CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench – Court No. – I

Service Tax Appeal No. 30146 of 2026

(Arising out of Order-in-Original No.GUN-EXCUS-000-COM-014-25-26-ST (Denovo) dt.03.03.2026 passed by Commissioner of Central Tax, Guntur)

M/s Capital Housing Projects Pvt Ltd
H.No.9-41, Nannapanenivari Street, Gottumukkala Road, Kanchikacharla, Krishna Dist., AP – 521 180 **......Appellant**

VERSUS

Commissioner of Central Tax
Guntur - GST
PB No.331, CR Building, Kannavari Thota, Guntur, Andhra Pradesh – 522 004 **……Respondent**

Appearance
Shri Irshad, CA for the Appellant.
Shri V.R. Pavan Kumar & Shri B. Sangameshwar Rao, ARs for the Respondent.

Coram: **HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)**
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30432/2026

Date of Hearing: 21.07.2026
Date of Decision: 31.07.2026

[Order per: ANGAD PRASAD]

M/s Capital Housing Projects Pvt Ltd (hereinafter referred to as appellant) are in appeal against OIO dt.03.03.2026 (impugned order). This impugned order has been passed by the Adjudicating Authority pursuant to Miscellaneous Order No. M/30398/2025 dt.11.11.2025 by this Bench in relation to Final Order No. A/30436/2024 dt.20.12.2024 in their Appeal No. ST/30396/2022.

2. The relevant facts relating to the appeal are that the appellants were undertaking certain activities as a sub-contractor to one, M/s Transstroy (India) Ltd (Main Contractor) in terms of an agreement dt.16.03.2016. The department noticed that they were not paying any service tax on the activities carried out by them, which according to department was activity of

'Site Formation services' (SFS). Therefore, SCN dt.01.12.2020 was issued to them by the department, which was adjudicated vide order dt.07.07.2022. Vide the said order, a demand of Rs.2,05,69,323/- was confirmed holding that the activities being performed were rightly classifiable as SFS, denying their claim for exemption under S.No.12(d) of Notification No. 25/2012. On appeal, this Bench, vide Final Order dt.20.12.2024, upheld the order passed by the Original Adjudicating Authority. However, the appellant thereafter filed a miscellaneous petition for rectification of mistake with regard to order of the Tribunal and after going through the submissions and grounds taken and arguments from both the sides, the Tribunal passed a miscellaneous order dt.11.11.2025. The relevant paras of the order dt.11.11.2025 are cited below:

> *"20. Para 25 and 26 of the impugned order are modified, as under:*
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> > *"25. In view of the discussion, supra, the appellants are not entitled for benefit under S.No.12(d) of Notification No.25/2012 nor they can get the benefit on account of their being a sub-contractor, however, to the extent their alternative claim under S.No.29(h) of the Notification No. 25/2012 is concerned, the matter is remanded back for examination by the Original Adjudicating Authority in view of the observations made, supra. Further, insofar as invocation of extended period is concerned, the plea of bonafide belief or its being matter of interpretation of provisions is to be examined in the light of observations made, supra. Therefore, only for these two issues, the matter is remanded back to the Adjudicating Authority. Further, if the demand is upheld, the plea for threshold exemption and cum-tax benefit would also have to be considered by the adjudicating authority. The appellants are to provide all relevant details and evidence to the adjudicating authority within two months from the receipt of order and Adjudicating Authority to decide the matter within two months of submission of such documents and evidence by the appellants."*
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> > *26. The order of the adjudicating authority is modified to this extent only and the Appeal is allowed partly by way of remand."*

3. Based on these directions, in the denovo proceedings, the adjudicating authority framed certain questions, as under:

(i) Whether the assessee is eligible for availing the exemption under S.No.29(h) of Notification No. 25/2012-ST dt.20.06.2012, as amended; and whether the case laws relied upon by the noticee vide Para 17 of the Hon'ble Tribunal Order dt.11.11.2025 are applicable to the instant case or not;

(ii) If the demand is upheld, whether the assessee is eligible for threshold exemption and cum-tax benefit;

(iii) Whether extended period of limitation is invokable on the plea of bonafide belief or its being matter of interpretation of provisions;

(iv) If the demand is upheld, whether the assessee is liable to pay interest and penalties as proposed in the show cause notice; and

(v) Whether Shri Nannapaneni Sitarama Raju, Managing Director of M/s Capital Housing Projects Pvt Ltd, is liable for penalty under section 78A of the Finance Act, 1994.

4. Insofar as the eligibility under S.No.29(h) of Notification No. 25/2012-ST was concerned, the adjudicating authority, inter alia, held that in the course of providing earth excavation/levelling works, it did not involve usage of any goods involving transfer of property, attracting payment of VAT and the mere fact of using lubricants/consumables by noticee for running the machinery, while providing the services, cannot be construed that the property in the goods has been transferred to the service recipient (main contractor).

5. Insofar as the case laws, which were relied upon by the appellant in support that they were providing Works Contract Services (WCS) to the main contractor, the adjudicating authority has distinguished these case laws.

6. Insofar as the eligibility of the appellant for threshold exemption is concerned, the adjudicating authority allowed certain benefits in terms of exemption notification No. 33/2012-ST dt.20.06.2012 for the FY 2016-17. He also extended the benefit of cum-tax in terms of section 67(2), thereby the demand was reduced to Rs.1,77,55,933/- from the original demand.

7. Insofar as the issue of invocation of extended period is concerned, the adjudicating authority has held that the appellant had intentionally suppressed the facts and violated various provisions of the Finance Act and Service Tax Rules with an intent to evade payment of service tax. He also upheld the payment of interest and penalty under section 78. However, penalty under section 76 was dropped.

8. Insofar as penalty under section 78A on Shri Nannapaneni Sitarama Raju, Managing Director is concerned, he, inter alia, held that no complicity

or active planning to evade payment of service tax by the Managing Director has been brought on record and therefore, he held that Shri Nannapaneni Sitarama Raju was not liable to penalty under section 78A.

9. Learned CA for the appellant has mainly contested the fact that in the denovo proceedings, the adjudicating authority has not properly appreciated the legal points and the case laws cited by them. He has taken the following grounds:

A) The interpretation of the provisions covered under section 65B(54) of the Finance Act by the adjudicating authority is misplaced inasmuch as the adjudicating authority has interpreted the expression ‘leviable to tax as sale of goods’ as ‘such supply of goods be subjected to VAT’. According to him, there is no such condition that there should be physical supply of goods and that the same shall be subjected to VAT. The reason being that in a WCS, property in goods is passed on by accretion and there will never be any physical sale of goods or collection of VAT on said goods as such, as has been interpreted by the adjudicating authority.

B) Non-collection of VAT/filing of Nil VAT return/non-filing of VAT refund does not influence/alter the nature of the services carried out by the appellant. In support, he has submitted that while it is a fact that they had not charged VAT on their RA bills raised on main contractor, however, this was because as per section 4(7)(b) of the Andhra Pradesh Value Added Tax Act, 2005 and rules made thereunder, every dealer executing works contract may in lieu of amount of tax payable by him under clause (a) opt to pay tax by way of composition and Proviso to section 4(7)(b) states that the sub-contractor, executing works contract on behalf of the contractor, who opts to pay tax under the clause, shall be exempted from levy of tax.

C) Reimbursement of VAT initially deducted by the main contractor is due to exemption available to sub-contractor from payment of VAT and not because theirs was not a works contract. Thus, the VAT was payable but exempted and hence they were not liable to pay VAT at the time of raising of RA bills. The deduction at a flat rate was made by main contractor suo moto and on further communication/ clarification, they agreed to return the said amount, which was deducted from their bills towards applicable RA on said work.

D) The reliance placed on Circular No. 138/07/2011-ST dt.06.07.2011 and Circular No. 147/16/2011-ST dt.21.10.2011 are not applicable for negative tax regime post 2012 and even if it is assumed that said circulars are applicable, the appellant had never claimed that service tax was not payable as service provided by them was to the main contractor, who is providing the WCS. It was appellant's claim that they have always classified their services independent of the main contractor and on the basis of their own bills raised on main contractor.

E) The legal principles laid down by the Tribunals on the application of goods in providing WCS were not properly considered and analyzed in arriving at the conclusion. The observations and findings of the adjudicating authority distinguishing the relied upon case laws is not correct as certain principles were laid down by the Tribunals i.e., once goods are used in providing WCS, the property in goods passes to the main contractor, was not duly appreciated.

F) The decisions relied upon by the adjudicating authority in support of invocation of extended period does not involve correct interpretation of law and in this case, they had a case of bonafide belief and therefore, extended period could not have been invoked in view of settled law. He has also submitted that if extended period of limitation is no invokable, then on the same ground, imposition of penalty under section 78 would also not sustain. He has further relied on certain case laws, as under, in support that there was no intention to evade service tax, apart from their having bonafide belief for their being exempted service and therefore, extended period cannot be invoked.

   a. Hi-Tech Publicities Vs CCE [2018 (9) GSTL 119 (Tri-Chennai)]
   b. Stratagem Media Pvt Ltd Vs CCE [2016 (46) STR 420 (Tri-Mumbai)]
   c. Addis Marketing Vs CCE [2017 (50) STR 56 (Tri-Mumbai)]

10. Per contra, learned AR for the department supports the impugned order passed by the adjudicating authority. He has taken us through the provisions as per entry 29(h) of Notification No. 25/2012-ST, which provides exemption from service tax to the sub-contractor providing services by way

of works contract to another contractor providing WCS, which are exempt. He has also justified invocation of extended period and distinguished the case laws relied upon by the appellant viz., as under.

a) CST Vs Matushree Textile Ltd [2003 (8) TMI 478 (Bombay)]
b) Enviro Chemicals Vs State of Kerala [2011 (2) TMI 1296 (Kerala)]
c) SEM Construction Vs CCE & ST [2020 (8) TMI 739] (Tri-Ahmedabad)]

11. In support of limitation, he has relied on the following case laws.

a) Touraids (I) Travel Services Vs CCE & Anr [2014 (7) TMI 542 – Allahabad High Court]
b) Trafigura India Pvt Ltd Vs UOI [2023 (12) TMI 196 – Gujarat High Court]
c) Camlin Ltd Vs CCE, Mumbai-IV [2008 (10) TMI 161 – CESTAT Mumbai]

12. Heard both sides and perused the records.

13. Before we proceed to decide the issues, we wish to recap the chequered history of this appeal. The department had issued SCN alleging that the appellant had not taken service tax registration nor paid any service tax in respect of activities i.e., site formation, earth work, etc., carried out by them as sub-contractor. The entire demand was confirmed and on appeal, the said order was further upheld by the Tribunal. However, the appellant filed miscellaneous application for rectification of mistake (ROM) and after going through the submissions and evidence on record, this Tribunal modified the original order and remanded back for specific consideration of the adjudicating authority in respect of certain points, while observing that the issue relating to their eligibility under S.No.12(d) of Notification No.25/2012 was already settled. Therefore, essentially, the remand proceedings were made for examining their claim of being covered under S.No.29(h) of the said notification and also whether extended period of limitation is invokable or otherwise. Additionally, certain other observations were also made as indicated in Para 3 above.

14. Therefore, the present appeal is restricted only to the extent of examining the order in terms of remand order and hence, the issue to be examined will be restricted to their eligibility or otherwise under S.No.29(h)

of the said notification and also applicability of extended period of limitation in the facts of the case. Additionally, the issue of penalty to the extent confirmed would also have to be decided depending on the decision arrived at with regard to coverage under S.No.29(h) of the notification as well as limitation.

15. Further, the admitted facts of the case are that the appellants were sub-contractor of a contractor, who were providing WCS to a Government project and was engaged in construction of dams and canals, etc. It is also an admitted position that the appellant had not shown or discharged any VAT payment on their RA bills, however, certain standard deductions were made by the main contractor from their RA bills towards applicable VAT. Admittedly, they had purchased lubricants, oil, spare parts, etc., for running their heavy machinery and used in such machineries, etc., for executing the earth work, site formation work, etc., in terms of the agreement.

16. Therefore, in this case, the following two core issues are required to be decided:

A) Whether the appellants are eligible for exemption under S.No.29(h) of the notification or otherwise.
B) Whether the extended period of limitation is invokable for payment of service tax in the facts of the case and evidence on record or otherwise.

A) <u>Whether the appellants are eligible for exemption under S.No.29(h) of the notification or otherwise</u>:

17. For the sake of brevity, the entry at S.No.29(h) of the Notification No.25/2012-ST is cited below:

> *"29. Services by the following persons in respective capacities –*
>
> *(a) ...*
> *(b) ...*
> *(c) ...*
> *(d) ...*
> *(e) ...*
> *(f) ...*
> *(g) ...*
> *(h) Sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt."*

18. Therefore, a plain reading of this entry would indicate that any sub-contractor, who is providing WCS to another contractor (principal contractor), who in turn is also providing WCS, which is exempt, the service tax at the hand of sub-contractor will be exempted. Therefore, the twin criteria would be that the sub-contractor is providing WCS to the main contractor and the main contractor is also providing WCS, which is exempt. In this present appeal, there is no dispute or any evidence on record that the main contractor, with whom the sub-contractor had entered into agreement, has not provided WCS and the same is otherwise exempt in the hands of main contractor. In terms of agreement dt.02.03.2013 between the Government of Andhra Pradesh and, inter alia, main contractor, as also EPC contract dt.04.03.2013 between JV and main contractor, the main contractor was executing the work of construction of earth dam, canals, etc., for Government project. This situation is covered by exemption at S.No.12(d) of the Notification No. 25/2012-ST dt.20.06.2012 and hence it is obvious that main contractor was executing work contract in relation to dam, canals, etc., to the Government of Andhra Pradesh. The adjudicating authority has not disputed that main contractor was not providing work contract service, which was exempted. The only dispute is whether sub-contractor has provided WCS or otherwise.

19. The essential ground taken by the appellant is that they had used lubricants, oil, spares, etc., on which VAT is leviable and since they were in possession of purchase bills, it is obvious that they had used these goods towards execution of WCS viz., earth excavation, levelling, etc. We find that the interpretation of the adjudicating authority that there should be transfer of property in goods and that supply of such goods should be subjected to VAT, is suffering from certain infirmity inasmuch as the definition of WCS under section 65B(54) provides, inter alia, that where a contract, wherein transfer of property in goods involved in execution of such contract is leviable to tax as sale of good and such contract is for the purpose of, inter alia, carrying out certain activities in respect of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property. Apparently, the adjudicating authority felt that there has to be actual transfer of goods as such or actual payment of VAT on such goods, which were used by the appellant when the same were cleared or where property in goods got transferred to the main contractor.

20. In the WCS, essentially it requires that if certain goods or materials are also used in the execution of a contract, they are leviable to tax as sale of good. In other words, the good, per se, is not getting taxed as such, rather it is consumed while executing works contract but on the said works contract itself, the goods are being taxed as deemed sale. The payment of VAT would be on the WCS under the respective state VAT Acts and not on individual items, which got consumed or subsumed in the process of execution of works contract. In this case, the machineries were essential and integral requirement of execution of the service entrusted by main contractor. In order to operate those machineries, they were required to use fuel, lubricants, spares, etc., and also maintain those machineries. We also find from the contract that the scope of work and payment not only included removal of over burden soils for dam, spillway intake structure, etc., but it also included all lifts, cost of machinery, labour, fuel charges as required for finished item of work. It also included cost of all materials, machinery, labour, etc. For the sake of clarity, the scope of work in the agreement is quoted below:

S.No.	Description of item	Unit	Approximate Quantity	Rate (INR)	Amount (INR)
1.	Removal of over burden soils including boulders up to 0.30 m diameter for Dam, Spillway intake structure, Spill channel and other appurtenant works and placing and spreading the excavated soil neatly in dump area or disposing off the same as directed etc., complete with initial lead up to 1 km including all lifts, cost of machinery, labour, fuel charges as required for finished item of work.	Cum	20,000	Rs.58.59/- (Rupees Fifty Eight and paise Fifty Nine only)	Rs.11,71,800.00
2.	Excavation in F&F including dressing of bed and sides to required level and profile, cost of all materials, machinery, labour, placing the excavated soft rock at designated dump yards and levelling the	Cum	13,00,000	Rs.115.50/- (Rupees One Hundred Fifteen and paise Fifty only)	Rs.15,01,50,000

	dumped rock to the required level and slope with a lead of 2 km including all lifts.				
3.	Excavation in hard rock requiring blasting including dressing of bed and sides to required level and profile, cost of all materials, machinery, labour, placing the excavated rock at designated dump yards and levelling the dumped rock to the required level and slope with a lead of 2 km including all lifts.	Cum	12,00,000	Rs.178.79/- (Rupees One Hundred Seventy Eight and paise Seventy Nine only)	Rs.21,45,48,000
				Total Amount	Rs.36,58,69,800

21. Thus, it is obvious that scope of work clearly prescribe for removal of over burden, excavation, etc., including cost of certain machinery, labour, fuel, etc. In other words, by its very basic nature, work awarded was not simple contract of service but it was a composite contract where the material portion, i.e., machinery, fuel, all materials, etc., were also to be provided by the sub-contractor in the course of execution of work. Admittedly, the appellants have purchased those materials like fuel, lubricants, spares, etc., which are otherwise leviable to VAT.

22. As regards another argument that the work executed by them has not been subjected to VAT, which is one of the pre-condition for its being treated as WCS, we find that the term used is ‘leviable to VAT and not ‘subjected to VAT’. In other words, if goods or materials leviable to VAT were also used in the course of execution of any contract, the said contract would be treated as works contract and it has to discharge VAT as applicable in terms of respective state VAT Acts, as it existed during material time. In this case, obviously no VAT has been charged by the appellant, however, it is also an admitted fact that the VAT amount applicable on such RA bills was deducted at the time of making payments by the main contractor. The fact that subsequently they got reimbursement of the said deduction does not mean that the VAT was not payable on the said work executed by the appellant. The appellants have tried to explain that clearly there was exemption available to sub-contractors from payment of VAT in case the main contractor was paying the VAT and therefore, since they were not

required to pay VAT as they were exempted and accordingly, they got said amount reimbursed back to them from main contractor, which was refunded as an illegal deduction. This would, however, not mean that the activities carried out by them were not leviable as WCS. It was leviable as works contract but exempted subject to certain conditions and in this case, there was no dispute that the main contractor has not provided the WCS.

23. We, therefore, find that the observation of the adjudicating authority is suffering from certain infirmities. It is obvious that he has seen the invoices and he has observed that they had got reimbursement of VAT. He has also taken into consideration that as per them, they were not liable to pay any VAT and labour cess as they had not supplied any WCS involving transfer of property in goods to their contractor as per the statement of the Managing Director of the appellant. Therefore, since service provider had not billed and collected VAT on the ground that earth excavation/levelling work did not involve any transfer of property in goods that were liable to payment of VAT and on the other hand, they had claimed reimbursement of VAT, therefore, it was his conclusion that the work did not include usage of good involving transfer of property in goods. In fact, he has also made an observation that the mode of deduction of VAT @3.5% uniformly from the total value of all invoices is inconceivable and on the contrary, if the appellant was not able to produce VAT bills/invoices but if the deduction towards VAT payment was not uniform in all cases, then benefit of doubt with respect to transfer of property in goods could have been given to the appellant. We feel that this understanding is fallacious as it presumes that a person, who is providing WCS has to separately bill for the goods, which have been consumed in the execution of work towards recipient of WCS. In the works contract, the entire WCS is subjected to VAT as deemed sale at an applicable rate and not individual items which have gone into execution of said contract, which are billed separately and VAT paid on that.

24. We also find that he has also relied on certain facts regarding their being sub-contractor and therefore, they are liable to pay tax for services provided by them irrespective of service tax payable by the main contractor. Firstly, this is not the issue, which is required to be decided as it is already held in the original order of the Tribunal and even in the remand proceedings that sub-contractor is required to pay service tax in respect of

services, which he has performed irrespective of fact that main contractor has paid service tax or not. This, however, has no bearing on the issue of eligibility of notification claimed by the appellant.

25. Insofar as distinguishing the case laws relied upon by them, we find that in this case, it is not in dispute that the contract was inclusive of materials to be used for execution of work. It is also not in dispute that said goods like lubricants, fuel, spares, etc., were actually used in the course of execution of work. It is also not in dispute that these goods are otherwise leviable to VAT. The only question is whether there has been transfer of property in goods or otherwise. We find that the case laws relied upon by the appellant are relevant as the principle laid down in the said case laws would indicate that it is not necessary that the goods, which have been used or consumed in the course of execution of work, need to be actually transferred in the original form in which they have been purchased.

26. In the case of Enviro Chemicals Vs State of Kerala (supra), the issue was whether services rendered by the appellant in the form of chemical treatment of effluent water for the awarder amounts to sale of goods in the execution of works contract. In this case, while doing water treatment certain chemicals were being added in the water. The Larger Bench of the Hon’ble High Court of Kerala answered the reference by holding that there was indeed sale of chemical involved in the execution of the works contract, in view of the judgment of the Apex Court in Xerox Modicorp Ltd Vs State of Karnataka [2005 (8) TMI 359 (SC)], as there is delivery of the same to the awarder by virtue of the chemical being poured into the effluent. The relevant portion of the judgment, which brings out the ratio, is cited below:

> *“15. We would think that the principle "quicquid plantatur solo, solo cedit" is a principle which is apposite in the context of a building and engineering contract. We get the following Account of the principle "quicquid plantatur solo, solo cedit":*
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> *"The well-known principle is that the property in all materials and fittings, once incorporated in or affixed to a building, will pass to the free-holder quicquid plantatur solo, solo cedit. As soon as materials of any description are used in a building or other erection, they cease to be the contractor's property and become that of the free holder. The employer under a building contract may not necessarily be the free-holder, but may be a lessee or licensee, or even have no interest in the land at all, as in the case of a sub-contract. However, once the builder has affixed materials, the property in them passes from him, and at least as against him, they become the absolute property of his employer, whatever the latter's tenure of or title to the lands. The builder has no right to detach*

them from the soil or building, even though the building owner may himself be entitled to sever them as against some other person - for example, tenant's fixtures. Nor can the builder reclaim them if the building owner or anyone else has subsequently severed from the soil.

Materials worked by one, into the property of another, becomes part of that property. This is equally true whether it be fixed or moveable property. Bricks built into a wall becomes part of the house, thread stitched into a cost which is under repair, or planks and nails and pitch worked into a ship under repair, become part of the coat or the ship. Until, however, the materials are actually built into the work, in the absence of some stipulation intended to pass the property in them, when delivered on the site, they remain the property of the contractor, notwithstanding that they might have been approved by the employer or his agent or brought into the site unless the agreement between the parties evinces a clear intention to the contrary."

We would think that the said principle as such may not advance the case of the Revenue in a case where the works contract involves the effluent treatment process wherein chemical is poured into the effluent.

16. When the assessee has used it, will it remain the owner of the chemical any longer? Will not the property in the goods pass to the awarder ? We would think that the moment the assessee pours the chemicals into the effluent, he will cease to be the owner and at that point of time the awarder must be deemed to have taken delivery of the same. In our view the fact that upon it being poured into the effluent, it loses its identity and that it is consumed will not detract from the fact that there is delivery of the same to the awarder. The assessee does not have a case that the effluent belongs to the assessee. We do not think that it can be their case that the effluent does not belong to the awarder. Let us pose a question, if a complaint by a third party is raised about the treated effluent, can the awarder absolve itself of the ownership of the same? We would think, it may not be possible. Therefore we would be justified in holding that the effluent and the treated effluent both belonged to the awarder. It is, therefore, into the property of the awarder, namely the effluent that the assessee supplies the chemical. The Apex Court in its decision in Gannon Dunkerley & Co. & Others v. State of Rajasthan & Others ((1993) 1 SCC 364) had, inter alia, held that cost of consumables, such as, water, electricity, fuel etc. used in the execution of the works contract, the property in which is not transferred in the course of execution of a works contract, is to be deducted. In Section 5C also, the words "not involving any transfer of property in goods" have been incorporated. Just like the toner and developer having been put into xerox machine becoming the property of the customer in the case before the Apex Court in Xerox Modicorp Ltd case and the sale taking place before the goods are consumed, in the same way, the property in the chemical passed to the awarder the moment they are put into the effluent by the assessee and its subsequent consumption is the consumption after sale and it does not detract from the factum of sale and consequently the exigibility to tax becomes unquestionable."

27. In the case of CST Vs Matushree Textile Ltd (supra), the issue was that the appellant was engaged in the business of dyeing, bleaching and printing of grey fabrics and for the said purpose, they were using colours, dyes and chemicals and these materials were converted into a solution and

stored in a tank. Thereafter, the grey fabric was passed through the above solution several times, till the required colored shade was obtained on the fabric as per the specifications of the customer. Thereafter, the dyed fabric was washed through a water solution to drain away the chemical solution remaining on the fabrics. The senior counsel for the respondent contested that there is no passing of property in goods either as goods or in some other form and hence, it was not WCS, whereas, the Court, inter alia, held that if in the execution of works contract, the property of the materials used in the execution of the contract passes either in its original form or in some other form, then there is deemed sale of that materials under Works Contracts Act. Relying on several case laws and judgments of Hon'ble Supreme Court, the Court held that property of materials such as chemicals, colours and dyes used in the process of dyeing and printing are passed on to the fabrics of the customers and such passing is deemed sale and tax is leviable under Works Contract Act. The relevant portion of the judgment, which brings out the ratio, is cited below:

> *"34. It is true, that to constitute sale, either under the Sale of Goods Act, or under the BST Act, the intention of the parties to transfer the goods by an agreement, determination of price of the goods to be transferred and the actual transfer of goods as per the agreement is necessary. However, under the Works Contracts Act, the concept of deemed sale has been introduced, as a result, irrespective of the criteria laid down under the Sale of Goods Act or the BST Act, if, in the execution of a works contract, the property of the materials used in the execution of that contract passes either in its original form or in some other form, then, there is deemed sale of those materials under the Works Contracts Act. The definition of "sale" under the Sale of Goods Act and under the BST Act is materially different from the definition given under the Works Contracts Act. In other words, to constitute sale under the Works Contracts Act, the only criteria required to be fulfilled is the transfer of property in goods used in the execution of works contract either in its original form or in some other form and not the criteria laid down under the Sale of Goods Act or under the BST Act.*
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> *35. The contention of Mr. Joshi that even after the Forty-sixth Amendment to the Constitution, the ratio laid down by the apex Court in the case of Gannon Dunkerley & Co. (Madras) Ltd. [1958] 9 STC 353 still holds good and that the transfer which is incidental to the contract of service cannot be taxed, is without any merit. The very foundation of the Forty-sixth Amendment to the Constitution was to bring to tax the transfer of the materials (in any form) used in the execution of a works contract. Therefore, once it is held that there is transfer of goods used in the execution of a works contract either in its original form or in some other form, then, even if there is a composite works contract, it is deemed to be bifurcated and the provisions of the Works Contracts Act would apply to the materials used in the execution of such composite works contract. This is exactly what the three-Judge Bench decision of the apex Court has held in the case of Associated Cement Companies Ltd.*

[2001] 124 STC 59. As stated hereinabove, the three-Judge Bench decision of the apex Court in the case of Associated Cement Companies Ltd. [2001] 124 STC 59 has clearly held that even if the dominant intention of the contract is the rendering of service, it will amount to works contract and after the Forty-sixth Amendment, the States would be empowered to levy sales tax on transfer of the materials (in any form), used in the execution of a works contract.

36. Mr. Joshi strongly contended that the transfer of property in the form of coloured shade/print is on the theory of accretion or accession which is incidental to the contract and not by way of transfer of the materials used in the execution of a works contract, As pointed out by the apex Court in the case of Gannon Dunkerley & Co. [1993] 88 STC 204 at 213, the mischief or the defect in the expression "sale" pointed out by judicial decision led to the Forty-sixth Amendment to the Constitution. Once the mischief or the defect is remedied by bringing in the concept of deemed sale in a works contract, then the only criteria relevant for deemed sale is the passing of the property in goods (in any form). In other words, to constitute sale under the Works Contracts Act, the test is, whether the materials used in the execution of a works contract pass to the contractee either in its original form or in some other form ? If it passes, then there is deemed sale of the materials used in the execution of the works contract even if there is no specific agreement between the parties for sale of materials, even if the price for such sale is not agreed between the parties and even though the materials are not delivered as materials. In the present case, due to the chemical reaction of colours, chemicals and dyes, the inherent property in those goods are passed on to the fabrics. The fact that after the inherent property in those goods is transferred to the fabrics the remaining solution is thrown out as waste or affluent, does not in any way affect the taxability on transfer of the property in goods already effected on the fabrics. Admittedly, after dyeing, the solution made of colours, chemicals and dyes is thrown as waste, because, on transfer of the property in the form of coloured shade, the said solution becomes worthless. Therefore, the Legislature has sought to tax the property in goods which passes and not the remnants or the affluent that remains after the passing of the inherent property in those goods."

28. We find that ratio from these two judgments is that it is not necessary that the goods are transferred as such but it may be transferred in any other form as long as there is a clear indication that said goods have been actually used for the execution of work. Therefore, we find that distinguishing these case laws by the adjudicating authority on the facts is not correct and the ratio of these case laws is applicable inasmuch as there has been usage of goods in execution of work and these goods were leviable to VAT under the category of works contract. Therefore, we find that appellant has provided WCS, though they have not paid any VAT on the said services in view of the exemption under applicable tax laws during the material time. Mere reimbursement of deducted VAT amount would not tantamount to their having not paid any VAT on the contract value as deemed sale or the work itself was not leviable to VAT.

29. From the scope of work, it is obvious that work for certain earth work, all material, labour, machinery including fuel were to be provided by sub-contractor. It is not a case of simple labour job but composite contract involving men, materials and machines and certain other materials used for running the machines or excavation of earth, lifting of earth, etc. All these jointly comprise the work awarded to them. In WCS, by doctrine of accretion, transfer of title in property or goods takes place. In the facts of the case, without the use of fuel, machinery could not have been operated for carrying out the earth work. It is not the case that fuel was provided by the main contractor, though they had agreed that the said fuel will also be part of the contract for executing the work. We find that in the case of M/s Aristo Printers Pvt Ltd Vs CTT, Lucknow, UP [2025 (10) TMI 387 (SC)], the Hon'ble Supreme Court held that taxable event in a works contract is transfer of property in goods involved in the execution of contract rather than the status of finished product itself and it was, inter alia, held that tax is attracted the moment the goods are incorporated in the work and form part of the transfer to the customer even if they are chemically altered or subsequently consumed during execution (such as ink and processing chemicals forming composite medium in printing lottery tickets.

30. Therefore, in the facts of the case, service of site formation, earth work, etc., are in the nature of works contract and the appellants are clearly entitled for benefit under S.No.29(h) of Notification No. 25/2012-ST in respect of work executed by them to their main contractor and demand cannot be sustained on this count.

B) <u>Whether the extended period of limitation is invokable for payment of service tax in the facts of the case and evidence on record or otherwise</u>:

31. Insofar as the issue of extended period is concerned, the adjudicating authority has, inter alia, noticed that the facts relating to non-taking of service tax registration or non-filing of periodical returns would not have come to light but for detailed investigation. He also noted that from the statement of the Managing Director, it was clear that they claimed reimbursement of VAT and cess as no goods were transferred while providing earth excavation and leveling work having been clearly aware of the fact that their service do not falls under WCS and despite that they have not paid service tax. He has relied on the judgment of Prathyusha Associates

Shipping Pvt Ltd Vs CCCE & ST, Visakhapatnam [2014 (36) STR 1145 (Tri-Bang)] in support that plea of bonafide belief is not sustainable when the statute is clear that there is no ambiguity. Similarly, in the case of NGK Infrastructure Ltd Vs CCE & ST, Ghaziabad [2016 (41) STR 299 (Tri-Del)], it was held that non-reflection in ST3 return is sufficient to establish suppression of fact. He has also relied on Lakhan Singh & Co Vs CCE, Jaipur [2016 (46) STR 297 (Tri-Del)] in support that suppression is not about making false declaration but also about not declaring what should be declared and accordingly, held that assessee had intentionally suppressed the facts and violated various provisions of the Finance Act, 1994 and Service Tax Rules with an intent to evade payment of tax. Appellant has contested that reliance on these case laws are not tenable.

32. The adjudicating authority has primarily referred to the statement of the Managing Director of the appellant and has also observed that they have not taken service tax registration nor filed periodical return and the same would not have come to notice but for detailed investigation of the officers of DGGI. He has also placed great emphasis on the fact that they had claimed reimbursement of VAT as no goods were transferred while providing earth excavation/levelling works, etc., and were clearly aware that the services did not fall under WCS. He has also relied on various case laws as under:

a) CCE, Chandigarh-I Vs Punjab Steels [2011 (21) STR 5 (P&H)]
b) Saraf Trading Corporation Vs State of Kerala [2011 (264) ELT 8 (SC)]
c) Qazi Noorul HHH Petrol Pump Vs Dy Director, ESI Corporation [2009 (240) ELT 481 (SC)]

33. We find that in this case, essentially, there was a contract for execution of certain work by the appellant. The scope of work of the main contractor, who had awarded the work itself, indicated that work was in relation to construction of dam, canal, etc., and it was for Government of Andhra Pradesh. Therefore, there could have been a genuine bonafide belief that the same was covered under scope of S.No.12(d) of Notification No. 25/2012-ST. Though, this Tribunal in its finding denied the benefit of this notification, however, it does not take away the fact that this was also relevant notification for the issue in hand and a reasonable belief could have been formed by appellant about their not required to pay any service tax in

the given facts of the case. Insofar the statement of the Managing Director of appellant to the effect that no transfer of property in goods has taken place in execution of work and therefore, they have not paid any VAT is concerned, it could have been because of their understanding and interpretation that no VAT is payable. However, this again does not take away the fact that there was provision under VAT laws to exempt them from payment of VAT and because of that also they were not required to pay VAT as they were otherwise exempted. The reimbursement was only because of initial deduction by the main contractor but subsequently, on being pointed out that they were exempted from payment of VAT in terms of provisions under State VAT laws, the said amount was reimbursed. In fact the deduction supports the view that work was treated as works contract by the main contractor and hence he had deducted VAT as no VAT was apparently paid on the RA bills issued by the appellant.

34. All these facts basically indicate that they were having different interpretations and there was conflicting views about the applicability of VAT or otherwise. There were different notifications available to cover this type of work. However, as there is transfer of property in goods and therefore, the statement given as per the understanding of Managing Director at that point of time for non-payment of service tax could not be the basis to come to the conclusion that there was no transfer of property in goods in the said execution of work or that it was deliberately and intentionally not paid. The case laws cited would indicate that the use of fuel, lubricants, spares, etc., would constitute deemed sale and therefore, leviable to VAT. Non-payment of VAT due to certain exemption is of no consequence as the said work was otherwise leviable to VAT.

35. Therefore, holistically evaluating the facts and submissions, we find that the whole issue is that of interpretation and we also find that there was bonafide belief that they were not leviable to any service tax and that is why they had not taken registration nor paid any service tax. Even for payment of service tax by the sub-contractor, when the main contractor has paid service tax, was subject matter of various disputes and it has been held by the Tribunals that due to different interpretations, there cannot be any deliberate attempt for not paying service tax and in such cases, extended period was not found invokable.

36. In the case of SEM Construction Vs CCE & ST (supra), the Hon'ble Supreme Court has, inter alia, upheld the order of the Tribunal, wherein, in the given facts invocation of extended period was not found sustainable. The Tribunal has not allowed invocation of extended period, inter alia, on the grounds that there was no positive evidence of suppression or intent to evade payment of duty. In the present case also, we do not find any concrete or cogent grounds other than the statement of the Managing Director. Incidentally, the penalty imposed on the Managing Director has not been upheld by the adjudicating authority in the impugned order on the grounds that SCN has not brought out any complicity or active planning to evade payment of tax by the Managing Director. Therefore, if the statement of the Managing Director is sole basis for holding that appellant was deliberately suppressing the fact or intentionally not paying the service tax, then this observation of the adjudicating authority goes contrary to his finding that appellant company has suppressed the facts or has intention to evade the service tax deliberately. Thus, it is obvious that this is a case where there has been complex interpretation of tax exemptions and certain statutory entries and in the absence of any other strong and cogent grounds to the contrary, extended period cannot be invoked.

37. We also note that reliance placed by the adjudicating authority on various case laws is also not relevant as the issue before the Tribunal was different. In the case of appellant, the issue involved is interpretation of construction of dam, provision of service to Government, WCS, etc., which all required interpretation unlike judgment relied upon by the adjudicating authority for denying them this ground. Even in the case of bonafide belief, the reliance placed by the adjudicating authority on various judgments as in the case of Prathyusha Associates Shipping Pvt Ltd Vs CCCE & ST, Visakhapatnam (supra), the Tribunal has neither discussed nor decided bonafide belief, whereas, in the case of NGK Infrastructure Ltd Vs CCE & ST, Ghaziabad (supra), the Tribunal had made decision in the context of law existing at that point of time and facts of the case. In the case of Lakhan Singh & Co Vs CCE, Jaipur (supra), the issue involved was interpretation of classification of services in the year 2002 and 2004 prior to negative tax regime and hence, cannot be relied upon.

38. In the given facts of the case, extended period cannot be invoked and entire demand gets time barred as SCN has been issued beyond normal period of limitation, as applicable during material time.

39. In view of the above, both on merit as well as on the ground of limitation, the impugned order cannot be sustained and therefore, set aside. As demand is not sustained on merit as well as on the grounds of limitation, penalties are also not sustained and are accordingly, set aside.

40. Appeal allowed.

(Pronounced in the Open Court on 31.07.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

Veda