

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,  
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

**SERVICE TAX Appeal No. 11761 of 2017-DB**

[Arising out of Appeal No CCESA-VAD-APP-II-VK-73-2017-18 dated 19.06.2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-II]

**Skyway Construction**

Harshal S. Talati Prop. of Skyway Construction, Ashok  
Vatika, 3, Opposite King Palace, Ring Road,  
SURAT, GUJARAT -395001

**.... Appellant**

*VERSUS*

**Commissioner of Central Excise & ST, Surat-i**

New Building, Opp. Gandhi Baug,  
Chowk Bazar, Surat, Gujarat -395001

**.... Respondent**

**WITH**

- (i) SERVICE TAX Appeal No.11762/2017 (M/s. Hitam Construction)**
- (ii) SERVICE TAX Appeal No.11763/2017 (M/s. Hitam Construction)**
- (iii) SERVICE TAX Appeal No.11764/2017(M/s.Bhavik Construction)**
- (iv) SERVICE TAX Appeal No.11765/2017(M/s.Bhavik Construction)**

[Arising out of Appeal Nos. CCESA-VAD-APP-II-VK-74-2017-18, CCESA-VAD-APP-II-VK-71-2017-18, CCESA-VAD-APP-II-VK-75-2017-18, CCESA-VAD-APP-II-VK-76-2017-18, all dated 19.06.2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-II]

**APPEARANCE :**

Shri Jigar Shah & Shri Amber Kumarawat, Advocates for the Appellant  
Shri Himanshu P Shrimali, Superintendent (AR), (AR) for the Respondent

**CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)  
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)**

DATE OF HEARING : 25.06.2024

DATE OF DECISION: 28.06.2024

**FINAL ORDER NO. 11442-11446/2024**

**C.L. MAHAR :**

All the appeals details of which are being given hereunder are taken up together as all these appeals emanated from common investigations initiated by the investigating agency of the department. The brief facts of the matter are that the Director General of Central Excise Intelligence, Vapi have searched the premises of M/s. Shree Hindustan Fabricators, Surat suspecting that M/s. Shree Hindustan Fabricators and his subcontractors are providing

services of laying of pipelines for water supply and drainage to Surat Municipal Corporation and others. The investigation conducted by the agency has established that the above mentioned appellants have provided the service of laying pipelines for water supply and drainage for the main contractor namely M/s. Shree Hindustan Fabricators. Show cause notices have been issued to the above mentioned appellants as well as to M/s. Shree Hindustan Fabricators alleging that the appellant have provided Erection, Commissioning and Installation Service and service tax has not been paid by the appellants to the government exchequer. The show cause notices have been confirmed upto the level of Commissioner (Appeals), as per details as follows:-

Appeal No.	Impugned Order	SCN	Period	Demand
M/s Skyway Construction ST/11761/2017	OIA No. CCESA-VAD(APP-II)/VK-73/2017-18 dated 19.06.2017	SCN dated 22.10.2013	01.04.2008 to 31.03.2013	Rs. 17,84,475/-
M/s Hitam Construction ST/11762/2017	OIA No. CCESA-VAD(APP-II)/VK-74/2017-18 dated 19.06.2017	SCN dated 22.10.2013	01.04.2008 to 31.03.2013	Rs. 13,59,812/-
M/s Hitman Construction ST/11763/2017	OIA No. CCESA-VAD(APP-II)/VK-71/2017-18 dated 19.06.2017	SCN dated 23.02.2015	01.04.2013 to 30.09.2014	Rs. 2,02,740/-
M/s Bhavik Construction ST/11764/2017	OIA No. CCESA-VAD(APP-II)/VK-75/2017-18 dated 19.06.2017	SCN dated 23.10.2013	01.04.2008 to 31.03.2013	Rs. 14,28,328/-
M/s Bhavik Construction ST/11765/2017	OIA No. CCESA-VAD(APP-II)/VK-76/2017-18 dated 19.06.2017	SCN dated 20.02.2015	01.04.2013 to 30.09.2014	Rs. 2,36,887/-

The appellants are before us against the above mentioned Commissioner (Appeals) orders.

2. The learned advocate appearing on behalf of the appellants submitted that the matter is no longer *res-integra* as the demand against M/s. Shree Hindustan Fabricators has already been decided by this Tribunal on the same issue vide Final Order No. A/10337-10338/2020 dated 29.01.2020. The departmental representative has also agreed to the same.

3. We have heard both the sides and we feel that the matter is no longer *res-integra* as it has already been decided in the case of M/s. Shree Hindustan Fabricators vs. CCE & ST, Surat (supra) reported under 2020 (2) TMI 110 – CESTAT Ahmedabad. The relevant extracts of the order is reproduced below:-

**“5.** We have considered rival submissions, we find that the primary defense of the appellant is that the activity undertaken by them does not fall under the category of ECIS. It has been argued that since the demand has been made under ECIS only, no demand under any other classification such as Commercial or Industrial Works Construction Service or Works Contract Service can be sustained. For this argument they have relied on the decision of REAL VALUE PROMOTERS PVT. LTD.(supra) and on the decision in the case of CONCEPT MOTORS PVT. LTD. (supra). In the case of CONCEPT MOTORS PVT. LTD. (supra) tribunal has observed as follows :

*“As regard the demand of service tax on referral fees received by the appellant from HDFC Chubb insurance company, we find that the service is in connection with business of insurance of HDFC Chubb. In terms of Sub Section 65 of Finance Act, 1994, the service provided by the appellant falls under definition of Insurance Auxiliary Services whereas the Revenue has raised the demand under wrong head. On this ground the demand of service tax under Business Auxiliary Services does not sustain. As per our above discussion, the impugned order is set aside and appeal is allowed.”*

**5.1** The next argument of the appellant is that the service provided by them is not covered under ECIS as held by tribunal in case of INDIAN HUME PIPE CO. LTD. (supra) affirmed by the Hon’ble High Court of Madras. In Para 8, 8.1 & 8.2 of the decision of tribunal in case of INDIAN HUME PIPE CO. LTD. following has been observed:

*“8. We have considered the rival arguments. The dispute involves the meaning of the expression and legislative intent behind scope of the levy on erection, commissioning or installation. The impugned order found that up to 16-6-95, the assessee had rendered the taxable activity of erection, commissioning or installation of a plant. The Commissioner found that “plant represented a fixed investment for carrying out certain institutional activity for business”. The water supply system involving pipelines is therefore seen as a plant. The activity undertaken by IHPL is construction of pipeline by earthwork excavation, conveying and lowering of PSC/MS pipes and MS specials, AC pipes, PVC pipes, CI/GI pipes and jointing materials into the trench; laying to proper grade and alignment; refilling the trenches with excavated soil after laying of pipes, construction of sluice valve pits, scour valve pits, air valve pits, thrust blocks, etc.*

**8.1** *We find ourselves in agreement with the appellants’ reading of the expressions contained in the relevant entry, namely, ‘erection, commissioning or installation’. We find it elementary that ‘erection’ connotes construction or building of a structure and laying of pipeline does not involve erection. We find no ambiguity in the expression installation. It applies to machinery already made which are formally made ready to operate at the site. Installation implies setting up the machinery ready for use, like giving power connections or installing driver software in the case of a machine run with the aid computer software. Commissioning involves the operationalisation of the machinery after which it starts functioning regularly. In laying of long distance pipeline, earth is dug and pipes laid and*

*jointed, and the pipes pass through sumps with boosters at intervals, if necessary. This activity will not involve erection.*

**8.2** *As rightly argued by IHPL, the CBEC Circular No. 62/11/2003-S.T., dated 21-8-2003, inter alia, clarified the levy to the same effect as follows :*

*“1.2 As commonly understood, the activity of installation means the act of putting an equipment, machinery or plant into its place and making it ready for use. The activity of installation will start after erection which would refer to putting up civil structures. Commissioning of a plant would mean operationalising an installed plant/equipment/machinery.”*

*Whereas erection became part of the entry only from 10-9-04, from 16-6-05 onwards meaning of ‘erection, commissioning or installation’ [Section 65(39a)] was enlarged to include installation of various devices and equipments. An entry “plumbing, drain laying, or other installation for transport of fluids” was introduced under sub-section (ii)(b). The impugned order found that the service involved was specifically covered from 16-6-05 under the same head by the entry “plumbing, drain laying, or other installation for transport of fluids”. We are inclined to agree with the appellants that this entry covers such facility provided in a building as it appears in the company of air-conditioning system, lifts, electronic devices including wiring etc. which are installed in a building. The Commissioner found that “plant represented a fixed investment for carrying out certain institutional activity for business”. The Id. Consultant for the department has tried to defend the interpretation of the Commissioner of the expression plant. The Commissioner’s interpretation of a plant would cover a long distance pipeline. We find it difficult to accept the above reading of the word plant in the context it is used. It is an inappropriate selection of the various meanings of this simple word. Plant in popular usage means a cluster of buildings or a building in which machinery are installed usually for manufacture of goods. Long distance pipeline is not even remotely associated with this common understanding of the word plant. We also find that a water supply project is an infrastructure facility and a civic amenity the State provides in public interest and not an activity of commerce or industry. The impugned order also did not hold it to come under a service of commercial or industrial nature as submitted by the Id. Consultant for the Revenue. Therefore, the impugned order demanding duty on the activity of laying of pipeline interpreting it to be erection, commissioning and installation of a plant is totally misconceived and unacceptable.”*

**5.2** While affirming the decision of tribunal in case of INDIAN HUME PIPE(supra), the Hon’ble High Court of Madras relied on the decision of Larger Bench of tribunal in case of LANCO INFRATECH LTD. 2015 (38) S.T.R.709 (Tri.-LB). Hon’ble High Court observed as follows:

*“10. On the question as to what happens if the case is covered by Section 65(25b), a larger Bench of the Customs, Excise and Service Tax has already held in Lanco Infratech Ltd. v. Commissioner of Customs, Central Excise and Service Tax, Hyderabad [2015 TIOL-768-CESTAT-BANG-LB = 2015 (38) S.T.R. 709 (Tri. - Bang)] as follows :*

*“Considered in the light of the precedents referred to herein above; the definitions of ECIS and CICS; the Board clarification dated 7-1-2010; the Dictionary meanings*

*ascribed to the word "conduit"; and provisions of Section 65A(2)(a) and (b), we conclude that construction of a pipeline/conduit for transmission of water/sewerage and involving associated works like digging of the earth, supporting pipeline/conduit, construction of pumping stations together with associated machinery and other construction works, including for transmission of water in lift irrigation projects, cannot be classified under ECIS. These services are only classifiable as CICS. Where the pipeline/conduit laying is executed for Government or Government undertakings as part of irrigation, water supply, or sewerage projects, the works are not exigible to service tax under CICS (prior to 1-6-2007), since these are not primarily for commercial or industrial purposes and are excluded from the scope of the taxable services qua the exclusionary clause definition of CICS, in Section 65(25b) of the Act."*

**11.** *As rightly pointed out by the Tribunal, the assessee was entrusted with the task of laying a long distance pipeline to enable the Tamil Nadu Water Supply and Drainage Board to supply water. It was an activity in public interest, to take care of the civic amenities liable to be provided by the State. Therefore, the Tribunal was right in holding in favour of the assessee. Hence, the question of law is answered in favour of the assessee."*

**5.3** In view of categorical findings of Larger Bench as well as Hon'ble High Court of Madras cited above we respectfully hold that the activities under taken by the appellant cannot be classified under ECIS.

**5.4.** The other arguments of revenue regarding classification of services under Works Contract Service or Commercial or Industrial Construction Service become irrelevant as no demand under the said head has been raised by revenue. No charge for classification of the serviced provided by the appellant under the head of Works Contract or Commercial or Industrial Construction Service has been made against the appellant. In these circumstances we are unable to uphold the demand raised against the appellant in respect of activities relating to laying of pipelines for Surat Municipal Corporation, Gujarat Water Supply and Sewerage Board (GWSSB), Canal Division, NHA And M/s. Surat Urban Development Authority.

**5.5.** The revenue has also argued that in some cases the appellant have acted as sub-contractor and not as main contractor. We find that the said argument is of no use as the demand has been raised solely under the category of ECIS and in view of the decision of Hon'ble High Court of Madras and the Large Bench cited above, no demand under the said head can be raised against the appellant."

4. In view of the above, since the present appeals appears to be part of the investigation which have been carried out against M/s. Shree Hindustan Fabricators and the present appellants are only the sub-contractor of the main contractor M/s. Shree Hindustan Fabricators and were engaged in

providing service of laying pipelines for water supply and drainage to the Surat Municipal Corporation. Since the demand of service tax has been made in these appeals under service tax category of 'Erection, Commissioning and Installation Service' however, in the similar matter of M/s. Shree Hindustan Fabricators (supra) this Tribunal has held that the correct classification of such services should be under Commercial and Industrial Construction service as per Section 65 (25b) of the Finance Act, 1994. Thus we hold that impugned orders-in-appeal are without any merit, therefore, we set-aside the same. The appeals are accordingly allowed.

*(Pronounced in the open court on 28.06.2024)*

**(Somesh Arora)**  
**Member (Judicial)**

**(C L Mahar)**  
**Member (Technical)**

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