CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT NO. – I

Service Tax Appeal No. 274 of 2012

(Arising out of **Order-in-Original** No.17 / 2011 - Adjn. (ST) (Commr.) dated 21.09.2011 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad)

NCC Ltd., .. **APPELLANT**
41 Nagarjuna Hills,
Panjagutta,
Hyderabad,
Telangana – 500 082.

VERSUS

Commissioner of Central Tax Rangareddy – GST .. **RESPONDENT**
H.No. 1-98-7-43,
VIP Hills,
Jaihind Enclave,
Madhapur,
L.B Stadium Road,
Basheerbagh,
Hyderabad,
Telangana – 500 001.

APPEARANCE:
Ms. S.R. Nandhini, Advocate for the Appellant.
Shri A. Rangadham, Authorized Representative for the Respondent.

CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30183/2026

Date of Hearing: 11.12.2025
Date of Decision: 07.04.2026

[ORDER PER: ANGAD PRASAD]

M/s NCC Ltd., (hereinafter referred to as appellant) are in appeal against the Order-in-Original dated 21.09.2011, whereby, demand raised vide Show Cause Notice dated 30.03.2010, was confirmed along with equal penalty under Section 78 of the Finance Act, 1994.

2. The issue, in brief, is that, the consequent to the Departmental audit, it was noticed that the appellant had not discharged Service Tax on

"mobilization advances" received by them during the period 16.06.2005 to 31.06.2009. The appellant's, were engaged, inter alia, in the business of construction and were registered for providing various services including commercial or industrial construction service, construction of complex service, works contract service etc. For providing the said services, they used to receive mobilization advance from their customers towards the service to be provided. Department noticed that out of total receipt, they had already adjusted certain advance proportionately against the subsequent RA bills raised from time to time towards service provided and also paid the Service Tax leviable there on. However, such payments were made after due dates, as the advance was received much earlier and hence to that extent no interest was paid for late payment of Service Tax. It was also noted that there was certain balance of mobilization advance received and reflected in their books of account, as on 30.06.2009, on which Service Tax liability were still not paid.

3. The Adjudicating Authority relying on the definition of the term taxable service under clause 105 of Section 65 of the Finance Act, 1994, which was amended with affect from 16.06.2005 vide the Finance Act, 2005, held that post amendment, the taxable service included even the service, which were to be provided and not only service provided. Therefore, keeping in view explanation no. 3 to Section 67, which was again amended with effect from 18.04.2006, and sub-section (3) of Section 65 inserted, which provided that the gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service, he upheld the demand. His interpretation was that by virtue of such amendment, the appellant were required to discharge the Service Tax

liability even on advance amount received for provision of service in future and which may be prior to actual rendering of service. He also relied on Board's Circular dated 21.12.2007 in support of his views.

4. The Learned Advocate for the appellant has mainly submitted that such advances were received from their customers from time to time only for initial setting up and were in the nature of capital advance to be adjusted against future RA bills issued by them for rendering of actual service. Moreover, the Point of Taxation Rules, 2011 (Rules) was introduced vide Notification No. 18/2011-ST dated 01.03.2011, only, wherein, vide Rule 3, it was specifically provided that if the service provider issues an invoice or receives a payment even before the provision of the service, the service to that extent covered by the such invoice or to the extent payment received would be deemed to have been provided at the time of raising the invoices or at the time of receipt of the payment itself whichever is earlier. Thus, by virtue of this deeming provision, even advance amount received prior to actual provision of service was subject to Service Tax.

5. Learned Counsel for the appellant also stated that the issue of levy of Service Tax on the advances received is no longer res-integra in terms of several decisions of Tribunals. Learned Counsel for the appellant relied on following decisions:

1. Gammon India Ltd., Vs CST Mumbai, [2021(44) GSTL 373 (Tri-Mum.)].

2. Thermax Instrumentation Ltd., Vs CCE, [2016 (42) STR 19 (Tri-Mum.)]

3. SMS Infrastructure Ltd., Vs CCE [2017 (47) STR 17 (Tri-Mum.)].

4. GB Engineering Enterprises Pvt Ltd., Vs CCE [2017 (52) STR 313 (Tri-Che.)]

5. Hindustan Shipyard Ltd., Vs CCE [2019 (21) GSTL 394 (Tri-Hyd.)].

6. CCE Vs Thermax Engineering Construction Co. Ltd., [2019(22) GSTL 80 (Tri-Mum.)].

6. The Learned AR reiterates the findings of the Adjudicating Authority.

7. Heard both the sides and perused the records.

8. The issue to be decided in the present appeal is whether the mobilization advance received by the appellant can be subjected to Service Tax during the period prior to 01.03.2011 or otherwise. We find that in terms of agreement with their customer, the appellant was receiving certain amount of the contract value, as mobilization advance. These mobilization advances were being subsequently adjusted by the appellant in due course through RA bills and it was more in the nature of running account, wherein, they were raising the bills after providing the service and were also discharging the Service Tax thereon. This is also an admitted fact that they had discharged Service Tax in respect of said services by utilizing the said advance for payments against RA bills from time to time. They have also informed the Department on many occasions that they have discharged the entire amount of Service Tax demanded by the Department and even post the interest there on has been fully discharged. Therefore, it cannot be a case where they failed to pay Service Tax on the services provided except that they paid such Service Tax on a later date at the time of actual provision of service or raising of bills and not on the date of receipt of such advance. They have also furnished a CA's certificate dated 28.11.2020 to the effect that they have discharged the entire Service Tax in respect of amount received as mobilization advance through the provision of service to their clients from time to time Service Tax, including interest.

9. Therefore, we find that there is statutory provision requiring service providers to pay Service Tax in one go at the time of receipt of mobilization advance after the introduction of point of taxation rules with effect from 01.03.2011. However, prior to that there was no such provision. It is also an admitted position that the entire amount received as mobilization advance was subsequently adjusted through R.A. bills raised in due course on which Service Tax has also been paid at the time of provision of service / issuance of the bill in terms of extant provisions under the Act and Rules. In fact, they have also paid interest for the said payment. We find, while the payment of Service Tax is obviously to be upheld as correct and it has already been paid by them in the regular course, the demand of interest thereon would not be sustainable though paid by them as there was no delay, as such, in payment of Service Tax during the material time. We also find that in the facts of the case the penalty could not have been imposed as demand it was not sustainable in view of the statutory provisions existing prior to 01.03.2011.

10. We also note that for the same appellant for the period from 2009-10 and covering similar issue, was decided by this bench vide Final Order No. 30509/2025 dated 21.11.2025 and appeal was allowed in favour of the appellant. Therefore, in view of the discussion, supra, as well as the decisions of this bench in their own case vide order dated 21.11.2025, the following order is passed.

11.

(a) The demand of Service Tax of Rs. 6,49,02,329/- stands confirmed, however, the same has already been paid, as discussed, supra and therefore, no further demand or recovery Service Tax can be made from the appellant.

(b) Similarly, penalty under Section 78 is set aside as there was no irregularity in payment of Service Tax during the material time.

(c) Interest is not applicable on said payment of Service Tax, however, if there was any delay, in the payment of Service Tax as per extant provision for discharge of Service Tax by due date, interest would be payable. Since, this factual matrix is not clear from record, these needs to be verified by the Adjudicating Authority and re-quantify the interest payable, if any. Only for this limited purpose, the appeal is remanded.

12. Appeal allowed partly.

(Pronounced in the open court on 07.04.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

Shirisha