be sustained and accordingly, the impugned order is set aside.

13. Appeal allowed.

(Pronounced in the Open Court on 28.07.2025)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)