

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
CHENNAI**

REGIONAL BENCH – COURT NO. I

**Service Tax Appeal No. 40918 of 2014**

(Arising out of Order-in-Original No. CHN-SVTAX-000-COM-044-13-14 dated 22.01.2014 passed by the Commissioner of Service Tax, Newry Towers. No. 2054-1, II Avenue, Anna Nagar, Chennai – 600 040)

**M/s. Para Enterprises Private Limited** : **Appellant**  
[Formerly 'M/s. Pioneer Wincon Private Limited']  
Boopathy Buildings, 17-A, Virudhunagar Road,  
Sivakasi – 626 123

**VERSUS**

**Commissioner of Service Tax** : **Respondent**  
Newry Towers. No. 2054-1, II Avenue,  
Anna Nagar, Chennai – 600 040

**AND**

**Service Tax Appeal No. 41833 of 2015**

(Arising out of Order-in-Original No. CHN-SVTAX-002-COM-01-2014-15 dated 27.02.2015 passed by the Commissioner of Service Tax, Newry Towers. No. 2054-1, II Avenue, Anna Nagar, Chennai – 600 040)

**M/s. Para Enterprises Private Limited** : **Appellant**  
[Formerly 'M/s. Pioneer Wincon Private Limited']  
Boopathy Buildings, 17-A, Virudhunagar Road,  
Sivakasi – 626 123

**VERSUS**

**Commissioner of Service Tax** : **Respondent**  
Newry Towers. No. 2054-1, II Avenue,  
Anna Nagar, Chennai – 600 040

**APPEARANCE:**

Smt. R. Charulatha, Advocate for the Appellant

Smt. Anandalakshmi Ganeshram, Superintendent for the Respondent

**CORAM:**

**HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)**

**HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER NOS. 40812-40813 / 2023**

DATE OF HEARING: 24.08.2023

DATE OF DECISION: 15.09.2023

**Order : [Per Hon'ble Mr. P. Dinesha]**

The undisputed facts are that the appellant is a manufacturer of Wind Turbine Generators (WTG), commonly known as windmills. The appellant would also undertake the activities of erection, commission and installation services and maintenance and repair services of windmills against composite orders.

2.1 During the course of audit, it appears that the internal audit team noticed the appellant was raising two sets of invoices, one for the supply of pioneer wincon make dual wind electricity generator with lattice tower, foundation, control room, HP structure, 22KV transformer including EB infrastructure and land, and the other towards erection and commissioning charges for the Wind Turbine Generator.

2.2 After perusal of the balance sheet, it appeared to the Revenue that the appellant had shown huge amount of expenditure towards "erection and commissioning charges" under the schedule of 'expenses', but however they had been collecting a fixed amount towards the same on which they had also paid the Service Tax. This prompted the issuance of Show Cause Notice dated 28.09.2012 and Statement of Demand dated 03.04.2013 proposing, *inter alia*, to demand Service Tax.

3.1 The appellant appears to have filed its replies dated 22.11.2012 and 24.05.2013 admitting that the activities undertaken by them involved both supply of various goods as well as erection, commissioning and installation and hence, the same was a composite contract. Further, during the process of setting up of the windmills, the property in respect of the goods being erected, commissioned and installed was getting transferred to the buyers which was amenable to State VAT, but however exempted; from 01.06.2007, the composite contract executed by them was

more appropriately classifiable under works contract service and not erection, commissioning and installation services. They also appear to have relied on the clarification issued by CBEC in F.No. B1/16/2007 dated 22.05.2007 and Board Circular No. 128/10/2010 dated 24.08.2010.

3.2 The assessee also took a specific plea, insofar as the valuation was concerned, that the value adopted by them for payment of Service Tax was in order as the cost of land, land development expenditure, infrastructure charges paid to EB and other statutory fees for obtaining various approvals were accounted and grouped under the head erection and commissioning expenses and that the cost of materials like cement, etc., incurred in connection with the same would also be accounted under erection and commissioning charges. They also appear to have admitted that only labour charges relating to laying civil foundation, DP & EB work, OH line work, crane hire charges, and tower assembly charges could be related to erection and commission work and that they had claimed exemption under Notification No. 12/2003-S.T. and hence, the Department cannot direct them to avail 67% abatement. Hence, they have also contended that grouping of various expenses under the head erection and commissioning charges in the P&L account had nothing to do with the determination of value of taxable services under section 67 of the Act; that out of two of their invoices, the first invoice represented value of windmill and other accessories sold, the cost of land and other expenses like statutory charges and the second invoice represented the value of erection, commissioning and installation service provided by them, which satisfied the requirement of Section 67 *ibid.* and hence there was no need to invoke the Service Tax (Determination of Value) Rules.

4.1 Having considered the explanation of the appellant and their reply to the Show Cause Notice, the adjudicating authority has at paragraph 7.1 of the Order-in-Original

dated 22.01.2014, extracted the scope of work and thereby has acknowledged that what was entered into between the parties was a composite contract order for purchase of WTG and erection and commissioning thereof. The original authority has also clearly understood the scope of the contract in the following words: -

"7.3 ...

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*.....Hence, the civil works and electrical installations are inseparable part of the erection, commissioning and installation work. Therefore, it is evident that the value of such materials shall also form part of the assessable value. Whereas, in the present case, the assessee has entered into a composite contract and raised two invoices separately one for supply of materials and another for erection, commissioning and installation work and undervalued the service value.."*

4.2 At paragraph 7.5 of the order, the original authority, after extracting provisions of best judgement assessment under Section 72 of the Finance Act, 1994, has held that *"a careful reading of the work order and breakup of the price structure of the said contracts indicate that the same are required to be construed only as composite contracts and the income received against such composite contracts are to be treated as the gross income and the tax liability has to be worked out as per the provisions of Notification No. 01/2006-S.T. dated 01.03.2006.."* He has thus felt it apt to resort to the best judgement assessment.

4.3 In the Order-in-Original dated 22.01.2014, the Commissioner has held that the activity, in the nature of composite contract service provided by the appellant, was be classified under "erection, commissioning and installation service" in terms of Section 65(105)(zzd) of the

Finance Act, has confirmed the payment of Service Tax for the period 2007–08 to 2010–11, has ordered total recovery of the Service Tax along with applicable rate of interest under Section 75 apart from levying penalty under Section 78 and Section 77 (2) *ibid*.

4.4 Similarly, in respect of the Statement of Demand dated 03.04.2013, the Order-in-Original dated 27.02.2015 came to be passed thereby confirming the payment of Service Tax for the period from April 2011 to March 2012 along with application interest under Section 75 apart from levying penalty under Section 76 and 77 *ibid*.

5. It is against these demands that the appellant has filed the present appeals before this forum.

6. When the case was taken up for hearing today, Smt. R. Charulatha, Ld. Advocate, appeared and argued for the appellant. Smt. Anandalakshmi Ganeshram, Ld. Superintendent, defended the orders of the Commissioner.

7.1 The Ld. Advocate would contend at the outset that the Commissioner having clearly acknowledged and accepted the composite nature of the contract executed by the appellant, the appellant therefore has rendered only works contract. She would thus contend that taxability on service tax portion of composite works contract has been made taxable only with effect from 01.06.2007 with the insertion of Section 65(105)(zzzza), which has been interpreted by the Hon'ble Supreme Court in the case of *Commissioner of Central Excise and Customs, Kerala v. M/s. Larsen & Toubro Ltd. [2015 (39) S.T.R. 913 (S.C.)]* to the effect that Section 65(105) is applicable for levy of Service Tax only on contracts simpliciter and not composite indivisible works contract and therefore, for the period prior to the insertion of the above Section, no Service Tax could be demanded on the services provided under an indivisible composite contract.

7.2 She would contend that the period in the case on hand admittedly being prior to the introduction of Negative List, for the subsequent period, i.e., 01.06.2007 to 30.06.2012, the service portion of the composite contract could only be taxed under works contract service, but however, the appellant has been paying Service Tax under works contract service only and hence, a demand by re-classifying the service under erection, commissioning and installation is not justified. She would rely on the decision in the case of *M/s. Larsen & Toubro Ltd. (supra)* which has been followed by various benches of the Tribunal across the country, including this very Bench, in the case of *M/s. Real value Promoters Pvt. Ltd. & ors. v. Commissioner of G.S.T. and Central Excise, Chennai [2018-VIL-648-CESTAT-CHE-ST]*.

7.3.1 She would thus contend that for the period from April 2007 to May 2007, the demand under 'erection, commissioning and installation service' cannot sustain as there was no levy on composite contracts.

7.3.2 She would also argue that for the subsequent period from June 2007 to March 2012, the demand under 'erection, commissioning and installation service' cannot sustain because of the composite nature of the contract, which is taxable under the category of works contract service.

7.4.1 Without prejudice to the above, she would also argue that extended period of limitation cannot be invoked. According to her, the demand proposed and confirmed in the impugned orders has been worked out based only on the expenses reflected in the balance sheet and P&L account; the Revenue has not relied on any other document other than these to even allege that there was suppression of any kind.

7.4.2 In this regard, she would rely on the following orders/decisions: -

- i. *Rolex Logistics Pvt. Ltd. v. Commissioner of Service Tax, Bangalore [2009 (13) S.T.R. 147 (Tri. – Bang.)]*
- ii. *Steelcast Ltd. v. Commissioner of C.Ex., Bhavnagar [2009 (14) S.T.R. 129 (Tri. – Ahmd.)]*
- iii. *Hindalco Industries Ltd. v. Commissioner of C.Ex., Allahabad [2003 (161) E.L.T. 346 (Tri. – Del.)]*

7.5 By relying on the above decisions, she would also argue that for the very same reasons, even the penalties demanded in the impugned orders cannot sustain.

8. On the other hand, the Ld. Departmental Representative relied on the findings of the Commissioner. She has also filed a written submission wherein the findings of the Commissioner have been specifically adverted to.

9.1 We have considered the rival contentions and we have carefully perused the documents placed on record. At paragraph 8.1 of the impugned order dated 22.01.2014, the Ld. Commissioner accepts that the assessee was a manufacturer and supplier of WTGs / Windmills and were also providing erection, commission and installation work against the composite contract work order, to make the WTG operational. This is the understanding between the parties and hence, the manner of raising the invoices does not matter. It is also a fact borne on the record that sale of the materials involved were subject to VAT, but however, the same was exempted. At paragraphs 8.1 and 8.2, the Ld. Commissioner, in the impugned order, has categorically observed that the assessee had undertaken the provision of service based on a composite contract. Further, the very fact that the Ld. Commissioner has allowed 67% abatement towards the material cost and 33% towards the service thereby extending the benefit of Notification No. 01/2006-S.T. dated 01.03.2006 itself suggests that the service rendered by the appellant was nothing but works contract.

9.2 These facts, according to us, are sufficient to uphold the claim of the appellant that the nature of service was clearly works contract service. There was no tax liability since the appellant continued to pay tax under works contract service for the periods under dispute, which is also as per the decision of the Hon'ble Apex Court in the case of *M/s. Larsen & Toubro Ltd. (supra)* and therefore, the appellant has to succeed.

10.1 We have carefully considered the Show Cause Notice, where the allegation for invoking the extended period of limitation reads as under: -

*3.0 During the course of audit of assessee's accounts by the Internal Audit Department of this Commissionerate, it was noticed from the purchase orders that they had been collecting charges towards supply of set of blades, lattice tower, nacelle assembly, wind turbine controller, etc. It is also seen that the charges towards foundation, control room, transformer and related electrical works, overhead transmission lines had also been brought down under supply of materials. Further, it was also seen that the assessee had collected some fixed amount towards Infrastructure Development Charges and other statutory charges payable to TNEB. Apart from the above, it was also noticed that they had been collecting an amount of Rs.3 lakhs, Rs.8 lakhs and Rs.10 lakhs respectively towards the erection and commissioning of 250 kw, 750 kw and 850 kw Wind Turbine Generators. On completion of the project they used to raise two set of invoices, one is for supply of pioneer wincon make dual wind electricity generator with lattice tower, Foundation, Control room, HP Structure, 22KV Transformer including EB infrastructure and land and the other is towards erection and commissioning charges for the wind turbine generator wherein the total value of the*



*invoice was for Rs.3 lakhs and service tax liability is calculated on cum tax value.*

*3.1 It appears on perusal of the Balance Sheets of the assessee and on further scrutiny of the records that they had shown huge amount as expenditure towards "Erection & Commissioning charges" under schedule of 'expenses'. It was noticed that they had reflected expenses under the heads Erection Cost, Transformer Cost, EB Infrastructure Development Charges and Contractual Maintenance Expenses. The details of expenditure reflected under the above head for the year 2007-08 to 2010-11 is as follows:*

<i>Year</i>	<i>Erection &amp; Commissioning Charges</i>
<i>2007-08</i>	<i>40,07,50,154</i>
<i>2008-09</i>	<i>27,46,61,113</i>
<i>2009-10</i>	<i>37,30,22,921</i>
<i>2010-11</i>	<i>77,84,16,656</i>

10.2 The authority appears to have assumed from the above details provided by the appellant that the value towards purchase of blades, lattice tower, etc., had all '*been brought down under supply of materials*'. Strangely, the authority has not specified as to what was the actual value with which the value adopted by the appellant was compared, to allege that such value had '*been brought down under supply of materials*'.

11. At paragraph 11 of the Notice, the officer has assumed that the non-payment of service tax under the category of erection, commissioning and installation services was liable to be recovered by invoking the extended period of limitation.

11.1 We have held that the nature of service rendered by the appellant in the case on hand is in the nature of a composite works contract, since it involves both service as

well as transfer of the property in goods/materials. This is clearly, therefore, not taxable under the head of 'erection, commissioning and installation service' prior to 01.06.2007 as declared by the Hon'ble Apex Court. Hence, just because the Revenue brought to tax under a category other than works contract service, the same does not tantamount to suppression of facts, etc., to justify invoking the larger period of limitation.

12. Since the appellant consistently declared the services under 'works contract' and paid tax accordingly, we are of the opinion that the impugned orders reclassifying the impugned service under erection, commissioning and installation cannot sustain and resultantly, the same are set aside.

13. The appeals are allowed with consequential benefits, if any, as per law.

(Order pronounced in the open court on **15.09.2023**)

Sd/-  
**(M. AJIT KUMAR)**  
MEMBER (TECHNICAL)

Sd/-  
**(P. DINESHA)**  
MEMBER (JUDICIAL)