

**Customs, Excise & Service Tax Appellate Tribunal  
West Zonal Bench at Ahmedabad**

REGIONAL BENCH- COURT NO. 3

**Service Tax Appeal No. 10879 of 2013-DB**

(Arising out of OIA-SRP/548/VDR-II/2013 dated 13/03/2013 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-II)

**Kirti Infrastructures Ltd**

18, Fatehgunj, Vadodara, Gujarat

**.....Appellant**

*VERSUS*

**C.C.E. & S.T.-Vadodara-ii**

1st Floor... Room No.101,  
New Central Excise Building, Vadodara, Gujarat - 390023

**.....Respondent**

**APPEARANCE:**

Shri Nilesh Suchak, Chartered Accountant for the Appellant  
Shri Prakash Kumar Singh, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR  
HON'BLE MEMBER (TECHNICAL), MR. C.L.MAHAR**

**Final Order No. A/ 11654 /2023**

DATE OF HEARING: 05.04.2023  
DATE OF DECISION: 03.08.2023

**RAMESH NAIR**

The issue involved in the present case are that

- (i) Whether the service of construction of a new building or a civil structure or a part there of as it turnkey project of construction during the period from 21.06.2007 to 31.07.2009 should be classified under Commercial or Industrial Construction Service as defined under Section 65 (25b) of the Finance Act, 1994
- (ii) Whether the appellant is required to include the value of free supplied material or provided by a client/ service receiver in the value of taxable service.

2. Shri Nilesh Suchak, Learned Counsel appearing on behalf of the appellant at the outset submits that with effect from 01.06.2007, the new service namely Works Contract Service was made effective, classification of aforesaid service would undergone a change in case of long term contracts even though part of the service was classified under respective taxable service prior to 01.06.2007. This is because the works contract describes the nature of activity more specifically and therefore as per the

provision of Section 65A of the Finance Act, 1994 it would be appropriate classification for the part of the service provided after that date. He placed reliance on the CBEC Board Circular No 128/10/2010-ST dated 24.08.2010 and this Tribunal decision in the case of JMC Projects India Ltd Vs. CST – 2014 (35) STR 577 (Tri. Ahmd).

2.1 He submits that the appellant has discharged the VAT on the Works Contract considering the same as a deemed sale and the contract was executed for service and supply of goods together.

2.2 As regard the issue of free supply of material by the service recipient for execution of works contract, he submits that this issue is no longer res-integra as the same has been decided by the Hon'ble Supreme Court in the case of the CST Vs. Bhayana Builders (P) Ltd – 2018 (10) GSTL 118 (SC). He also relied upon the CESTAT decision vide Final Order No. A/10425/2019 dated 28.02.2019 in their own case in Appeal No. ST/43/2011-DB.

2.2 He submits that the appellant had classified its services under works contract service and paid the due service tax under the said category during the period from 21.06.2007 to 31.07.2009. Based on their bona fide belief that the new category of works contract service from 01.06.2007 more specifically covers its services. In this fact there is no suppression of fact on the part of the appellant, hence the entire demand of service tax for the period 21.06.2007 to 31.07.2009 and show cause notice was issued on 12.07.2011 is hopelessly time bar as the show cause notice was served beyond the normal limitation period of one year.

3. Shri Prakash Kumar Singh, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. We find that the demand was raised under the category of Commercial or Industrial Construction Service for the period 21.07.2007 to 31.07.2009. With effect from 01.06.2007, a particular nature of the construction service was brought under works contract service for which certain conditions are required such as execution of project with material and the assessee paid VAT under works contract. During hearing, on the direction of this bench the appellant have submitted sample copies of the purchase order issued by the service recipient M/s. Torrent Pharmaceuticals Ltd. The same are scanned below:-

**TPL**

Corporate Office :  
Torrent House,  
Off Ashram Road,  
Ahmedabad-380 009,  
India.  
Phone : (079) 26565090 /  
26583000  
Fax : (079) 26585244

Date: 01.06.2007

M/s. Kirti Infrastructures Limited,  
18, "The Emperor",  
Fatehgunj,  
Vadodara - 390 002

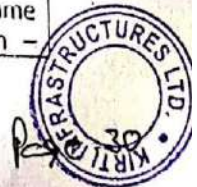
Ref: Purchase Order No: 49000004757 dtd. 09.04.2007

With reference to above referred our P.O., we hereby amend the same as below.

Heading	As per P.O.	Now Amended
Terms of Payment	<p><b>TERMS OF PAYMENT</b></p> <p>The terms of payment for the running bills will be as under.</p> <p><b>8(a). MOBILISATION ADVANCE</b> 5% mobilization advance against submission of Advance Bank Guarantee of an equivalent amount from a nationalized bank. The payment thus released will be recovered in 5 equal installments starting from 2<sup>nd</sup> running bill to 6<sup>th</sup> running bills.</p> <p><b>8(b). ADVANCE AGAINST THE CONSTRUCTION MATERIALS ON SITE</b> Secured advance of the value of the non perishable construction material bought on site by the contractor shall be given only after due verification of the same and certified by the Engineer - in - Charge on site as per the construction program periodically decided at the rate of 40% of contract rate for particular item. The same will be based on stock of material not used and claimed under RA bill. The material which has already been issued will be part of running bill. Such advance shall be paid for the items as per Section 'F' - special conditions of contracts clause no. 25:</p>	<p><b>TERMS OF PAYMENT</b></p> <p>The terms of payment for the running bills will be as under.</p> <p><b>8(a). MOBILISATION ADVANCE</b> 5% mobilization advance against submission of Advance Bank Guarantee of an equivalent amount from a nationalized bank. The payment thus released will be recovered in 5 equal installments starting from 2<sup>nd</sup> running bill to 6<sup>th</sup> running bills.</p> <p><b>8(b)-(i) ADVANCE AGAINST SITE ESTABLISHMENT AND COMPLETION OF FOOTING WORK ON SITE :</b> 10% Advance of contract value shall be paid against Site establishment and completion of footing work. The payment thus released will be recovered at the rate of 10% from each running bill.</p> <p><b>8(b)-(ii).ADVANCE AGAINST THE CONSTRUCTION MATERIALS ON SITE</b> Secured advance of the value of the non perishable construction material bought on site by the contractor shall be given only after due verification of the same and certified by the Engineer - in -</p>



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**Torrent Pharmaceuticals Ltd.**

**TPL**

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 Off Ashram Road,  
 Ahmedabad-380 009,  
 India.  
 Phone : (079) 26585090 /  
 26583000  
 Fax : (079) 26585244

	<p>a. Polished Kota Stone, ceramic tiles, Marbo-granite                  b. Aluminum Items-doors, windows and ventilators, Aluminum sections &amp; glazing.</p> <p>Payment so made shall be deducted from the subsequent R.A. Bills when the finished item of that particular material is claimed as executed.</p>	<p>Charge on site as per the construction program periodically decided at the rate of 40% of contract rate for particular item. The same will be based on stock of material not used and claimed under RA bill. The material which has already been issued will be part of running bill. Such advance shall be paid for the items as per Section 'F' - special conditions of contracts clause no. 25:</p> <p>a. Polished Kota Stone, ceramic tiles, Marbo-granite                  b. Aluminum Items-doors, windows and ventilators, Aluminum sections &amp; glazing.</p> <p>Payment so made shall be deducted from the subsequent R.A. Bills when the finished item of that particular material is claimed as executed.</p>
	<p><b>8(c). RETENTION MONEY</b>                  5% to be deducted in Cash from each &amp; every running bill of the contractor. The same shall be released as under:</p> <p>(i) 2.5% shall be released after virtual completion of all works. However, in case contractor submits bank guarantee for 2.5% of the contract value covering the period of contract, the payment will be released against the bank guarantee.</p> <p>(ii) 2.5% shall be released on submission of Performance Bank Guarantee drawn from a nationalized bank for 2.5% of the total value covering the defect liability and maintenance period of 12 months.</p> <p>The Payment mentioned in clause 8 C (ii) will be released subject to no deductions on account of liquidated damages.</p>	<p><b>8(c). RETENTION MONEY</b>                  5% to be deducted in Cash from each &amp; every running bill of the contractor. The same shall be released as under:</p> <p>(i) 2.5% shall be released after virtual completion of all works. However, in case contractor submits bank guarantee for 2.5% of the contract value covering the period of contract, the payment will be released against the bank guarantee.</p> <p>(ii) 2.5% shall be released on submission of Performance Bank Guarantee drawn from a nationalized bank for 2.5% of the total value covering the defect liability and maintenance period of 12 months.</p> <p>The Payment mentioned in clause 8 C (ii) will be released subject to no deductions on account of liquidated damages.</p>



**Torrent Pharmaceuticals Ltd.**

**TPL**

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Torrent House,  
Off Ashram Road,  
Ahmedabad-380 009.  
India.

Phone : (079) 26585090 /

26583060

Fax : (079) 26585244

8(d). RUNNING ACCOUNT BILL	8(d). RUNNING ACCOUNT BILL
<p>The Contractor shall submit monthly running bills and these shall be cleared for payment as below:</p> <p>a.70% Adhoc payment with in 10 days of receipt of the bill after deduction as per clause 8(a), 8(b) and 8(c).</p> <p>b.30% with in 30 days of verification and checking of Measurement by TPL and/or consultant.</p> <p>One running bill per month for Tender items. Separate Running bill per month for Non Tender items.</p> <p>Bills for extra item will be processed separately and will be part of next month's running account bill.</p>	<p>The Contractor shall submit monthly running bills and these shall be cleared for payment as below:</p> <p>a.70% Adhoc payment with in 10 days of receipt of the bill after deduction as per clause 8(a), 8(b)(i), 8(b)(ii), and 8(c).</p> <p>b.30% with in 30 days of verification and checking of Measurement by TPL and/or consultant.</p> <p>One running bill per month for Tender items. Separate Running bill per month for Non Tender items.</p> <p>Bills for extra item will be processed separately and will be part of next month's running account bill.</p>

Please note that all other terms & conditions of our earlier Purchase Order remain unchanged.

For TORRENT PHARMACEUTICALS LTD.

*M.D. Modi*  
AUTHORISED SIGNATORY



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4.1 From the above purchase orders in clause 8 (b) it clearly reveals that the construction service was provided by the appellant along with material. The appellant has submitted VAT return to claim that they have discharged the VAT on the works contract service. The sample copy of the VAT Form 216 evidencing payment of VAT under composition scheme is scanned below:-

**FORM 216**  
(See sub-rule (8) of rule 28)  
Statement for composition by way of lumpsum in lieu of tax payable,  
on the turnover of sales of goods involved in the execution of works  
contract

Registration Certificate Number 24073400674  
Permission No  
Period from 01/01/2008 to 31/01/2008

Name of the dealer: KIRTI INFRASTRUCTURES LTD.  
Address : 3/PAURAV, 9-A, SWASTIK SOC.,  
NAVRANGPURA,  
AHMEDABAD

The details of the turnover of sales of goods involved in the execution of works contracts are given as under:-

Sr No.	Date	Invoice No.	Name of the contractee	Amount Rs.
1	/ /		Torrent Pharmaceuticals Ltd.	2728544
2	/ /		Vadodara Mahanagar Seva Sadan	3235204
3	/ /		Aventis Pharma Ltd.	250855
4	/ /		Endeka Ceramics Ltd.	3523975
5	/ /		Nandesari Industries Associati	4005269

\* A separate sheet is to be attached for more details.

1. Amount received/Receivable during the period for The works contract undertaken.	1,37,43,847
2. Amount calculated at the rate of .6 *percent on above	82,463
3. Intrest payable, if any	0
4. Total amount payable	82,463
5. Deduction of source under section 59-B	1,39,247
6. Amount paid	0
7. Chalan No.	Dated / /

I solemnly declare that the above statements are true to the best of my my Knowledge and belief.

Place : AHMEDABAD  
Date : 15/02/2008

Full Signature of Authorised Signatory  
Name SHRI KIRTI INFRASTRUCTURES LTD  
Status DIRECTOR



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4.2 From the above VAT return it is clear that the appellant have discharged the VAT on their works contract service. Therefore, both criteria that the execution of the work with material and on such construction service the appellant have discharged the VAT is satisfied, this clarifies that the service is Works contract Service. The appellant have admittedly paid the service tax on the works contract service for the relevant period of this case, therefore in our considered view, the construction service provided by the appellant is correctly classifiable under works contract service. Hence, the demand under Commercial or Industrial Construction Service is not sustainable.

4.3 As regard the issue whether the cost of material supplied free by the service recipient is includible in the gross value of works contract service, the issue is no longer res- integra as the same has been decided by the Hon'ble Supreme Court in the case of CST Vs. Bhayana Builders (P) Ltd – 2018 (10) GSTL 118 (SC). Moreover considering the Apex Court judgment this Tribunal in the appellant's own case decided the issue in the favour of the appellant vide Final Order No. A/10425/2019 dated 28.02.2019. The said decision is reproduced below:-

*" The issue involved is whether for the purpose of granting exemption under Notification No. 15/2004-ST, the value of the free supplies material should be added in gross value of Commercial or Industrial Construction Service.*

*2. Shri N.V. Shuchak Ld. Chartered Accountant appearing on behalf of the appellant at the outset submits that this issue has been settled in the case of Bhayana Builder (P) Ltd. Vs. Commissioner of Service Tax-2018 (10) GSTL 118 (SC).*

*3. Shri. A. Mishra Ld. Joint Commissioner (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.*

*4. Considering the submissions made by both the sides and perusal of the records, we find that the issue in question has been settled by Hon'ble Supreme Court, therefore, for the purpose of computing the gross value of Commercial or Industrial Construction Service value of free supplies material by the service recipient need not be added in the gross Value of service. Accordingly, the issue is covered by the said judgment. The impugned order is set aside and appeal is allowed."*

4.4 In view of the above settled position of law, this second issue also stands settled in favour of the appellant.

5. Accordingly, the demand in the present case is not sustainable. Hence, the impugned order is set aside. Appeal is allowed.

(Pronounced in the open court on 03.08.2023 )

**RAMESH NAIR  
MEMBER (JUDICIAL)**

**C.L.MAHAR  
MEMBER (TECHNICAL)**

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