

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

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.75485 of 2017

(Arising out of Order-in-Original No.65/S.Tax/Commr/2016 dated 04.01.2017 passed by Commissioner, Central Excise & Service Tax, Ranchi-I.)

M/s.Hindustan Steel Works Construction Limited

(E5 & E6, Shyamali Colony, Doranda, Ranchi, Jharkhand-834002.)

...Appellant

VERSUS

Commissioner, CGST & CX, Ranchi

.....Respondent

(C.R. Building, 5A, Main Road, Ranchi-I-834001, Jharkhand.)

APPEARANCE

Shri Tarun Chatterjee & Shri Raju Mondal, Advocates for the Appellant (s)
Shri S.K. Dikshit, Authorized Representative for the Revenue

**CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER (TECHNICAL)**

FINAL ORDER NO. 75693/2026

DATE OF HEARING : 13.05.2026
DATE OF DECISION : 16.06.2026

Per : R. MURALIDHAR :

The appellant is a Central Public Sector Undertaking engaged in execution of various Government Construction like construction of Community Health Centre of Government of Jharkhand, Construction of Navodaya Vidyalaya, Construction of ER-CR-ESCAP Channel (canal) of Water Recourse Department, Government of Jharkhand and construction of road under PMGSY Scheme. On the ground that the appellant was rendering the service under the category of Consulting Engineer Service but no registration was taken by them nor they were paying service tax at appropriate rate applicable at the time of rendering of service, a Show Cause Notice came to be issued on 23.04.2015. The Show Cause Notice was issued demanding the

Service Tax for the period 2009-10 to 2013-14, by invoking the extended period provisions. The appellant filed their detailed reply as to how they are not liable to pay any Service Tax and contested the demand both on merits as well as on account of limitation. After due process, the Adjudicating authority confirmed the demand. Being aggrieved, the appellant is before the Tribunal.

2. The Ld Counsel, appearing for the appellant makes the following submissions :

2.1 The appellant has executed various projects for Government Construction like construction of Community Health Centre of Government of Jharkhand, Construction of Navodaya Vidyalaya, Construction of ER-CR-ESCAP Channel (canal) of Water Recourse Department, Government of Jharkhand and construction of road under PMGSY Scheme. The appellant states all the aforesaid construction are made under formal contract/agreement on turnkey basis, all such contract are on cost plus margin basis.

2.2 The appellant submits that none of the aforesaid contracts are coming with the definition of Commercial or Industrial Construction Service under section 65(25b) of the Finance Act, 1994, during the period 2009-10 to 30-06-2012. The said contracts are also exempted Under Notification No. 25/2012-ST, dated 20-06-2012, Sl. 12(a)(c)(d).

2.3 The appellant submits that all the aforesaid constructions are taken up under formal contract/agreement on turnkey basis, all such contract are on cost plus margin basis.

2.4 The appellant submits that from the agreements/contract/ /MOU it can be seen that the appellant has provided construction service which is 'works contract service' on turnkey basis, as per terms of the agreement the whole consideration is paid to the appellant on cost plus margin basis. The Revenue is in error in treating this Margin as the 'consultancy charges', losing sight of the fact that this is the profit margin of the appellant given for executing the entire work on EPC basis from end to end.

2.5 The appellant engaged sub-contractor on back-to-back basis for execution of the work, such sub-contractor raised invoice upon the appellant and the appellant after deduction of Income tax TDS and WCT made payment to sub-Contractor. Copy of the agreement, RA Bills, TDS Certificate are annexed herewith.

2.6 Kind attention is drawn to letter No. D.O.A.NO.334/44/2006-TRU, dated 28-02-2006, wherein it has been clarified that :

'.....for the purpose of classification of services, whether each element of the transaction should be treated separately or as a single composite transaction, albeit, made up of two or more separate services. A composite service, even if it consists of more than one service, should be treated as a single service based on the main or principal service and accordingly classified...'

2.7 The appellant submits that in **Commissioner Vs. Daelim Industrial Co. Ltd. Purported in 2004 (170) ELT, A181(SC)**, wherein the Apex Court, while dismissing the appeal filed by the department upheld the tribunal order holding that works contract is not liable to service tax under 'Consulting Engineer Service' as the contract cannot be vivisected and part of it subjected to service tax.

2.8 The appellant submits that Hon'ble Calcutta High Court in the case of **Simplex Infrastructure Ltd. Vs. CST Kolkata 2016 (42) STR634(Cal)** wherein it is held that *'service contracts simpliciter and not composite works contracts come within the service tax net under the provisions of the Finance Act. The petitioner is involved in performance of composite works contracts and vivisection of such contracts of segregate the service element and impose service tax on the same is not permissible...'*

2.9 The appellant states that in appellant's own case, the Id. Commissioner of Central Excise and Service Tax, Bangalore IV Commissionerate has dropped the proceedings initiated on the similar facts and circumstances vide order dated 22-09-2016.

2.10 The issue is squarely covered by the decision of the Hon'ble Tribunal in Commissioner of C.E., Vadodara VS. Ballast Nedam International, 2015(40) STR 186(Tri- Ahmd).

3. In view of the above submissions, the Ld Counsel prays that the appeal may be allowed on merits.

4. He further takes the stand that the SCN issued on 23.04.2015 for the period 2009-10 to 2013-14 is time barred for the extended period demand for the following reasons :

(a) The works executed by the appellant are fully exempt from payment of Service Tax by way of statutory provisions and Notifications issued from time to time. Hence, the appellant entertained a bonafide belief that they are not required to pay any Service Tax.

(b) Carrying the bonafide belief that no Service Tax is required to be paid by them, the appellants did not charge any Service Tax on the service receiver

(c) The appellant has declared all the details in their P&L Accounts and the Balance Sheet and have filed Income Tax Returns from wherein the information and data has been collected by the Dept to issue the present SCN. Hence, the question of suppression on the part of appellant stands disproved.

(d) The appellant is a reputed Public Sector Undertaking. They would have no intent to evade any Service Tax due to the Govt of India.

5. Based on the above submissions, the Ld. Counsel prays that the demand for the extended period may be set aside.

6. The Ld AR Appearing for the Respondent submits that the appellant neither took any Service Tax Registration, nor did they pay

any Service Tax. The Department had to take up a detailed verification and investigation of the books of accounts of the appellant. Only after such verification, the fact emerged that the appellants were getting certain percentage as 'consultancy charges', which is exigible to Service Tax payment. He relies on the detailed findings of the Adjudicating authority and justifies the confirmed demand. He prays that the appeal may be dismissed.

7. Heard both the sides and perused the appeal papers. We have also gone through the detailed documentary evidence placed by the appellant in support of their case.

8. On going through the Show Cause Notice, we notice that the relevant portion of the allegations reads as under :

2. The noticee is a Registered Public Ltd. Company; the nature of work/activity carried out by them under the scheme of Pradhan Mantri Gram Sadak Yojna (in short PMGSY) in the state of Jharkhand is construction of road, construction of Jawahar Navodaya Vidyalaya (JINV) under Navodaya Vidyalaya Samiti (an autonomous organization of Ministry of Human Resource Development, Govt. of India), construction of Sadar Hospital/Community Health Centre (CHC) under State of Jharkhand, construction of ER-CR-cum Escape Channel (Canal) under Water Resource Development of Jharkhand Govt, and interalia rendering service of advice, consultancy, technical assistance since inception till completion of all such projects. Such services are covered under the definition or the 'Consulting Engineer' service as defined under Section 65 (31) of the Act. [Emphasis supplied]

7. CBEC vide its Circular F.No. B.43/5/97-TRU dated 02.07.97 has clarified that the scope of the service of consultant may include the service of construction supervision and project management. It is also clarified vide Circular No. 138/7/2011-ST dated 06.05.2011 that services of architect and consulting engineer hired in relation to construction of roads, tunnels, and bridges etc. will not be exempted from levy of Service Tax. Thus, Input services like architect and consulting engineering services used for construction, repair, alteration, renovation or restoration of roads are not exempt from levy of the Service Tax. As such, in accordance with the Tripartite agreement it is clear that the services rendered by the Noticee in the capacity of executing agency of PMGSY is a taxable service under the category of 'Consulting Engineers' as defined in clause-31 of the Section- 65 of the Act ibid.

10. Based on above, the calculation sheet for service tax liability is under on aforesaid agency fee.

F. YEAR 2009-10	UNIT				
	NVS/NVS	CHC	PMGSY	WRD/Canal	GRAND TOTAL
NET	324098472	65644683	0	0	389743155
Commission Rate (%)	7.54	6.00	10.00	5.54	0
COMMISSION	24437025	3938681	0	0	28375706
S. Tax (10%)	2443703	393868	0	0	2837571
ED (2%)	48874.25	7877.362	0	0	56751
SHED (1%)	24437.025	3938.681	0	0	28376
TOTAL (S.TAX including Cess)	2922698				
F. YEAR 2010-11	UNIT				
	NVS/NVS	CHC	PMGSY	WRD/Canal	GRAND TOTAL
NET	225994708	55344180	640685069	0	922023957
Commission Rate (%)	7.54	6.00	10.00	5.54	0
COMMISSION	17040001	3320651	64068506	0	84429158
S. Tax (10%)	1704000	332065	6406851	0	8442916
ED (2%)	34080.002	6641.3016	128137.012	0	168858
SHED (1%)	17040.001	3320.6508	64068.506	0	84429
TOTAL (S.TAX including Cess)	8696203				
F. YEAR 2011-12	UNIT				
	NVS/NVS	CHC	PMGSY	WRD/Canal	GRAND TOTAL
NET	44862000	101001425	359138030	0	505201455
Commission Rate (%)	7.54	6.00	10.00	5.54	0
COMMISSION	3382595	6072086	48375971	0	57830652
S. Tax (10%)	338259	607209	4837597	0	5783065
ED (2%)	67651.96	121441.71	96751.9424	0	115661
SHED (1%)	3382.48	60720.855	48375.9712	0	57831
TOTAL (S.TAX including Cess)	5956557				
F. YEAR 2012-13	UNIT				
	NVS/NVS	CHC	PMGSY	WRD/Canal	GRAND TOTAL
NET	102065000	78857329	321071621	0	501993950
Commission Rate (%)	7.54	6.00	10.00	5.54	0
COMMISSION	7695701	4731440	32107162	0	44534303
S. Tax (10%)	923484	567773	3852859	0	5344116
ED (2%)	18470	11355	77057	0	106882
SHED (1%)	9235	5678	38529	0	53441
TOTAL (S.TAX including Cess)	5504440				
F. YEAR 2013-14	UNIT				
	NVS/NVS	CHC	PMGSY	WRD/Canal	GRAND TOTAL
NET	28159000	41949284	1071084135	11656246	1152848665
Commission Rate (%)	7.54	6.00	10.00	5.54	0
COMMISSION	2123189	2516957	107108414	645756	112394315
S. Tax (10%)	254783	302035	12853010	77491	13487318
ED (2%)	5096	6041	257060	1550	269746
SHED (1%)	2548	3020	128530	775	134873

TOTAL (S.TAX including Cess)	13891937
------------------------------	----------

Grand Total Service Tax including Cess Rs.3,69,71,834/- (S.Tax Rs.3,58,94,986/-, Ed.Cess Rs.7,17,898/, SHED Cess Rs.3,58,950/-) for the period 2009-10 to 2013-14

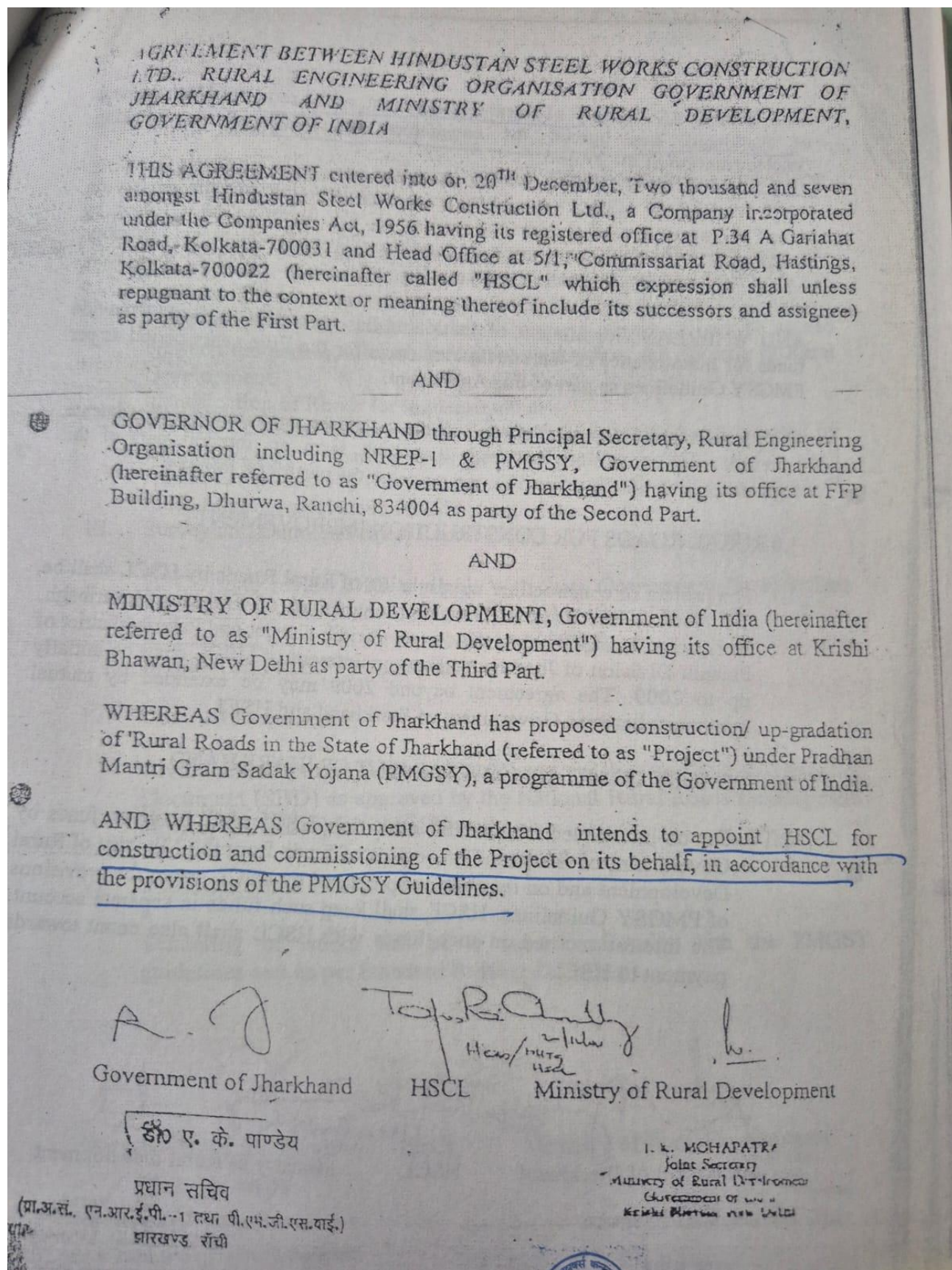
11. It is a statutory obligation of the service provider to obtain Service Tax Registration from the Department in terms of the provisions of Section 69 of the Act read with Rule 4 of the Rules, to assess their taxable value in terms of provisions of Section 67 of the Act and also to calculate and pay the Service Tax leviable thereon under the provisions of Section 68 of the Act read with Rule 6 of the Rules and to file periodical returns in terms of the provisions of Section 70 of the Act read with Rule 7 of the Rules. In spite of conversant Consultant Engineer, the said Noticee did not obtain Service Tax Registration under the appropriate head, did not assess their taxable value, did not pay Service Tax along with the applicable Cess and did not file the periodical returns by mentioning actual receipt of the sum collected against the services rendered by them, thereby, they have deliberately suppressed the facts from the Department with a sole intention to evade payment of Service Tax. In absence of audit; the fact regarding such evasion of Service Tax would not have come to the knowledge of the Department.

9. A careful reading of the allegations contained in the above paragraphs of SCN clarifies that the Revenue has taken a clear stand that the appellant is rendering 'Consulting Engineer's service' falling under Section 65 (31) of the Finance Act 1994. The definition of 'Consulting Engineer' is as under:

(31)"consulting engineer" means any professionally qualified engineer or any body corporate or any other firm who, either directly or indirectly, renders any advice, consultancy or technical assistance in any manner to any person in one or more disciplines of engineering

10. Till 30.06.2012, the Revenue was required to specify the classification of the Service, which they claim to be rendered by the assessee, while making the demand. Only from 01.07.2012, all the services, except for those falling under Negative List under Section 66D or those finding place in the Mega Exemption Notification No.25/2012 ST dated 20.6.2012, would be liable for Service Tax, without any

requirement on the part of the Revenue to specify the classification of service. In the present case throughout the entire period under consideration, the allegation is towards providing "Counseling Engineer's Service" only.



WITNESSETH

WHEREAS the State of Jharkhand, First Party, intends to award the work of construction work of Sadar Hospital, Community Health Center as per Annexure enclosed.

Whereas HINDUSTAN STEELWORKS CONSTRUCTION LIMITED (HSCCL) the second party which are government of India PSU's have the resources and capabilities in taking up such construction work of projects as per requirement and has agreed to take up the same as implementing agency on behalf of Department of Health, Govt. of Jharkhand, Ranchi.

NOW THEREFORE, it has been agreed between the parties as under: -

1. It is agreed that the first party will provide the requirements for drawing and designating of the proposed Hospital as per Annexure to be constructed to the second party.
2. The First party will provide the requisite guidelines, Model/Maps/Designs and norms of Hospital for the Construction to the Second Party.
3. The First party will provide revenue maps and details of land to the second party.
4. The First party will provide necessary assistance in executing the project wherever required to the second party.
5. The second party shall comply with the term and conditions as given below: -
 - a) The executing agency will complete the project as per the estimate and specification provided by the first party (GOJ) on the scheduled rate of GOJ within the prescribed time frame and there shall not be any deviation. The second party, in case of any deviation from the estimate or time schedule, will be liable to pay penalty @ $\frac{1}{2}$ of the estimated cost for every day of delay upto a maximum of 10% to the first party but in case of delay due to natural calamities and departmental reason, the period of completion shall be extended reasonably.
 - b) The DPR of the project shall be prepared by the empanelled architect/consultants on the basis of scheduled rate of GOJ. The consultant's/architect's fee will be met from the estimated cost of the project.

B. Jaiswal



3.0 IMPLEMENTATION BY HSCL

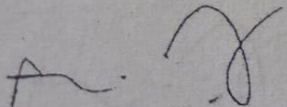
3.1 HSCL would adopt the following systematic approach in implementation of the PMGSY:

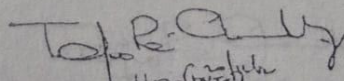
- I. The project shall be implemented as per PMGSY Guidelines and associated documents, including the Rural Roads Manual, Quality Control Handbook, Operations Manual for PMGSY, Book of Specifications for Rural Roads and Standard Bidding Document except as may be agreed between the parties, after obtaining the approval of the Ministry of Rural Development.
- II. Identification of Roads for Implementation
The list of roads for implementation shall be identified and selected by Government of Jharkhand as per PMGSY Guidelines. HSCL shall extend as requested by Government of Jharkhand assistance in selection, of roads as per provisions in PMGSY Guidelines.
- III. Survey and Detailed Project Report (DPR)

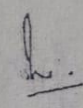
HSCL shall review DPR available with State Government for identified roads and update it for implementation. In case of its non-availability, HSCL shall carry out survey and prepare DPRS, and get them scrutinized in line with PMGSY requirements.
- IV. Contract Documents

Civil works Contract Document shall be as per the latest Standard Bidding Document (SBD) as approved by the National Rural Roads Development Agency (NRRDA) for PMGSY works.
- V. Executing Road Construction work

Tendering of works will be in strict conformity with the PMGSY guidelines and as per Standard Bidding Document.


Government of Jharkhand


HSCL


Ministry of Rural Development

Joint Secretary
Ministry of Rural Development
Government of India

VI. Maintenance Period

The completed roads shall be under five years defect liability/performance guarantee and five years' routine maintenance as per PMGSY guidelines on scheduled Rate of Payment.

VII. Progress Report

HSCL shall submit progress report (as per format prescribed from time to time) every month to Government of Jharkhand giving physical status of works and financial expenditure.

VIII. Monitoring, Supervision and Quality Control

HSCL will carry out Monitoring, Supervision and Quality Control as per provisions of PMGSY Guidelines. HSCL shall perform such monitoring and supervisory functions as may have been allocated to the State Nodal Department under PMGSY Guidelines. The Government of Jharkhand shall constitute a monitoring and supervision committee headed by Principal Secretary, Rural Engineering Organisation and including the local representative of HSCL and nominee of Ministry of Rural Development to oversee the Programme and resolve operational difficulties faced by HSCL or the Executing Agency.

IX. Completion and Handing over and Maintenance

On successful construction/implementation of various roads, HSCL shall handover the roads to Rural Engineering Organisation, Government of Jharkhand and shall issue Handing over/Taking Over Certificate to the latter. HSCL shall deploy personnel for periodic inspection/certification of contractor's bill during the maintenance period also.

Government of Jharkhand

श्री ए. के. पाण्डेय

प्रधान सचिव

(श्री ए. के. पाण्डेय, जी. एस. दाई.)

HSCL

Ministry of Rural Development

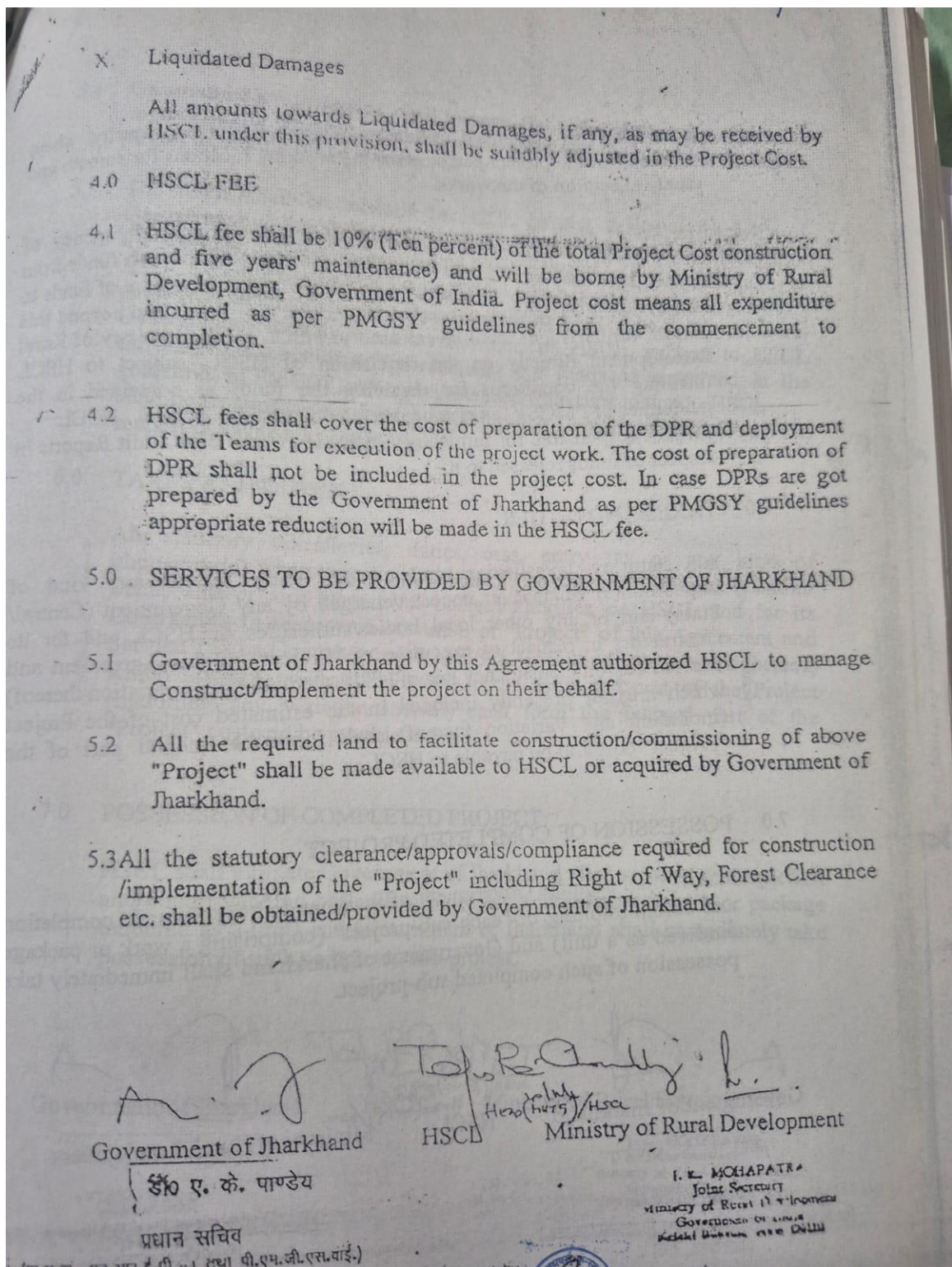
J. K. MOHAPATRA

Joint Secretary

Ministry of Rural Development

Government of India

Kolkata Branch, New Delhi

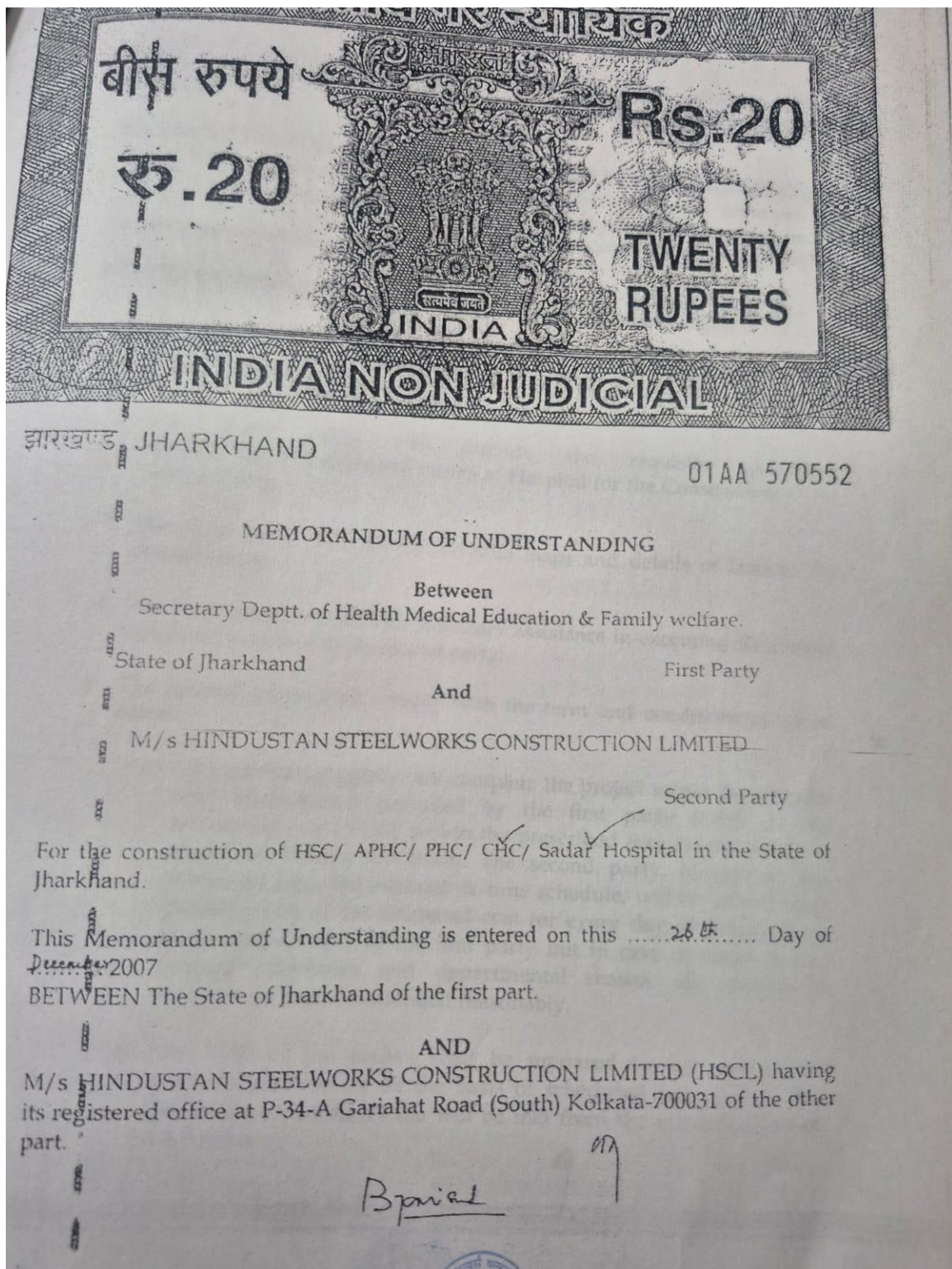


11. A careful and harmonious reading of the above clauses of the Agreement would clarify that the appellant is appointed for 'construction and commissioning of the project on behalf of Govt Of Jharkhand'. The activity to be undertaken pertains to Road construction in conformity with PMGSY guidelines. The appellant shall construct the road within 5 years and is required to take up routine maintenance for the next 5 years. The appellant is given fee @ 10% of the 'Total Project Cost Construction and five years maintenance'.

12. Therefore, it is clear that the appellant is asked to workout the total cost of the project. On the total expenditure [cost of the project], the appellant is given 10% fee. The appellant is liable to bring in the materials, labour, appoint sub-contractor, is responsible for the quality of work and implementation along with guaranteed delivery of the road within 5 years and further maintenance of 5 years.

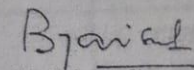
13. These clauses clearly show that the work undertaken by the appellant is a kind of EPC contract for construction of Road, wherein upon producing the total expenditure [cost] the appellant would be eligible for 10% fee. The entire expenditure + fee is paid by the Govt of Jharkhand treating the same as a single contract.

14. We have also gone through one more MOU. The relevant portion is reproduced below:

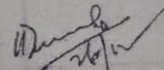


- c) The amount of the estimated cost of the project will be made available to the concerned agency against the Bank Guarantee.
 - d) The first party shall have the right to inspect and monitor the projects.
 - e) The first party shall have the power to allocate and amend the project area of the second party.
 - f) The second party will be liable to supply all necessary construction materials and the first party shall have the power to inspect the quality of the materials. The second party shall bear the expenses of any such inspections by the first party.
 - g) The second party shall undertake the guarantee of the completed project regarding defect and liability for five years.
6. The second party will complete the project within the time limit of 24 months/years 2 from the date of receipt of first Installment of required funds.
 7. The second party shall be responsible for Quality/Quantity of the said project.
 8. The second party will fix-up the working agency as per standard norms of HSCL.
 9. Schedule of rate of State Govt. should be followed and for those heads for which schedule of rates is not fixed the prevailing procedure of the State should be complied with.
 10. Service Tax/Value Added Tax (VAT) as applicable shall be payable to the second party.
 11. Quarterly Physical and Financial Report shall be submitted by the Second Party.

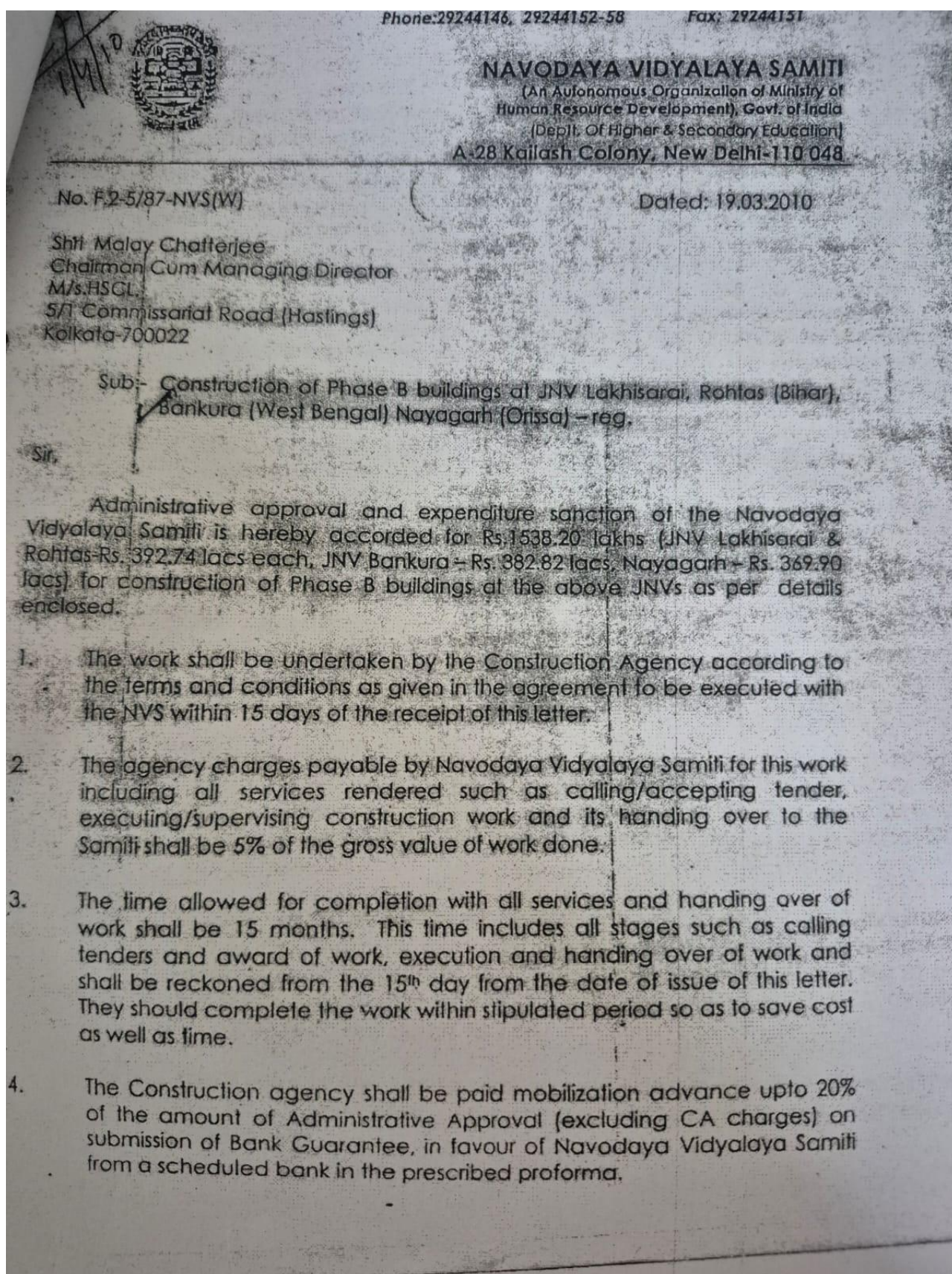
Signed on the date mentioned herein above at Ranchi by the authorized representatives of the parties to this Memorandum of Understanding.


(B. Jaiswal)

Dy. General Manager
For and on Behalf of
M/s Hindustan Steelworks
Construction Ltd.



For and Behalf of
The State of Jharkhand.



15. The above documents also clarify that the activity undertaken by the appellant is towards construction of Hospitals and Educational institutions. They are composite contracts on turnkey basis being awarded to the appellant.

16. We have gone through the Running Bills raised by the appellant for their services. Some sample bills are reproduced below :

Bridge:-@ch-1+200M in hutar to chitra package no-JH17HS18 PMGSY, Block -: Chainpur Bridge Length -:43.80 m								
Item. no	Ref Mord standard data/mord specification	Description of work	Unit	Rate	Quantity		Amount	
					upto date	since. prev.	uptodate	since.prev.
14	11.1/300	Earthwork in excavation for structure as per drawing and technical specification clause 305.10 including setting out, construction of shoring and bracing removal of stumps and other deleterious						
1.1		Up to depth 0 to 3m	cum	186.36	401.72	401.72	74864.54	74864.54
2.0		Soft Rock w/o blasting	cum	224.61	231.2	231.2	51929.83	51929.83
	11.40/800 & 1200	Plain cement concrete /RCC in open foundation complete as per drawing and technical specifications clauses 802,803,1202 & 1203			225.6	225.6	50672	50672
19	11.40/800 & 1200	(a) PCC Grade M-15	cum	4766.59	19.116	19.116	91118.13	91118.13
6.2	11.40/800 & 1200	(b) RCC Grade M-25	cum	6181.25	173.49	173.49	1072385.06	1072385.06
7.20	12.5/800	Providing concrete for Plain/reinforced cement concrete in substructure complete as per drawing and technical specifications clauses 802,804,805,806,807,1202 & 1204 RCC Grade M25	cum	6553.62	95.90	95.904	628518.37	628518.37
25	12.1	supplying, fitting and placing rebar TMT bar reinforcement in foundation, substructure and superstructure complete as per drawing and technical specifications clauses 1000 and 1202 as per direction of E/I					0.00	
12.2		(a) TMT bar in foundation	MT	75707.35	11.37	11.37	860792.57	860792.57
		(b) TMT Bar in substructure	MT	75793.5	8.755	8.755	663572.09	663572.09
					Total=		3443180.60	3443180.60

34,41,922.87 34,41,922.87

Aswish

चलता लेखा बिल "क"

(टीकेदार के लिए :- यह फारम अन्तिम भुगतान तथा मापे गये निर्माण मदे भुगतान के लिए है।)

टीकेदार का नाम - Himalayan Steel Works Construction Limited. तारीख 20

प्रोजेक्ट का नाम - Construction of C.H.C Building at Champur Palamau

बिल की क्रम संख्या - 12th on A/c Bill

निर्माण के पिछले बिल की संख्या और तारीख 28/6/2013 संख्या 15 तारीख 15.12.2007

संवत्सर का निर्देश Agreement No. M.O.U. signed 15.12.2007

शुरू करने के लिखित आदेश की तारीख - 15.11.2008

निर्माण वस्तुतः पूरा होने की तारीख - on progress

1 किए गए निर्माण का लेखा

निर्माण के लिए भुगतान			निर्माण की मर्दे (प्राक्कलन के "उपशीर्षक" और निर्माण के अनुसार वर्गीकृत)	माप	माप बही के अनुसार अवतक निष्पादित मात्रा	वास्तविक माप के आधार पर किए गए भुगतान		अभुविष्ट (स्तम्भ) में दिखाए गए भुगतानों के समायोजन में हुए विलंब के कारण सहित	
बिल के अनुसार माप के बाद	पिछले बिल	अवतक				पिछले			
1	2	3	4	5	6	7	8	9	10
रु०	रु०	रु०			रु०	पै०	रु०	पै०	रु०
<u>Hospital Building</u>									
<u>(2) Civil works</u>									
<u>Excavation in foundⁿ trenches in all kind of soil do. do. E11</u>									
				M ³	39.67	824.75	3		Rs 32718.00
<u>Exc. in Back filling earth obtained from foundⁿ excavation in foundⁿ & plinth do. do. E11</u>									
				"	14.56	824.75	3		Rs 12008.00
<u>Exc. in filling in foundⁿ and plinth earth obtained from borrow pits do. do. E11</u>									
				"	33.79	131.50	3		Rs 4443.00
<u>Providing sand filling in foundⁿ and plinth do. do. E11</u>									
				"	112.27	136.62	3		Rs 15338.00
							<u>Grand Total</u>		
							<u>Rs 64507.00</u>		

अग्रणीत

जहाँ स्तम्भ 9 में वास्तविक माप के आधार पर कोई प्रविष्टि की जाय वहाँ सविस्तार माप के बिना ही पहले चुकायी गई पूरी रकम को स्तम्भ 2 में से रकम की बराबर की राशि घटाकर समायोजित कर लिया जाय ताकि "स्तम्भ 3" में दिखाया गया "अवतक कुल शून्य हो जाय।

जब प्रत्येक प्राक्कलन या उपशीर्षक के संबंध में स्तम्भ 9 में दो या दो से अधिक प्रविष्टियां हों, तब ऐसे निर्माण की दशा में जिनका लेखा उपशीर्षकों में दर्ज किया जा सके, उन प्रविष्टियों को जोड़कर योगफल स्तम्भ 10 में चढ़ा दिया जाय, ताकि "निर्माण सार" में दर्ज किया जा सके।

5.4.38 | S/T single leaf door shutter

M² 885.45 112.51 99621.98

99621.98

17. We have also seen the TDS certificate produced by the appellant. Some samples are reproduced below:

Form 26AS

File Creation Date	Permanent Account Number (PAN)	Current Status of PAN	Financial Year	Assessment Year	Name of Assessee	Address Line 1	Address Line 2	Address Line 3	Address Line 4
5/15/2026	AAACH9524R	ACTIVE	2012-13	2013-14	HINDUSTAN STEELWORKS CONSTRUCTION LIMITED	5-Jan	COMMISSARIAT	HASTINGS	

PART A - Details of Tax Deducted at Source

Sr. No.	Name of Deductor	TAN of Deductor	Total Amount Paid / Credited (Rs.)	Total Tax Deducted (Rs.)	Total TDS Deposited (Rs.)
93	OFFICE OF THE CHIEF ADMINISTRATIVE OFFICER (CONST) PATNA	PTNO00312E	2.45E+08	5412723	5412723

Sr. No.	Section	Transaction Date	Status of Booking	Date of Booking	Remarks	Amount Paid / Credited (Rs.)	Tax Deducted (Rs.)	TDS Deposited (Rs.)
1	194C	30-Mar-13	P	21-May-13	-	3356916	77209	77209
2	194C	23-Mar-13	P	21-May-13	-	532074	12237	12237
3	194C	23-Mar-13	P	21-May-13	-	3677584	423	423
4	194C	23-Mar-13	P	21-May-13	-	390602	8984	8984
5	194C	23-Mar-13	P	21-May-13	-	2487350	57209	57209
6	194C	23-Mar-13	P	21-May-13	B	-532074	-12237	-12237
7	194C	23-Mar-13	P	21-May-13	-	532074	12237	12237
8	194C	23-Mar-13	P	21-May-13	B	-3677584	-423	-423
9	194C	23-Mar-13	P	21-May-13	-	3677584	423	423
10	194C	23-Mar-13	P	21-May-13	B	-3677584	-423	-423
11	194C	23-Mar-13	P	21-May-13	-	3677584	423	423
12	194C	23-Mar-13	P	21-May-13	B	-3677584	-423	-423
13	194C	23-Mar-13	P	21-May-13	-	3677584	423	423
14	194C	23-Mar-13	P	21-May-13	B	-532074	-12237	-12237

Form 26AS

File Creation Date	Permanent Account Number (PAN)	Current Status of PAN	Financial Year	Assessment Year	Name of Assessee	Address Line 1	Address Line 2	Address Line 3	Address Line 4
5/15/2026	AAACH9524R	ACTIVE	2011-12	2012-13	HINDUSTAN STEELWORKS CONSTRUCTION LIMITED		COMMISARIAT	HASTINGS	

PART A - Details of Tax Deducted at Source

Sr. No.	Name of Deductor	TAN of Deductor	Total Amount Paid / Credited (Rs.)	Total Tax Deducted (Rs.)	Total TDS Deposited (Rs.)
66	CHIEF ADMINISTRATIVE OFFICER	PTNC02196F	1686640	835	835

Sr. No.	Section	Transaction Date	Status of Booking	Date of Booking	Remarks	Total Amount Paid / Credited (Rs.)	Total Tax Deducted (Rs.)	TDS Deposited (Rs.)
1	194C	23-Dec-11	P	29-Aug-13	-	1686640	835	835
2	194C	23-Dec-11	P	29-Aug-13	B	-1686640	-835	-835
3	194C	23-Dec-11	P	29-Aug-13	-	1686640	835	835

OFFICE OF THE CHIEF ADMINISTRATIVE OFFICER (CONST) PATNA

PTNO00312E

Sr. No.	Section	Transaction Date	Status of Booking	Date of Booking	Remarks	Total Amount Paid / Credited (Rs.)	Total Tax Deducted (Rs.)	TDS Deposited (Rs.)
1	194C	31-Mar-12	P	24-Apr-12	-	1751514	40285	40285
2	194C	31-Mar-12	P	24-Apr-12	B	-1751514	-40285	-40285
3	194C	31-Mar-12	F	22-Nov-12	-	1751514	40285	40285
4	194C	31-Mar-12	F	22-Nov-12	B	-1751514	-40285	-40285
5	194C	31-Mar-12	P	17-Dec-14	-	1751514	40285	40285
6	194C	14-Mar-12	P	24-Apr-12	-	512561	11789	11789
7	194C	14-Mar-12	P	24-Apr-12	B	-512561	-11789	-11789

8	194C	14-Mar-12	F	22-Nov-12	-	512561	11789	11789
9	194C	14-Mar-12	F	22-Nov-12	B	-512561	-11789	-11789
10	194C	14-Mar-12	P	17-Dec-14	-	512561	11789	11789
11	194C	13-Mar-12	P	24-Apr-12	-	4117852	94711	94711
12	194C	13-Mar-12	P	24-Apr-12	B	-4117852	-94711	-94711
13	194C	13-Mar-12	F	22-Nov-12	-	4117852	94711	94711
14	194C	13-Mar-12	F	22-Nov-12	B	-4117852	-94711	-94711
15	194C	13-Mar-12	P	17-Dec-14	-	4117852	94711	94711
16	194C	28-Feb-12	P	24-Apr-12	-	7020881	161481	161481
17	194C	28-Feb-12	P	24-Apr-12	B	-7020881	-161481	-161481
18	194C	28-Feb-12	F	22-Nov-12	-	7020881	161481	161481
19	194C	28-Feb-12	F	22-Nov-12	B	-7020881	-161481	-161481
20	194C	28-Feb-12	P	17-Dec-14	-	7020881	161481	161481
21	194C	27-Feb-12	P	24-Apr-12	-	1478474	34004	34004
22	194C	27-Feb-12	P	24-Apr-12	-	2118363	48722	48722
23	194C	27-Feb-12	P	24-Apr-12	-	341906	7864	7864
24	194C	27-Feb-12	P	24-Apr-12	B	-2118363	-48722	-48722
25	194C	27-Feb-12	F	22-Nov-12	-	2118363	48722	48722
26	194C	27-Feb-12	P	24-Apr-12	B	-341906	-7864	-7864
27	194C	27-Feb-12	F	22-Nov-12	-	341906	7864	7864
28	194C	27-Feb-12	P	24-Apr-12	B	-1478474	-34004	-34004
29	194C	27-Feb-12	F	22-Nov-12	-	1478474	34004	34004
30	194C	27-Feb-12	F	22-Nov-12	B	-1478474	-34004	-34004
31	194C	27-Feb-12	F	22-Nov-12	-	1478474	34004	34004
32	194C	27-Feb-12	F	22-Nov-12	B	-1478474	-34004	-34004
33	194C	27-Feb-12	F	22-Nov-12	-	1478474	34004	34004
34	194C	27-Feb-12	F	22-Nov-12	B	-1478474	-34004	-34004
35	194C	27-Feb-12	P	17-Dec-14	-	2118363	48722	48722
36	194C	27-Feb-12	F	22-Nov-12	B	-341906	-7864	-7864
37	194C	27-Feb-12	P	17-Dec-14	-	341906	7864	7864
38	194C	27-Feb-12	F	22-Nov-12	B	-1478474	-34004	-34004
39	194C	27-Feb-12	P	17-Dec-14	-	1478474	34004	34004
40	194C	27-Feb-12	F	22-Nov-12	B	-1478474	-34004	-34004
41	194C	27-Feb-12	F	22-Nov-12	-	1478474	34004	34004
42	194C	27-Feb-12	F	22-Nov-12	B	-1478474	-34004	-34004
43	194C	27-Feb-12	F	22-Nov-12	-	1478474	34004	34004
44	194C	7-Feb-12	P	24-Apr-12	-	1478474	34004	34004
45	194C	7-Feb-12	P	24-Apr-12	B	762456	17536	17536
46	194C	7-Feb-12	F	22-Nov-12	-	-762456	-17536	-17536
47	194C	7-Feb-12	F	22-Nov-12	B	762456	17536	17536

18. From the above documentary evidence read together would clarify that:

- (a) The appellant is executing the contract towards construction of roads, hospitals and other facilities on turnkey basis.
- (b) Irrespective of the construction / civil work are undertaken by the appellant or any of his sub-contractors, the overall responsibility to execute the contract satisfactorily is purely on the appellant.
- (c) The terms of the contract are based on the total cost +fee for the appellant.
- (d) The fee is not reflected anywhere as the consideration being paid to the appellant for bringing in the third party sub-contractor to the Govt of Jharkhand.
- (e) The entire construction cost+fee is treated as a single transaction by the Govt of Jharkhand and the same is being paid to the appellant based on the Running Bills raised by them. The TDS is deducted under Section 194C – applicable to the contractor on the full value. This also shows that the appellant is not being treated a 'Consulting Engineer' with the payment being made only for the fee portion along with TDS. The entire amount is being paid to the appellant is considered since they are taking up the work on EPC basis.

19. The above factual details make us conclude that the appellant is undertaking composite Works Contract. The works undertaken by them, being in the nature of public utility, road construction etc., have always enjoyed Service Tax exemption prior to 1.7.2012 and also subsequent to 1.7.2012. Even otherwise, it is not the case of the Revenue that the appellant is required to pay the Service Tax on the consideration received on account of the project. Therefore, the exemption granted towards Service Tax, stands admitted by the Revenue.

20. The Revenue has vivisected the total contract value, by latching on the Fee being paid to the appellant in respect of the various agreements. As we have seen above, the nature of contract itself makes it clear the appellant is responsible for the total expenditure and on this total cost he is given the fee. This is nothing but 'profit margin' of the appellant for executing the project. As per the details discussed above, the service will not fall under the category of 'Consulting Engineer's service'. From the Table given for the quantification of demand, the consideration is mentioned as 'Commission'. When the amount is received as 'commission', the same would call for classification under Business Auxiliary Service in terms of Section 65 (19). In the present case there is nothing to show that the appellant has received the Commission, as can be seen from the Form 16A-TDS details.

21. Thus, it is seen that the Revenue has completely failed to bring in any evidence that the appellant has rendered any service under the category of 'Consulting Engineer's service'. On the other hand, the evidence produced by the appellant shows that the work undertaken is a EPC / turnkey project works contract involving supply of materials and service.

22. In the present case, the SCN has been issued for period 2009-10 to 2013-14 on 23.04.2015 and for the entire period, the allegation is only towards providing the 'Consulting Engineer's service' as observed above. At this point, it would be relevant to go through the landmark judgement of Punjab & Haryana High Court in the case of Commissioner Of Central Excise vs Dr. Lal Path Lab (P) Ltd., rendered on 14 September, 2007 [**Dr. Lal Path Lab Vs. CCE - 2006 (4) STR 527** – Affirmed by Supreme Court - 2007 (8) STR 333 (P&H).] The relevant portions are extracted below:

5. On further appeal filed by the assessee-respondent, the Tribunal came to the conclusion that the activities of the assessee-respondent were not covered by the provisions of [Section 65\(19\)\(ii\)](#) of the Act. The view of the Tribunal is discernible from paras 11 to 14 of its order, which reads as under:

12. It is well-settled that once there is a specific entry for an item in the tax code, the same cannot be taken out of that specific entry and taxed under any other entry. In the present case, Revenue is seeking to discard the specific entry and

to bring the appellants' services under a very general entry, only because under the specific entry no tax is payable. This approach is contrary to the scheme of the legislation. What is specifically kept out of a levy by the Legislature cannot be subjected to tax by the Revenue administration under another entry.

14. The services rendered by the appellants herein also do not seem to fall under any category specified in the definition of 'business auxiliary service'. The agreements make it clear that the appellants are not engaged for promotion or marketing of testing and analysis service. The appellants' business is organised for drawal of samples and for processing and forwarding of those samples. They are also not in the business of marketing or business promotion. The expertise, through technical staff (phlebotomist) is for rendering service in connection with human blood testing. Similarly, equipment available are for drawing, processing and preserving of samples. Thus, clearly, the appellant cannot come under serial No. (ii) of business auxiliary service. Serial No. (iv) brings 'any incidental or auxiliary support service' within the scope of business auxiliary service. Type of services covered therein are illustrated in the definition 'billing, collection or recovery of cheques, accounts and remittance/ etc. The drawing of sample and processing and forwarding of such samples are not in the same genre as any of the illustrative services mentioned under serial No. (iv). Serial No. (iv) makes it clear that only incidental or auxiliary support services such as the ones mentioned therein would fall within the definition. As already noted, the services provided by the appellants do not come within the categories of services mentioned in the definition. Therefore, these services cannot fall within serial No. (iv).

7. Having heard the learned Counsel and closely perused the order passed by the Tribunal, we are of the considered view that this appeal is liable to be dismissed because in pith and substance, the activity of the assessee-respondent is confined to a collection centre with facilities and trained employees for drawal of blood samples and to carry out essential processing (serum separation) of blood and forwarding the samples to the principal lab at Delhi through courier. The collection centres are also responsible for disposal of waste arising in the process. The case of the assessee-respondent appears to be covered by the exception postulated by Sub-section (106) of [Section 65](#), which defines the expression "technical testing and analysis". The provision is reproduced hereunder for facility of reference:

'technical testing and analysis' means any service in relation to physical, chemical, biological or any other scientific testing or analysis of goods or material or any immovable property but does not include any testing or analysis service provided in relation to human beings or animals ;

Explanation.-For the removal of doubts, it is hereby declared that for the purposes of this clause, 'technical testing and analysis' includes testing and analysis undertaken for the purpose of clinical testing of drugs and formulations ; but does not include testing or analysis for the purpose of determination of the

nature of diseased condition, identification of a disease, prevention of any disease or disorder in human beings or animals.

8. A perusal of the aforementioned provision makes it clear that the expression "technical testing and analysis" does not include any testing or analysis service provided in relation to human being or animals. The Explanation goes to the extent of excluding from the aforementioned definition, a testing or analysis for the purposes of determination of the nature of diseased condition, identification of a disease, prevention of any disease or disorder in human beings or animals. Such being the statutory provision, we do not entertain any doubt that merely because any incidental service is rendered by the assessee-respondent like putting across or dropping of the name of the principal company, it would become part of the definition of "business auxiliary service" within the meaning of Section 65(19)(ii) of the Act. The view taken by the Tribunal is unassailable and deserves to be upheld.

23. This decision of the Punjab & Haryana High Court was considered by the Kerala High Court in the following case :

Federal Bank Ltd. Vs. CCE

2008 (10) STR 320

12. It is well settled that once there is a specific entry for an item in the tax code, the same cannot be taken out of that specific entry and taxed under any other entry. In the present case, revenue is seeking to discard the specific entry and to bring the appellantsservices under a very general entry, only because under the specific entry no tax is payable. This approach is contrary to the scheme of the legislation. What is specifically kept out of a levy by the legislature cannot be subjected to tax by the revenue administration under another entry. In terms of the above paras it is clear that cash management service has been netted out from specific category. Therefore, the revenue cannot bring that activity under any other category of customer care services. Likewise this judgments of Dr Lalpath Lab Pvt Ltd., has been confirmed by Apex court as reported in 2007 (8) STR 333 (P&H). In the light of the above observation, I find that the impugned orders are not legal and proper, hence they are set aside by allowing the appeal.

24. In the present case, the Revenue's issuing of Show Cause Notice terming the activity as 'Consulting Engineer's Service' when the same is in the nature of composite EPC / Turnkey contract towards supply of proves fatal to its case. The cited judgements are squarely applicable. On this ground itself the impugned order cannot be legally sustained. Hence, we set aside the same.

25. Coming to the issue of Revenue taking only a part of the total consideration, as 'Consulting Engineer's fee for fastening the Service Tax demand when the Agreement / Contract is for turnkey project, we go through the relevant CBIC's Circulars and case laws discussed below:

D.O.A.NO.334/44/2006-TRU, dated 28-02-2006 [relevant portion]

3.2 Often services provided consist of more than one service. In such cases, it is important to decide, for the purpose of classification of services, whether each element of the transaction should be treated separately or as a single composite transaction, albeit, made up of two or more separate services. A composite service, even if it consists of more than one service, should be treated as a single service based on the main or principal service and accordingly classified.

The decision is to be made on question of facts and law. It will not make a difference if the tax rates of the components are the same as that of the principal service. The problem may arise when some elements are taxable and others are exempt. While taking a view, both the form and substance of the transaction are to be taken into account. The guiding principle is to identify the essential features of the transaction. The method of charging does not in itself determine whether the service provided is a single service or multiple services.

26. This circular clarifies that the classification of service would depend on the basic structure of the work carried out.

27. We go through some important case laws on this issue :

2003 (155) E.L.T. 457 (Tri. - Del.)

DAELIM INDUSTRIAL CO. LTD.

Vs COMMISSIONER OF C. EX., VADODARA

2. A show cause notice dated 16-4-2001 was issued by the Additional Commissioner of Central Excise, Vadodara holding that the appellant was liable to pay service tax on residual process design and detailed engineering, "commissioning of plant" applicable to "consulting engineers". The appellant contested the proposal

contending that theirs was a construction contract and they have not rendered any engineering consultancy services.

4. The contention of the appellant is that their contract was a work contract and design drawing in question were incidental to the execution of the work contract. It is also pointed out that rendering the consultancy services was not involved at all inasmuch as the drawings were made for their own purpose, for the execution of the work contract. Learned Counsel for the appellant took us through to the various provisions in the contract to show that the contract was a work contract for the construction of desulphurisation plant. Separate element of works were costed individually as per the contract terms, only for the purpose of facilitating periodic installment payments. Learned Counsel has pointed out that each component of the project involving design, drawing, procurement, supply, fabrication, etc. cannot be vivisected and considered as different transactions. Learned Counsel pointed out that a mere perusal of the costs of the various components would show that the dominant idea of the contract is the execution of desulphurisation plant. He also pointed out that the cost of process design, detailed engineering etc. carved out by the Central Excise Authorities was less than 7% of the total cost of the contract. Learned Counsel has also taken us to the relevant case law to show that in the case of work contracts, components cannot be taken as separately transactions. He pointed out that in the *State of Punjab v. Associated Hotels India Ltd.* (1972) 1 Supreme Court Cases 472, the Apex Court held that the primary objective of the contract would determine the issue. Learned Counsel pointed out that in the present case, since the primary objective of the contract was a construction of desulphurisation plant, it is not amenable to be split into individual components for levy of service tax. Learned Counsel has also pointed out that in the instant case, Engineers India Ltd. was the consultant of IOC and the main design, drawing and other consultancy services were provided by the Engineers India Ltd. and the appellant carried out only the residual process design and detailed engineering for the construction of the issue.

5. The issue raised in the present appeal is whether there is consulting engineer services involved in the appellants contract with IOC. "Consulting engineer" has been defined as under for the purpose of service tax :

"Consulting engineer" means any professionally qualified engineer or an engineering firm who, either directly or indirectly, renders any advice, consultancy or technical assistance in any manner to a client in one or more disciplines of engineering."

A perusal of the various clauses of the contract between IOC and the appellant makes it clear that the project was for construction, erection and installation of desulphurisation plant.

6. Thus, a perusal of the clauses of the contract leaves no doubt that the appellant contract with IOC was a work contract on turnkey basis and not a consultancy contract. It is well settled that a work contract cannot be vivisected and part of it subjected to tax. The impugned orders have proceeded to do precisely that. Therefore, they are required to be set aside.

Affirmed by Supreme Court :
Commissioner Vs. Daeiim Industrial Co. Ltd.
2004 (170) ELT, A181(SC)

While dismissing the appeal, the Supreme Court passed the following order :-

“We see no reason to interfere.
 The Special Leave Petition is dismissed.”

The Appellate Tribunal in its impugned order had held that works contract is not liable to Service tax under consulting engineer services as the contract cannot be vivisected and part of it (design and detailed engineering, commissioning of the plant) subjected to Service tax.

2016 (42) S.T.R. 634 (Cal.)

SIMPLEX INFRASTRUCTURES LTD.
Vs COMMISSIONER OF S.T., KOLKATA

78. Thus, service contracts simpliciter and not composite works contracts come within the service tax net under the provisions of the Finance Act. The petitioner is involved in performance of composite works contracts and vivisection of such contracts to segregate the service element and impose service tax on the same is not permissible.

2015 (40) S.T.R. 186 (Tri. - Ahmd.)
COMMISSIONER OF C.E., VADODARA
Vs BALLAST NEDAM INTERNATIONAL

Commissioner (Appeals) vide his impugned order has held that the turnkey contract entered into by the respondent with their buyers cannot be vivisected and a portion of the services relating to engineering services cannot be taxed to Service Tax separately. The said decision arrived at by the Commissioner by following Tribunal's decision in case of *M/s. Daelim Industries* - [2003 \(155\) E.L.T.](#)

[457](#) (Tri.-Delhi), as confirmed by Hon'ble Supreme Court when the appeal filed by Revenue was dismissed [[2004 \(170\) E.L.T. A181](#)]. He has also relied upon Tribunal's decision in case of *M/s. Larsen & Toubro Ltd.* - 2004 (60) RLT 505 (CESTAT-Delhi) = [2004 \(174\) E.L.T. 322](#) (Tri.), wherein it was held that design element of the work contract is not to be subjected to Service Tax by vivisectioning the contract.

2. We find no infirmity in the impugned order of the Commissioner (Appeals), which is based upon the earlier decisions of the Tribunal.

3. Revenue's appeal is, accordingly, rejected.

2006 (4) S.T.R. 63 (Tri. - Mumbai)

COMMR. OF C. EX. & CUSTOMS, VADODARA

Versus LARSEN & TOUBRO LTD.

31. We have considered the submissions made by both the parties. We find that facts of the present case are squarely covered by the Tribunal decision in the case of *Daelim Industrial Co.* cited supra and the department's SLP in the case of *Daelim Industrial Co.* has been dismissed by the Apex Court. Further the decision of the *Daelim Industrial* has been followed by this Tribunal in the case of *M/s L&T Ltd.* Its ratio has also been referred to by the Gujarat High Court in the case of *Elecon Engineering Co. Ltd. v. Union of India* - [2005 \(182\) E.L.T. 148](#) (Gujarat H.C.). Further in *Ircon International Ltd. v. CCE, Mumbai* - 2002 (2) STT 264, Tribunal has held that construction contract could not be subjected to service tax as consulting engineering service, either as a whole or in part and further observed that position remains covered by the decision in the case of *Daelim Industrial Co.* cited supra. Revenue has not been able to distinguish the present contract from that involved in *Daelim* case because the contract in the present cases are essentially for construction and not for the services and the services referred to are an integral part of contract. The contract is a work contract on a turnkey basis and not a consultancy contract. It is well settled by series of case laws that a work contract cannot be vivisected and part of it subjected to tax.

2007 (5) S.T.R. 353 (Tri. - Bang.)

BLUE STAR LTD.

VsCOMMISSIONER OF C. EX., HYDERABAD-II

4. On a careful consideration, we notice that this very aspect pertaining to the work contract i.e. whether it should be vivisected and part of it be subjected to duty was considered in all the above judgments. The Tribunal, in the case of *CCE v. Larsen & Toubro* (cited supra), after due consideration, upheld the assessee's contention and

set aside the demands as raised in the present case also. The findings recorded in para 31 are reproduced herein below :

“31. We have considered the submissions made by both the parties. We find that facts of the present case are squarely covered by the Tribunal decision in the case of *Daelim Industrial Co. Ltd.* (supra) and the department's SLP in the case of *Daelim Industrial Co.* (Supra) has been dismissed by the Apex Court. Further, the decision of the *Daelim Industrial* has been followed by this Tribunal in the case of *L & T Ltd.* (supra). Its ratio has also been referred to by the Gujarat High Court in the case of *EleconEngg. Co. Ltd.* (supra). Further in *Ircon International Ltd.* (supra), Tribunal has held that construction contract could not be subjected to service tax as consulting engineering service, either as a whole or in part and further observed that position remains covered by the decision in the case of *Daelim Industrial Co. Ltd.* (supra). Revenue has not been able to distinguish the present contract from that involved in *Daelim* case because the contract in the present cases are essentially for construction and not for the services and the services referred to are an integral part of contract. The contract is a work contract on a turnkey basis and not a consultancy contract. It is well-settled by series of case laws that a work contract cannot be vivisected and part of it subjected to tax. The decision in the *Associated Hotels* case does not lend any support to the revenue as a solitary instance cited by the learned S.D.R. in the case of *S. Krishna* of Andhra Pradesh High Court has been undone by the Supreme Court in *Guntur Tobacco Ltd.*'s case (supra) by the appellants. The 46th amendment to the Constitution has also not made any difference to the decision of *Associated Hotels* as it was mainly with respect to sales tax which introduced deeming provision which is not the case before us. The Kerala High court decision in *Kerala Colour Lab Association's* case (supra) also does not help revenue as in that case the principal contract was that of service and not of sale of photographic material and, therefore, it was correctly held that once the taxing event is rendering of service and the entire activity of the assessee answer the description of taxable photography service, it is the service which will be chargeable to service tax and the agreement cannot be considered as that of sale of photographic material. In the present case, the principal object of the contract is that of construction and not of rendering any service and accordingly, service tax cannot be levied on service portion of the contract. “

We notice that this judgment has been followed in the other rulings as noted

supra. In view of the issue decided in assessee's favour, the confirmation of demand is not justified. The same are set aside by allowing the appeal with consequential relief, if any.

28. We find that the High Court / Tribunals have been consistently holding that a composite works contract cannot be vivisected to fasten the demand on a portion of the work under Consulting Engineer's service or any other service in respect of composite contracts. Factually, we have seen that the works undertaken by the appellant is in the nature of turnkey projects. Therefore, the ratio laid down in the cited case laws would be squarely applicable. Hence, even on this ground the Appeal succeeds on merits.

29. The appellant has also forcefully argued that the demand for the extended period cannot be legally sustained. As we have seen above, the nature of the work undertaken is that of works contract in respect of turnkey projects involving materials and service. Admittedly, without any dispute, the projects were exempted from payment of Service Tax both prior to 30.06.2012 and after 01.07.2012. Hence, the appellant could have entertained bonafide belief that they are not required to pay any Service Tax. No evidence has been brought in to show that they have charged the Service Tax on the recipients and not paid to the exchequer. Even as the appellant was not registered under Service Tax provisions, it is on record that the data towards quantification has been taken by the Revenue from the books of accounts of the appellant. Moreover, the appellant is a Public Sector Undertaking, gaining nothing by evading the Service Tax.

30. In **Collector of Central Excise, Hyderabad v. Chemphar Drugs and Liniments, Hyderabad** reported in **1989 (40) E.L.T. 276 (S.C.)**, the Supreme Court held :-

“In order to make the demand for duty sustainable beyond a period of 6 months and up to a period of 5 years in view of the proviso to sub-section (1) of Section 11A of the Act, it has to be established that the duty of excise has not been levied or paid or short-levied or short-paid or erroneously refunded by reasons of either fraud or collusion or wilful misstatement or suppression of facts or contravention of any provision of the Act or Rules made thereunder, with intent to evade payment of duty. Something positive other than mere inaction or failure on the part of the manufacturer or producer or conscious or deliberate withholding of information when the manufacturer knew otherwise is required before it is saddled with any liability, before the period of six months. Whether in a particular set of facts and circumstances there was any fraud or collusion or wilful misstatement or suppression or contravention of any provision of any Act, is a question of fact depending upon the facts and circumstances of a particular case.”

31. In the present case, no specific evidence has been brought in by the Revenue towards wilful suppression on the part of the appellant. Therefore, we are not inclined to accept the Revenue's contention that any case has been made out for invoking the extended period provisions. Accordingly, we set aside the confirmed demand for the extended period on account of time bar.

32. To summarize:

- (a) The nature of service rendered by the appellant does not fall under the classification of 'Consulting Engineer's Service'. On this ground itself the confirmed demand gets set aside.
- (b) The work undertaken is that of composite works contract involving goods and services. From this composite contract, there is no provision to vivisect to demand the Service Tax on the 'Consulting Engineer's service'. Hence, even on this ground the confirmed demand gets set aside.

- (c) The Revenue has not made out any case of suppression on the part of the appellant. Hence, the confirmed demand in respect of the extended period gets set aside on account of time bar also.

33. As a result, the impugned order is set aside and the appeal is allowed. The appellant would be eligible for consequential relief, if any, as per law.

(Order pronounced in the open court on 16.06.2026.)

Sd/

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/

(RAJEEV TANDON)
MEMBER (TECHNICAL)

sm