

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA**

REGIONAL BENCH – COURT NO. 2

Service Tax Appeal No. 75351 of 2017

(Arising out of Order-in-Appeal No. 269/ST-I/KOL/2016 dated 21.11.2016 passed by the Commissioner of Central Excise (Appeal-I), Kolkata 169, A. J. C. Bose Road, Bamboo villa (4th Floor), Kolkata-700014)

M/s. Britannia Engineering Ltd.

1, Ali Hyder Road, Titagarh, Kolkata-700119
Dist.-24 Parganas (N)

: Appellant

VERSUS

The Commissioner of Central Excise (Appeal-),

169, A. J. C. Bose Road,
Bamboo villa (4th Floor), Kolkata-700014

: Respondent

APPEARANCE:

Shri Ronaldo Das, Advocate
Shri Harsh Gadodia, Advocate for the Appellant
Shri P. Halder,
Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.76386/ 2026

DATE OF HEARING: 23.09.2026

DATE OF PRONOUNCEMENT: 08.10.2026

ORDER: [PER SHRI R. MURALIDHAR]

Appellants are registered with the Service Tax Department with Service Tax Registration Number AABCB4796JSU001 dated 31-07-2006. An audit was taken up by Superintendent Audit Branch. They pointed out that the appellant has not paid Service Tax of Rs.11,66,943/- in respect of the services rendered by them under the category of Commercial or Industrial Construction Service.

2. This demand was for the period 2006-07, 2007-08 and 2008-09. The audit worked out the gross value of the work and consideration received by them and gave abatement of 67% and charged the Service Tax on the balance 33% amounting to Rs.11,98,511/-. The appellant paid Rs.2,06,423/- and Rs.11,97,213 under protest.

3. After this a show cause notice was issued demanding Rs.11,98,511/-. The appellant submitted their reply stating that the appellant is providing Works Contract Service and no tax was required to be paid for the services rendered prior to 1-06-2007 under Works Contract Service. They also submitted that the Show Cause notice issued under the category of Commercial and Industrial Construction Service is erroneous since the appellant is rendering the services under the category of Works Contract Service. However, the adjudicating authority went on to confirm the demand. On appeal, the Commissioner (Appeals), dismissed the same. Therefore, the appellants are before the tribunal.

4. The learned advocate appearing on behalf of the appellant submits that the Revenue is in error in categorizing the services Commercial or Industrial Construction Service since the appellant has rendered Works Contract Service. This service was not taxable for the services rendered prior to 2006-07. He also submits that for the amounts received by them during 2006-07 to 2008-09, many of their contracts were completed much before and hence they should not have been added for arriving at the demand amount. He also takes the stand that issue of the demand under the category of Construction of Commercial and Industrial Service is erroneous and

by not issuing the show pass notice under the category of Works Contract Service, the whole show cause notice becomes legally not sustainable.

5. He also takes the stand that the show pass notice issued on 31-03-2010 for the transactions taking place between 2006-07 to 2008-09 is time barred for most of the period.

6. The learned AR appearing on behalf of the Revenue submits that the appellant has rendered service in respect of Commercial and Industrial Construction only. All the contracts given to the appellant are in respect of various activities undertaken for state government and others on which they are realizing rent. Therefore, the appellant's service cannot be taken as any service rendered for public welfare. He further submits that irrespective of whether the show cause notice has been issued under Construction of Industrial and Commercial Service or under Works Contract Service, it is seen that abatement of 67% has been provided for the goods sold in the course of rendering the service. Therefore, the argument of the appellant that the entire demand becomes erroneous is not correct. Hence, he justifies the confirmed demand.

7. Heard both the sides, perused the appeal papers and the documents placed before us.

8. So far as the appellant's argument that the show cause notice has been issued under the category of Construction of Industrial and Commercial Service whereas they have rendered the service under Works Contract Service is concerned, we do not find not much merit on this submissions.

We find from the Table given in the show cause notice that the audit team has considered that the appellant has supplied both goods as well as services. Therefore, they have considered and given the abatement of 67% on account of the materials used. Therefore, we do not find much substance in the argument adduced by the appellant on this ground.

9. However, we do find force in the appellant's arguments that the service was not taxable on accrual basis. During the period involved, it was taxable on receipt basis. Service tax is to be discharged on the receipt of the amount. In this case, it is required to be found out as to what amounts they have received during the period as consideration between 2006-07 to 2008-09. If any amount pertains to the services rendered prior to the Service Tax provisions coming into place for Construction of Commercial Industrial Construction Service, then the same would not be liable for any tax.

10. For the limited purpose of checking as to when the contracts were entered into and were completed and as to when the amounts were received by the appellant, we are remanding the matter to the adjudicating authority for re-quantification of the demand. Due consideration should be given for the documentary evidence to be produced by the appellant before the adjudicating authority. It is to be kept in mind that the service tax is payable only based on the actual receipts and not on the basis of accruals during the period under consideration.

11. The adjudicating authority should follow the principles of natural justice and decide the issue

within four months from the date of receipt of this order. The appellant is also directed to cooperate and provide all the documentary details before the adjudicating authority.

12. Thus, the appeal stands disposed off by way of remand to the adjudicating authority.

(Order Pronounced in Open court on 08.10.2026)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP