

(2025) 01 CESTAT CK 0025

Customs, Excise And Service Tax Appellate, New Delhi

Case No: Service Tax Appeal No. 50915 of 2018

M/S Aaditya Constructions

APPELLANT

Vs

Principal Commissioner of
CGST-Raipur ChhattisgarhRESPONDENT

Date of Decision: Jan. 22, 2025**Acts Referred:**

- Finance Act, 1994 - Section 65(50a), 65(105), 65(105)(zzq), 65(105)(zzzza), 73, 76, 77, 78

Hon'ble Judges: Dilip Gupta, President (J); P. V. Subba Rao, Member (T)**Bench:** Division Bench**Advocate:** B.L. Narasimhan, Daliya Singh, Manoj Kumar**Final Decision:** Allowed

Judgement

Sl. No., Nature of Activity, Total Amount, "Service Tax
payment status

1., Construction of Road, "16,21,20,777/-", Not paid

2., "Construction of boundary wall and area
grading", "4,59,76,158/-", "24,04,910/-

3., "Construction and fixing of tiles in water
reservoir", "53,39,347/-", Not paid

4., Supply of machinery, "1,75,407/-", Not paid

5., Supply of boulders & dust, "40,46,34/-", Not paid

6., Supply of aggregate, "1,56,29,937/-", Not paid

10. Construction and fixing of tiles in water reservoir (S. No.3 of the table). An amount of Rs. 53,59,347/- was received by the appellant as",,,

follows:,,,

(a) Construction and fixing of tiles in water reservoir as a sub-contractor of M/s Akmaii Construction Company Pvt. Ltd. during 2009-10.,,,

(b) Construction and fixing of tiles in water reservoir of M/s Akmaii Construction Co Ltd. as a sub-contractor during 2011-12-Rs. 38,60,964/-.",,,

11. Learned counsel for the appellant submits that these services were rendered by the appellant as a sub-contractor of M/s UPMAI who received a,,,

contract in respect of the water reservoir related to dams. The service rendered by the appellant included not only fixing of tiles but also providing the,,,

tiles. Therefore, this construction was in the nature of works contracts service and it could not have been taxed under construction of complex" ,,,

services. Services rendered in relation to dams would be specifically excluded from section 65 (105) (zzzza) and, therefore, no service tax could have" ,,,

been charged on these amounts even under the works contract service.,,,

12. Learned counsel for the appellant also submitted that the demand is not sustainable for the preliminary reason that the impugned order failed to,,,

classify the services.,,,

13. In addition to the above, there is a demand of service tax on GTA services alleged to have been received by the appellant. Learned counsel for the" ,,,

appellant submits that it had received transportation of services from individual truck owners and not from goods transport agencies and, therefore, no" ,,,

service tax was payable on them. The appellant also received some transportation services from goods transport agencies on which it had paid an,,,

amount of Rs. 3,30,671/-along with its VCES application 2013. The amount has paid stands appropriated." ,,,

14. He draws the attention of the Bench to Section 65 (50a) and section 65 (105) (zzq) which reads as follows:,,,

“Section 65(50a)-“goods transport agency” means any person who provides service in relation to transport of goods by road and,,,

issues consignment note, by whatever name called” ,,,

“65 (105)(zzp) to any person, by a goods transport agency, in relation to transport of goods by road in a goods carriage,” ,,,

15. Learned counsel, therefore, submits that no service tax remains to be paid under reverse charge mechanism in respect of the transportation" ,,,

services received by the appellant.,,,

16. Learned authorised representative appearing for the department supported the impugned order.,,,

17. We have considered the submissions made by both the sides and perused the records.,,,

18. Of the six heads under which amounts were received by the appellant for providing services, the appellant already paid service tax in respect of",,,

â€œconstruction of boundary walls and area gradingâ€ and settled regarding two disputed services, namely, supply of machinery, boulders and dust",,,

and supply of aggregates under the VCES scheme. The appellant submits that it had also settled dispute regarding the demand of service tax under,,,

reversed charged mechanism under GTA services received by it under the VCES scheme.,,,

19. Therefore, what remains to be decided are the taxability of (a) services of construction of road by the appellant as a sub-contractor; (b)",,,

construction and fixing of tiles in water reservoir by the appellant as a sub-contractor and (c) service tax under reverse charge mechanism on the,,,

transportation service received from individual truck owners.,,,

20. The submission of the learned counsel for the appellant that service tax cannot be demanded for the pre-negative list period without classifying the,,,

service deserves to be accepted. In fact, the impugned order mentions the service tax as being demanded under construction services/ works contract",,,

services. The demand is vague and deserves to be set aside on this ground alone.,,,

21. It is also the submission of the learned counsel for the appellant that all disputed services, namely, construction of roads and construction and fixing",,,

of tiles in water reservoir were rendered along with supply of materials. He submitted few work orders and the contracts received by the main,,,

contractor in support of the appeal. There is nothing on record in the show cause notice or in the submissions made by the department to establish that,,,

these two services were rendered as services simpliciter. It has been held by the Supreme Court in Larsen & Toubro that the charge of service tax,,,

under various heads of section 65 (105) other than section 65 (105) (zzzza) is only a charge of services simpliciter. Therefore, there cannot be any",,,

demand of service tax under any head other than under works contract services. There is no specific demand under works contract services.,,,

22. At any rate we find that section 65(105) (zzzza) reads as follows:,,,

“Section 65 (105)(zzzza) to any person, by any other person in relation to execution of a works contract, excluding works contracts in”,,,

respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.”,,,

Explanation- for the purpose of this sub-clause, “works-contract”™ means a contract wherein,-”,,,

(1) Transfer of property in goods involved in the execution of such contract is leviable to tax a sale of goods, and”,,,

(2) such contract is for the purpose of carrying out-,,,

a. “| “| “| “| ..,,,

b. Construction of a new building or a civil structure or a part thereof or a of a pipeline or conduit, primarily for the purpose of commerce”,,,

or industry,,,

c. “| “| “| “| “| ..,,,

d. Completion and finishing services, repair, alternation, renovation or restoration of, or similar services, in relation to (b) or (c); or”,,,

e. “| “| “| “| “| “.â€,,,

23. This charging section specifically excludes “œworks contracts in respect of roads” as well as the “œworks contracts in respect of dams”.,,,

Therefore, the demand of service tax either on the construction of roads or on the tiling of the reservoir for dams cannot be sustained.”,,,

24. As far as the demand of service under reverse charge mechanism on GTA service is concerned, section 65 (50a) defines goods transport agency”,,,

as any person who provides service in relation to transportation of goods by road and issues a consignment note, by whatever name called. Section 65”,,,

(105)(zzq) defines “œgoods transport agency service” as a service provided to any person by “œgoods transport agency” in relation to transport,,,

of goods by road in a goods carriage. Unless the service provider is a “œgoods transport agency”, its services are not taxable either at the hands of”,,,

the service provider or at the hand of service recipient because such services are out of the purview of the charging section. In order for an,,,

organisation to be a goods transport agency it must issue consignment notes. It is a well settled legal position that individual truck owners who do not,,,

issue consignment notes are not covered by the definition of goods transport agency and the services rendered by them are not exigible to service tax.,,,

25. Learned counsel for the appellant submits that to the extent the appellant had received amount through goods transport agencies it has already paid,,,

service tax as a part of settlement under VCES 2013. As far as the individual truck owners are concerned, the services rendered by the appellant are",,,

not exigible to service tax because they are not goods transport agency.,,,

26. In view of the above, the demand of service tax under reverse charge mechanism on roads transport agency services on the services rendered by",,,

the individual truck owners also cannot be sustained. Since the demand of service tax cannot be sustained, the demand of interest and penalty also",,,

need to be set aside.,,,

27. In view of above, the appeal is allowed and the impugned order is set aside with consequential relief to the appellant, if any.",,,

[Order pronounced on 22/01/2025],,,