

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No.433 of 2012-DB

(Arising out of OIO-STC/30/COMMR/AHD/2012 dated 19/06/2012 passed by Commissioner of Service Tax-SERVICE TAX - AHMEDABAD)

Apollo Construction Projects Pvt Ltd

D-502, Status-I, Opp. T V Tower, Thaltej,
Ahmedabad, Gujarat

.....Appellant

VERSUS

C.S.T.-Service Tax – Ahmedabad

7 Th Floor, Central Excise Bhawan, Nr. Polytechnic
Central Excise Bhawan, Ambawadi,
Ahmedabad, Gujarat-380015

.....Respondent

APPEARANCE:

Shri. R. R. Dave, Consultant for the Appellant

Shri. Kalpesh P. Shah, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final Order No. A/ 10255 /2023

DATE OF HEARING: 25.01.2023

DATE OF DECISION:07.02.2023

RAMESH NAIR

The issue involved in the present is that whether the construction service provided to Oil and Natural Gas Corporation (ONGC), Gujarat Water Supply & Sewerage Board (GWSSB) and Ahmedabad Urban Development Authority (AUDA) falls under works contract to attract service Tax and whether the demand is hit by limitation.

2. Shri. R.R. Dave Learned Consultant appearing on behalf of the appellant submits that all the three service recipients are Government Enterprise, therefore, the service provided to the Government is not liable to service tax. He further submits that the construction service provided by the appellant is along with supply of material, therefore, the construction service falls under work contract service. In such case the works contract service prior to 01.06.2007 was not taxable as held by the Hon'ble Supreme Court in the case of Larsen and Toubro Ltd. He further submits that the department

was well aware of the activity of the appellant as there was continuous correspondence. All the transactions were reflected in balance sheets from which the data retrieved and demand was raised. Therefore, there is no suppression of fact on the part of the appellant. For the demand raised for the period 2005-2006 to 2007-2008, the show cause notice was issued after the normal period is hit by limitation and demand is not sustainable on time bar also.

3. Shri. Kalpesh P Shah, Learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both the sides and perused the records. We find that admittedly the appellant have provided the construction service to Oil and Natural Gas Corporation (ONGC), Gujarat Water Supply & Sewerage Board (GWSSB) and Ahmedabad Urban Development Authority (AUDA). The appellant have vehemently argued that the service of construction was provided to the Government, therefore the same is not taxable. We find that ONGC cannot be treated as the Government organization. Though, it is public sector undertaking but being a Public Limited Company the same will not fall under the category of Government. However, as regard, the service provided to GWSSB and AUDA both service recipients being directly under Government of Gujarat. The service provided of road construction service being excluded from the taxable service namely "Commercial or Industrial Construction Service", therefore, the demand of service tax provided to GWSSB and AUDA are set aside.

4.1 As regard, the construction service provided to ONGC it is the appellant submission that there contract is with material therefore the same falls under the category of works contract service. This issue needs to be examined on the fact that whether the service is provided with material and appellant were paying VAT to the State Government. For this purpose as

regard the demand related to ONGC, the matter is remanded. The issue of limitation is also kept open.

5. In view of above the appeal is partly allowed and partly remanded to adjudicating authority.

(Pronounced in the open court on 07.02.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Prachi