

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

**Service Tax Appeal No.57087 Of 2013**

[Arising out of Order-in-Appeal No.172/ST/PKJ/CCE(ADJ)2012 dated 18.10.2012 passed by the Commissioner (Adjudication), Service Tax, New Delhi]

**The Commissioner of Service Tax, Delhi** : **Appellant**  
17-B.I.A.E.A. House, M.G. Road,  
I.P. Estate, New Delhi-110002

*VERSUS*

**M/s Golden Earthmovers** : **Respondent**  
SCF, 65, II Floor, Sector-15A,  
Market No.2, Faridabad,  
Haryana-121001

**APPEARANCE:**

Shri Pawan Kumar, Authorised Representative for the Appellant  
Shri S.C. Kamra, Advocate for the Respondent

**CORAM: HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)**  
**HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER No.60453/2024**

DATE OF HEARING: 28.06.2024

DATE OF DECISION: 31.07.2024

***PER: P. ANJANI KUMAR***

The respondents, M/s Golden Earthmovers, are a partnership firm engaged in providing Works Contract Services taxable under sub-clause (zzzza) of Section 65 (105) of the Finance Act; the respondents entered into a sub-contract with M/s Patel Gammon J V Engineering Ltd. who in turn entered into a contract with M/s Satluj Jail Vidyut Nigam Ltd. (SJVNL), a joint venture of Government of India and Government of Himachal Pradesh; in terms of the sub-contract, the activities of excavation of surface/ soils, removal and depositing the excavated material and stock piling the material separately. On the basis of an investigation conducted by the officers of the Central Excise

Commissionerate, it was found that the respondents provided taxable services of surface excavation of powerhouse at Rampur Hydro Electric Project to M/s SJVNL; entertaining an opinion that the services rendered by the appellants, setting up the power plant and not in relation to construction of dams, were not exempt from service tax; the appellants deposited Rs.40 Lakhs during the investigation; a Show-Cause Notice dated 20.04.2012 was issued to the respondents seeking to demand service tax of Rs.4,51,63,535/-, along with interest and penalties, for the period 2006-07 to 2010-11. Commissioner of Central Excise, Chandigarh vide impugned order dated 18.10.2012, confirmed the demand of Rs.2,03,037/- only and dropped the rest of the demand accepting the defence of the respondents that the services were provided by the respondent to M/s Patel Engineering; the services were in relation to the construction of dams, tunnels, roads, power houses etc. and that the services performed by the respondents were in respect of dams specifically exempted by Notification No.17/2005 dated 07.06.2005 and therefore, the appellants are not liable to pay the demand of service tax. Committee of Chief Commissioners has reviewed the impugned order passed by the Commissioner and directed the Commissioner to file an appeal before this Bench. Hence, this appeal.

2. Revenue's appeal is on the following grounds:

- The Adjudicating Authority erred in arriving at the conclusion that the services rendered by the respondents are covered under Notification No.17/2005-ST dated 07.06.2005 as it does not provide any exemption to services rendered in relation to construction of a power house.

- The Adjudicating Authority erred in confirming that the services of site formation and clearance, excavation and earthmoving and demolition, rendered by the respondents were in respect of the dam; however, as per the contract entered into by the respondents with M/s Patel Gammon Engineering J V Ltd., the respondents were required to provide service of surface excavation of power house at Rampur Hydro Electric Project and hiring of excavators, ROC and tippers at Rampur Hydro Electric Project; nowhere in the contract, it is mentioned that the services are in relation of construction of a dam.
- A dam and the power house can be parts of a power project but by no stretch of imagination, a dam of a power project can be identified as part of the power house of the power project. Construction of a power house is secondary to the construction of a dam, a power house in no way be termed as a dam.
- The Adjudicating Authority has grossly erred in appreciating the fact that a power house is used for generation of electricity which is sold to the ultimate customers/ consumers and thus, power house is a commercial entity.
- The website of M/s SJVNL conveys that Rampur Hydro Electric Project is an environment friendly project and does not involve construction of any diversion dam or any de-silting chambers and does not inundate any land.

2.1. Shri Pawan Kumar, learned Authorized Representative for the Department, reiterates the grounds of appeal and submits that the

Notification No.17/2005 is very clear as it intends to provide exemption to construction of roads, airports, railways, transport terminals, bridges, tunnels, dams, ports or other ports; the intention of the legislature is not to give exemption Hydro Electric Projects. He refers to the definition of a "Dam" from Wikipedia and submits that a dam is a barrier that stops or restricts the flow of surface water or underground streams. He submits that in the instant case, the services are rendered with respect to excavation work provided for construction of a power house. He submits that the case laws relied upon by the respondents support Revenue's claim rather than the respondent's claim.

3. Shri S.C. Kamra, learned Counsel for the respondents, submits that the issue of service tax exemption on services provided as part of Hydro Electric Project and thus construction of dam is no longer res integra; in any water harnessing system, dams and tunnels are not an end in themselves but are always designed to provide the intended purposes with association of other structures; the structure of Hydro Electric plant is part of the system and dams and channels are subset of the system; the dam and tunnel are part and parcel of Hydro Electric project. He relies on the following cases:

- M/s C.P. Systems Pvt. Ltd. – 2023 (71) GSTL 70 (Tri. Del.)
- Continental Construction Ltd. – 2018-VIL-97-CESTAT-DEL-ST.

4. Learned Counsel further submits that the entire demand is time barred; no commissions or emissions envisaged under proviso to Section 73(1) are existing in the impugned case; no evidence to the effect that the appellant has mis-declared or suppressed any material fact with

intent to evade payment of duty has been adduced; moreover, during the relevant time, there was no clarity on the issues related to service tax and most of the issues came to be settled at a later date by the judgments of Tribunals, High Courts and Supreme Court; the respondents had a bona fide belief that they are not required to pay service tax; extended period cannot be invoked for entertaining a different opinion. He further submits that learned Commissioner had decided the issue in favour of the respondents; however, the issue is squarely in the favour of the respondents on limitation too though the Adjudicating Authority has not discussed the issue of limitation. He relies on the following cases:

- Pushpam Pharmaceuticals Company – 1995 (78) ELT 401 (SC)
- Anand Nishikawa Co. Ltd. – 2005 (188) ELT 149 (SC).
- Continental Foundation Joint Venture Holding – 2007 (16) ELT 177 (SC).
- Bharat Hotels Ltd. – 2018 (12) GSTL 368 (Delhi)
- Hospitech Management Consultants Pvt. Ltd. – (2023) 7 Centax 134 (Tri. Del.)
- M/s C.P. Systems Pvt. Ltd. – 2023 (71) GSTL 70 (Tri. Del.).

5. Heard both sides and perused the records of the case. The brief issue that requires our consideration is as to whether the services rendered by the respondents are in relation to the construction of a dam and thus, the respondents are eligible for the exemption contained in Notification No.17/2005 dated 07.06.2005. The respondents contend that the dam and tunnels are integrally connected to the Hydro Electric project and as rightly held by the Adjudicating Authority, the services rendered by them are in relation to the construction of a dam and thus eligible for exemption. The Revenue submits that by no stretch of imagination, work rendered in relation to a Hydro Electric project cannot

be equated to be a work related to the dam and to that extent, the Adjudicating Authority erred in finding that the respondents are eligible for the exemption. Revenue also pleads that exemption notification need to be strictly interpreted and as the Notification No.17/2005 dated 07.06.2005 is very clear in its language and meaning, extended interpretation is not warranted.

6. We find that the Adjudicating Authority has arrived at the following conclusion:

20.1 I find that the services provided by the assessee falls under the taxable categories of Site Formation and clearance, excavation and earthmoving and demolition Services and the same was covered under Service Tax w.e.f. 16.06.2005 under section 65(97a) of chapter V of the finance act, 1994 as amended which read as under:

**(97a)** Site formation and clearance, excavation and earth moving and demolition includes-

(i) drilling, boring and core extraction services for construction, geophysical, geological or similar purposes or

(ii) horizontal drilling for the passage of cables or drain pipes or land reclamation work or

(iii) land reclamation work or

(iv) contaminated top soil stripping work or

(v) soil stabilization or

vi) demolition and wrecking of building, structure or road, but does not include such services provided in relation to agriculture, irrigation, watershed development and drilling, digging, repairing, renovating or restoring of water sources or water bodies. The definition of the service excludes from its purview above said services provided in relation to-

(a) **Agriculture** that the art or science of cultivating the ground, including rearing and management of livestock, husbandry, farming etc. and also including in its broad sense, farming, horticulture and forestry, cheese making etc.

(b) **Irrigation** that supply of water to and area of land through pipes and channels so that crops will grow.

(c) **Watershed** development the term watershed means a line of high land where streams on one side flow into river, and streams of other side flow into a different river and

(d) Drilling, digging, repairing, renovating or restoring of water sources or waterbodies.

20.2 I also find that the services were provided by the noticee to M/s Patel Engineering Ltd. for Parbati Hydro Electric Project-II, Barshaini (H.P.), Satluj Jal Vidyut Nigam Ltd., Rampur. The complete project consisted of construction of dam, tunnels, roads, power house, residential complexes and offices etc. The services of Site formation and clearance, excavation and earth moving and demolition in respect to dams were exempted from Service Tax under notification No. 17/2005-Service Tax dated 07.06.2005 w.e.f. 16.06.2005. As such the services of Site formation and clearance, excavation and earth moving and demolition provided by the noticee were exempted services.

7. We find that the respondents rely upon the case of C.P. Systems (supra) wherein the Principal Bench has upheld the order of the Adjudicating Authority in holding that standalone dam or water channel system would be quite useless unless it is combined with other structures like Hydro Electric Plant. We find that the case involves identical facts and the Tribunal has gone into the very same question as to whether services rendered in relation to a Hydro Electric Project would amount to work rendered towards the construction of dams to be eligible for the exemption contained in Notification No.17/2005 dated 07.06.2005. Tribunal observed as follows:

**5.** The findings recorded by the Commissioner, in regard to this issue, are contained in paragraphs 52, 53 and 54 of the order and they are reproduced:

*"52. It is important to realise that in any water harnessing system (such as a hydal based HEP, irrigation system, navigation system) the dams and the tunnels are never an end to themselves but in association of other structure provide a system that*

*serves certain intended purposes.* On its own, a dam or the channel system would be quite useless and nobody would construct a dam or tunnel system without making certain other structures that gives it one or many uses. Thus, to state that a dam or tunnel envisaged in the relevant entry in the Act, refers only when dams or channels are built in isolation, is irrational and illogical. Such structures have to be part of a system and this fact does not take away the exclusion provided to them. Dam and channels are sub-sets of a HEP but that does not alter the fact that a civil structure constructed is a dam and channel on its own.

53. *Under the said contracts, the Noticee has undertaken the civil construction of dams and tunnels in the nature of corrosion protection, epoxy coating, painting, polyurethane injection for grouting and blasting etc. for shaft spillways and tunnels (parts of dam) which are part and parcel of such dams and tunnels. Thus, it can be seen that the exclusion under dams and tunnels would cover all the works in the nature of civil construction of the dam or tunnel. Such a dam or tunnel would not be complete without the above said services provided by the noticee and which are part and parcel of the dam or tunnel. Therefore, the construction or civil works for dams as also of the tunnels undertaken by the Noticee are not exigible to service tax under the Act as they fall within the exclusion clause of the definition of 'commercial or industrial construction service' or 'Works Contract Service'. The corrosion protection, epoxy coating, painting, polyurethane injection for grouting and blasting etc. for shaft spillways and tunnels (parts of dam) on being incorporated into the dam structure/tunnel become part of the dam/tunnel and partake the character of the dam structure/tunnel itself. The hydro-mechanical fixtures get affixed to the dam or tunnel. In fact, without these fixtures the dam or the tunnel system is not complete. Hence such works are also in the nature of dam/tunnel and fall outside the scope of 'works contract service' as well under 'commercial or industrial construction service' by way of the specific exclusion provided for dams under the Act. The SCN has tried to differentiate between a HEP and dam and tunnel. The discussions above would clearly show that Dam and Tunnel are integral part of HEP, and HEP cannot be visualised in isolation from Dam and Tunnels. The logic of SCN would lead to an absurd situation where construction services of dam*

and tunnel under separate contracts would not attract service tax, while the same activity in the form of an integrated contract of HEP would attract service tax.

*54. Therefore, the demand of Service Tax to the extent it relates to Hydro Electric projects cannot sustain in respect of all works executed before 1-6-2007 under the taxable head of CICS and in respect of work executed after 1-6-2007 under the taxable head of work contract services, inasmuch as the same are outside the purview of service tax in view of discussion above and accordingly merits to be dropped."*

8. In view of the above and in view of the decision of the Tribunal in the case of Continental Constructions Ltd. (supra), we find that the issue is no longer res-integra and is decided in favour of the respondents. We find that the Hydro Electric projects have no separate existence from the dams. The construction of a Hydro Electric project, pre-supposes the existence or construction thereof of a dam. The Hydro Electric projects are always associated with the dam and therefore, such dams are often referred to as multi-purpose hydel projects. Thus, we find that there is no merit in the grounds of appeal of the Department. We find that learned AR for the Department submits the definition of the "Dam" from Wikipedia. However, on going through the definition, we find that the definition mentions that Hydro Power is often used in conjunction with dams to generate electricity. Therefore, we find that the Hydro Electric Projects cannot be separated from the dams. Work rendered in relation to the Hydro Electric Projects should necessarily be seen as the work rendered towards dams and thus eligible for exemption under the Notification No.17/2005 dated 07.06.2005. We also find that the Departmental appeal in C.P. Systems Pvt. Ltd. (supra) has been dismissed by the Principal Bench; therefore, there is no merit in the

argument of the learned AR that the ratio of the case is in favour of the Revenue.

9. The respondent also submits that the issue is barred by limitation. We find that other than making casual allegation that the appellants intended to avoid proper discharge of service tax and suppressed the facts and did not file ST-3 Returns, Revenue has not highlighted any specific commission or omission on the part of the respondents so as to necessitate the invocation of extended period. Therefore, relying on the cases cited by the respondent and the other cases, we are of the considered opinion that the respondent had bona fide reasons to believe that the services rendered by them to M/s Patel Gammon J V Engineering Ltd. are not exigible to service tax. Therefore, no case has been made by the Revenue to invoke the extended period.

10. In view of the above, we do not find any merit in the appeal and there are no reasons as to why the impugned order should be interfered with. We hold that the respondents have a case in their favour on merits as well as limitation. Accordingly, the appeal filed by the Revenue is dismissed.

(Order pronounced in the open court on 31/07/2024)

**(S. S. GARG)**  
**MEMBER (JUDICIAL)**

**(P. ANJANI KUMAR)**  
**MEMBER (TECHNICAL)**