$~14

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 21st August, 2025

\+ **CEAC 2/2025 & CM APPL. 3921/2025**

THE COMMISSIONER OF CENTRAL TAX,
CGST DELHI SOUTH .....Petitioner

Through: Mr. Shubham Tyagi (SSC, CBIC), Ms. Navruti Ojha, Mr. Rishabh Chauhan, Mr. Harish Saini, Advs.

versus

THE INDURE (P) LIMITED .....Respondent

Through: Mr. Ruchir Bhatia, Adv.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. This is an appeal challenging the impugned order dated 30th July,2024 by which the appeal of the Department has been dismissed by Customs, Excise and Service Tax Appellate Tribunal, Principal Bench, New Delhi *(hereinafter, 'CESTAT').*

3. On the last date of hearing, notice was issued to the Respondent and they were directed to file the relevant documents which are relied upon in support of the CA certificate, along with the reply to the appeal.

4. Today, Mr. Bhatia has appeared for the Respondent. Mr. Tyagi and Mr. Bhatia have been heard.

5. The short question that arises in this matter is whether the Respondent was liable to pay any service tax on the differential amount which was

reflected in the returns filed under the Value Added Tax Act, 2005 *(hereinafter, 'the VAT Act')* and under the Service Tax Act, 1994 *(hereinafter, 'the 1994 Act')*. The said issue has been considered by the Adjudicating Authority which has framed the following questions:

> *"Whether there is short payment of Service Tax under Works Contract Service arising out of Reconciliation?"*

6. In respect of this question, the Adjudicating Authority, *vide* order dated 10th April, 2017 has held as under:

> *46. The Noticee provided the break-up of their income,* ***vide RUD-26****, shown in the balance sheets for the financial year 2007-08 to 2010-11, and scrutiny thereof revealed difference between the amount of WCT Return and the amount of Works Contract Service in ST-3 returns as given in* ***Table****-A, supra. Accordingly,* ***SCN-I*** *seeks to demand a differential amount of service tax for the period 2007-08 to 2011-12 collectively amounting to* ***Rs.18,95,70,056/-*** *(details given in Table-B, supra) under Works Contract Service. Subsequently,* ***SCN-II dated 22.05.2014*** *was also issued seeking demand of differential amount of service tax to the tune of* ***Rs.22,47,16,258****/- (refer to Table-G, Supra for the period 2012-13 after arriving at the taxable value by jacking up turnover of WCT of previous year (2011-12) to the extent of 150% taking resort to the best judgment assessment as provided under Section 72 of the Finance Act, 1994 since the Noticee had failed to provide the information sought by the department.*
>
> *47. Against above, the Noticee submits that they executed all composite contracts with their own labour and materials. WCT/VAT returns contain all type of Works Contract and composite contracts as per definition of Section (au) of The Uttar Pradesh Value Added Tax Act, 2008and Section 2(44) of Rajasthan VAT (RVAT Act, 2003) whereas as per service tax law even prior to existence of the Works Contract Service in year 2007, they have discharged their service tax liability*

under the category of Erection; Commissioning or Installation Services; Commercial and Industrial Construction Services. Therefore, taxable value of these categories should have been taken into account while raising the demand of ***Rs.18,95,70,056/-*** *for the period 2007-08 to 2011-12 under* ***SCN-1****.*

48. I find from the SCN that the Noticee is mainly engaged in the business of manufacturing, procurement and commissioning of ash handling equipment including EPC projects for thermal power plants. They have their manufacturing units at Sahibabad and Sikanderabad, U.P. The Uttar Pradesh Value Added Tax Act, 2008 defines the term 'works contract' as under:

> *"Section 2(au)* ***"works contract"*** *includes any agreement for carrying out for cash, deferred payment or other valuable consideration, the building, construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair of commissioning of any movable or immovable property".*

49. It is unequivocally clear from the above definition that works contract under VAT law not only includes the contract for building construction but also contract for erection, installation, repair or commissioning of any movable or immovable property. The Section 2(44) of Rajasthan VAT (RVAT Act, 2003) is almost identical to the said section of UPVAT Act 2008. I find from S.No. G to RUD-26 that it contains the details of amount of taxable services & payment made as per ST-3 returns regarding Erection Commissioning & Installation Service, Civil Construction Service, Works Contract Service and abatement which squarely fall under the Works Contract as defined under Section 2(au) of UP. VAT Act, 2008 et al. Therefore, while calculating the differential amount of service tax, the taxable value of the said services, in the first place, should have also been taken into account.

50. The next argument of the Noticee is that WCT/VAT Returns are on accrual basis whereas till 30.06.2011 the service tax was payable on the basis of amount received in lieu of taxable service provided or to be provided. Hence, there can be no comparison of value of WCT/VAT Returns and ST-3 Returns for arriving at the differential amount of service tax.

50.1 I find that prior to 01.04.2011, service tax was payable on receipt basis i.e, on receipt of payment of invoice or bill from the customer or receipt of advance, whichever is earlier vide erstwhile Rule 6(1) of Service Tax Rules, 2004. However, w.e.f. 01.04.2011 Rule 6(1) has been amended to provide that the service tax shall be paid to the credit of Government by 5th/6th of the month/quarter immediately following the month/quarter in which service is deemed to be provided as per the rules framed (i.e. Point of Taxable Rules, 2011) in this regard. Thus, service tax from 01.04.2011 is payable on the basis of date of billing of receipt of advance, whichever is earlier, and not on receipt basis. However, in order to enable the service providers to have a smooth switch over to the new regime provided in the Point of Taxation Rules, 2011 the proviso to Rule 9 gives the service providers an option to remain in the 'receipt basis' taxation up to 30.06.2011, then follow the 'accrual basis' provided in the rules with effect from 01.07.2011. Therefore, the Noticee is right that service tax until 30.06.2011 was payable on receipt basis. I further observe that there can be no comparison between the VAT/WCT return and ST-3 return for the following reasons:-

(i) Under the Sales Tax/VAT law, sales tax/WCT is collected by the State Government when the invoice is raised whereas the service tax is payable till 30.06.2011 when the payment is received from the service receiver in lieu of services provided;

(ii) As soon as any advance is received by the service provider before provision of taxable service, it is taxable under the Finance Act whereas under the Sales Tax

provisions sales tax/WCT is paid when invoice is raised for sale;

(iii) It is also rife practice in the industry carrying out works contract that retention money is deducted by the contractee from the running bill of the contractor, which stands paid after successful completion of the particular project. Thus, service tax till 30,06.2011 was payable only on receipt of such retention money whereas VAT/WCT is collected on the entire amount of invoice including the retention money.

50.2 It becomes unequivocally clear that VAT Act and the Finance Act are disparate in character as far as levy and collection of tax is concerned. Consequently, comparison of return filed under both the Acts is erroneous. Accordingly, raising of demand till 30.06.2011 on the basis of difference in value between the WCT Returns and ST-3 returns is totally off base and unsustainable. Notwithstanding the above, theNoticee has also produced Certificates all dated 19.03.2016 from their Statutory Auditors namely R. Khattar& Associates for the period 2007-08 to 2011-12 wherein after verifying the records of service tax vis-à-vis books of accounts it has been certified that the Noticee has correctly paid their service tax liability on receipt basis till 30.06.2011 and on billing basis with effect from 01.07.2011. Accordingly, I am of the considered view the Noticee is not liable to pay service tax amounting to Rs. 18,95, 70,056/- us alleged in SCN-I.

51. As per SCN-II dated 22.05.2014 the Noticee did not provide the details qua WCT Return/income as per balance sheet. Thus,the demand of Service Tax of Rs.22,47,16,258/- covering the period 2012-13had been raised against them taking resort to Section 72 of the Finance Act, 1944 after arriving at the taxable value by increasing the WCT turnover of previous year (2011-12) to the extent of 150%. Against this, the Noticee's main stand is that they had provided the details in their letter dated 21.04.2014 (which has been

acknowledged by the department in the SCN) in response to department's letter dated 11.02.2014 and the department did not seek any further clarification/information regarding the details submitted by them. Further, the department in their letter dated 02.05.2014 sought details of total income/revenue receipts as reflected in Balance Sheet under the head of "WCT return for the FY:2012-13 wrt/basis of figurer taken/reflected in Para 4 of the SCN dated 16.04.2014" which was duly replied by them in their letter dated 12.05.2014 stating that they did not receive any SCN dated 16.04.2014 and in their balance sheet was no such heading of WCT Return for the FY: 2012:13. Therefore, demanding service tax taking resort to the provision of Section 72 in the SCN on the premise of non-submission of details is incorrect and unsustainable.

7. The finding, therefore, of the Adjudicating Authority is that the balance sheets were the relied upon documents which were placed on record. A proper reasoning was also given as to why demands cannot be raised on the basis of purported difference between the VAT returns and the returns under the Service Tax regime. The Adjudicating Authority, after considering the documents, has held that both under Show Cause Notice dated 22nd April, 2014 and Show Cause Notice dated 23rd April, 2023, no amount would be liable to be paid. The further finding of the Adjudicating Authority in the order dated 10th April, 2017 is set out below:

55. Evidently the Noticee has made available the information sought by the department. Thus, demanding service tax invoking Section 72 of the Finance Act, 1994 without analyzing the above information is not justifiable in my mind. I further observe that the Noticee has also produced reconciliation of balance sheet with ST-3 return for the year 2012-13 vide Certificate dated 22.08.2016

issued by their Statutory Auditor wherein it has been certified after verifying the service tax vs books of accounts, VAT records that the Noticee has correctly paid their service tax liability. The scanned copy of it given below:-has correctly paid their service tax liability. The scanned copy of it given below:-

56. Considering the above, I hold that the Noticee is not liable to pay service tax amounting to Rs.22,47,16,258/- as alleged in SCN-II.

8. This order passed by the Adjudicating Authority has been upheld by Custom Excise & Service Tax Appellate Tribunal *(hereinafter, 'CESTAT') vide* order dated 30th July, 2024 *(hereinafter, 'the impugned order'),* both on the ground that there are documents which were filed and the Chartered Accountant's certificate which was issued supporting the said documents could not be disregarded. Paragraph 6.2.1 and paragraph 6.3 of the impugned order are set out below:

6.2.1 Consequently, we hold that unless evidence to the contrary is submitted by the department to disregard the CA Certificate, we find no infirmity with the findings in this regard in the impugned order.

6.3 In addition, we note that the demand for the period 2012-13, was based on Best Judgment method. It has been submitted by the Ld Counsel that the demand based on Best Judgment is incorrect as the appellant had submitted all details and documents to the department. It has been further submitted that vide their letter dated 21.04.2014 (RUD to Show Cause Notice dated 22.05.2014) wherein turnover pertaining to Works Contract Services was duly informed to the Department. Further, the Department has submitted that the demand for the period 2012-13 was arrived at by jacking up the turnover of WCT of previous year 2011-12 to the extent of 150% by resorting to Section 72 of the Finance Act, 1994, as the appellant had failed to provide the information sought

by the department. In the instant case, we note that the adjudicating authority has observed that the appellant had shown the value of Rs. 217,73,140,223/- in their WCT/Income as per balance sheet, and 135,79,57,744/- as per ST-3 returns. This difference in the amount was satisfactorily explained by the appellant before the adjudicating authority. We note that the Best Judgment method is a power given to Central Excise Officer to raise demand based on evidence on hand or gathered. The burden of proof to provide information for best judgement assessment is on the person to be assessed. However, it has been noted by the Hon'ble Apex Court that the estimate must relate to some evidence or material and must be something more than mere suspicion. Even the best judgement assessment must be made reasonably and not on surmises. We rely on the Supreme Court's decision in the case of M/s Raghubir Mandal vs State of Bihar [1957(5) TMI 28]-SC and M/s Kathyaini Hotels vs ACCT [2002 (1) TMI 1134 SC]. In this context, we note that the appellant had submitted relevant documents to the department, which should have been utilised to calculate the demand, if any. However, the department chose to rely on Best Judgment method to estimate the duty liability despite the information being available to them, which is not acceptable. In this context, we rely on the decision of the Hon'ble Apex Court in State of Kerala v C Velukutty [1965 (12) TMI 32], wherein the Court held that best judgement assessment means that it does not depend on arbitrary caprice. Even though there is an element of guesswork, it should have reasonable nexus to the available material and circumstances of the case. In the instant case, it is on record that the appellant had submitted the required details, but the demand notice had estimated the turnover to be 150% more as compared to the previous year's turnover. This estimated inflated demand has been rightly rejected by the adjudicating authority.

9. The only question is whether any additional liability is to be fastened on the Respondent or not. Both the original adjudicating authority and the CESTAT has held clearly that the difference in the amount has been

satisfactorily explained. In view thereof, this Court is of the opinion that the impugned order does not warrant any interference as no substantial question of law arises for consideration of this Court.

10. The appeal is accordingly dismissed on said terms. Pending applications, if any, are already disposed of.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

AUGUST 21, 2025/*kp/ss*