$~49

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

Date of decision: 29th August, 2025

\+ **W.P.(C) 13198/2025 & CM APPL. 54098/2025**

M/S AHLCONS INDIA PRIVATE LIMITED .....Petitioner

Through: Mr. Yogendra Aldak & Mr. Agrim Arora, Advs. (8010333998)

versus

PRINCIPAL COMMISSIONER, CGST, DELHI SOUTH COMMISSIONERATE & ANR. .....Respondents

Through: Mr. Atul Tripathi, SSC, CBIC

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

Prathiba M. Singh J. (Oral)

1. This hearing has been done through hybrid mode.

CM APPL. 54099/2025

2. Allowed, subject to all just exceptions. The application is disposed of.

W.P.(C) 13198/2025 & CM APPL. 54098/2025

3. The present petition has been filed by the Petitioner under Article 226 of the Constitution of India, *inter alia*, assailing the Order-in-Original No. 52/55/RPS/PR.COMMR./CGST/DSC/2024-25 dated 30th March, 2025 passed by the Respondent No. 1 (hereinafter, *'impugned order'*).

4. The Petitioner is a company involved in works contract relating to manufacturing of aluminum doors and windows etc. and was registered under service tax *vide* STC No. AACCA8064HST001 for providing construction services and consulting engineering services, transport of goods by road and

works contract service. Four Show Cause Notices (hereinafter, *'SCN'*) were issued to the Petitioner in respect of payment of service tax. The details of the SCNs are as under:-

SCN details	**Period**	**Amount of Service Tax proposed in the SCNs**	**1st Order-in-Original**	**CESTAT Order No.**	**2nd Order-in-Original**
DL-II/ST/R12/LAR/Alhcon/47/09 dated 20.10.2010 (**'SCN-I'**)	2006-07 to 2009-10	Rs. 6,34,68,733	36-37/S.Tax/D-1/2013 dated 21.08.2013	57527-57528/2017 dated 06.10.2017	52-55/RPS/PR.COMMR./CGST/DSC/2024-25 dated 30.03.2025
443/ST/DIV-II/2012 dated 24.05.2012 (**'SCN-II'**)	2010-11	Rs. 16,70,05,410			
768/ST/Div-II/2012 dated 23.04.2013 (**'SCN-III'**)	2011-12	Rs. 1,99,88,119	DLI/SVTAX /002/COM/077/16-17 dated 06.04.2017	55781/2024 dated 07.05.2024	
02/Range-26/Div-VI/2015-16 dated 07.08.2015 ('**SCN-IV'**)	2012-13-2013-14	Rs. 2,46,96,233			

5. The Customs Excise and Service Tax Appellate Tribunal (hereinafter, *'CESTAT'*) had remanded the matters *vide* the orders captured above. On remand, the impugned order dated 30th March 2025 has been passed.

6. The submission of ld. Counsel for the Petitioner is that in the first two

Orders-in-Original dated 21st August 2013 and 6th April 2017, the demands in respect of mobilisation advance and some other demands were confirmed. However, the demand in respect of services provided by the sub-contractor, were actually dropped to the tune of more than Rs. 12 crore. Against the demands which were dropped, the orders were not challenged by the GST Department before CESTAT. The Petitioner had challenged these orders, qua the demands that were confirmed, resulting in the final orders of the CESTAT dated 6th October 2017 and 7th May 2024. A perusal of the said two orders of the CESTAT would show that primarily, in respect of tax liability on mobilisation advance and other demands, the matter was remanded to the original Authority in the following terms:

> *"These two appeals are on identical set of facts and hence are taken up for final disposal. The appellants are engaged in the construction activities. The proceedings were initiated against them to demand and recover service tax under the category of "Commercial or Industrial Construction Service" for the period 2006-07 to 2010-2011. Two issues were raised for consideration. Firstly, the appellant did not discharge service tax on the consideration received on mobilization advance. Secondly, the appellant did not pay service tax on certain construction claiming that they have taken the work as sub-contractor and the main contractor already paid the service tax on the whole value. The Lower Authority confirmed the service tax liabilities and imposed penalties also.*
>
> *2. Ld. Counsel for the appellants submitted that the mobilization advances were received and were later adjusted in the running account and full service tax liability has been paid when the adjustments were made towards the advance, later. As such, they have not short paid any service tax. Regarding the service tax liability for the work executed as sub-contractor, he submitted*

that the main contractor has paid the service tax liability on the whole value and as such, there is no liability on them to pay again service tax. Further, he also submitted that the lower authority did not examine the correct classification of the tax liability as the work executed by the appellant are all composite in nature, involving the provision of service as well as supply of goods. Relying on the decision of the Hon'ble Supreme Court in the case of Larsen & Toubro Ltd. - 2015 (39) STR 913 (SC), the ld. Counsel submitted that there could be no tax liability on the appellant for the period prior to 1.6.2007.

3. Ld. Authorised Representative submitted that the Lower Authority did not have benefit of ruling of the Apex Court in the case of Larsen & Toubro Ltd. (supra). Further, regarding the tax liability on mobilization advance, he submitted that in terms of Section 67 of Finance Act, 1994, any amount received for taxable services to be provided is also liable to be taxed at the time of receipt itself. Though the appellant claim that they have discharged service tax later, by adjusting in running account, belated payment will attract interest as applicable.

4. Heard both the sides and perused the appeal records.

5. Admittedly, the claim of the appellant regarding the nature of work executed by them is composite in nature should be examined with the legal principles laid down by the Hon'ble Supreme Court in Larsen & Toubro Ltd. (supra). In case, the work executed by the appellants were all found to be rightly classifiable as work contract service, no tax liability will arise for the period prior to 1.6.2007. This aspect requires verification with connected documents. The mobilization advance is liable to be service tax, as the provisions of Section 67 are clear to the effect that any money received for the taxable service to be provided is to be taxed at the time of receipt itself. The appellants, though claimed to have discharged the service tax later, subject to verification

of the same, the liability for the interest on the late payment will arise. In any case, this also requires to be verified along with tax liability of the service itself in terms of the decision of the Apex Court in Larsen & Toubro Ltd. (supra).

6. Regarding the claim of the appellant for tax liability, as sub-contractor, we note that the same also depends on the actual classification service during the material time. Further, the fact of payment of tax on full value by the main contractor and connected issues are required to be examined afresh after correct classification of the tax liability.

7. In view of the above discussion and analysis, we find it fit to set aside the impugned order and remand the matter to the Original Authority for a fresh decision. Adequate opportunity shall be provided to the appellant to submit their side of the case while deciding the matter. The appeals are allowed by way of remand."

7. Following these orders, a second order dated 7th May 2024 was also passed by the CESTAT in the following terms:

"4. This appeal, as noticed above, arises out of two subsequent show cause notices dated 24.05.2013 and 07.08.2015 for the subsequent period and it is pointed out by learned counsel for the appellant that the show cause notices are based on the same allegations as are contained in the first two show cause notices that were the subject matter of the order passed by the Tribunal. It is, therefore, submitted by the learned counsel for the appellant that an order in the same terms as earlier passed by the Tribunal on 06.10.2017 may be passed in this appeal.

5. Learned authorized representative appearing for the department does not dispute the factual position that the issue involved in the present appeal is similar to that in the earlier appeals decided by the Tribunal.

6. Thus, for the reasons stated by the Tribunal in the

decision dated 06.10.2017, the order dated 31.03.2017 passed by the Commissioner is set aside and the matter is remitted to the Adjudicating Authority to pass a fresh order expeditiously and preferably within a period of three months from the date of the copy of the order is produced before the Adjudicating Authority by either of the parties."

8. The stand of Mr. Yogendra Aldak, on behalf of the Petitioner is that in the impugned order now, even the demands which were originally dropped in the Orders-in-Original, have now been confirmed and hence, the impugned order is completely unsustainable.

9. On the other hand, Mr. Atul Tripathi, ld. SSC for the Respondent submits that he would wish to seek instructions in the matter. However, it appears that even the dropped demands have now been confirmed.

10. The second limb of argument on behalf of the Petitioner is that after the remand more than six to seven years have been consumed by the Original Authority in passing the impugned order and hence, there is a substantial delay.

11. The present petition raises various issues as to the taxability of the services provided by the Petitioner. Insofar as the sub-contracting services were concerned, the Original Authority appears to have dropped the demand in the earlier Orders-in-Original, which were not challenged. Hence, there is a *prima facie* case made out by the Petitioner that the said demands could not now have been confirmed as there was no fresh adjudication which was directed by CESTAT of the dropped demands. The adjudication upon remand by the CESTAT ought to have been only in respect of the challenge raised by the Petitioner before CESTAT.

12. It is clear from a perusal of all the orders that the originally dropped

demands were not under challenge before CESTAT and thus on remand, prima facie, the said demands could not have been re-opened. The question whether the liability exists against the Petitioner or not would have to be adjudicated by CESTAT which is the Appellate Authority. Since a *prima facie* view is being taken by the Court, the Petitioner is permitted to avail of its appellate remedy before CESTAT, however, subject to the following conditions:

i. In respect of the dropped demand in terms of the Order-in-Original dated 21st August 2013 and 6th April 2017, no pre-deposit would be liable to be paid.

ii. The CESTAT would also consider as to whether the impugned order could have re-confirmed the dropped demands in this manner and whether the same would be valid or not.

iii. Adjustment shall be given for the pre-deposit already made by the Petitioner in the earlier round of appeal to the tune of Rs. 32,45,459/-.

iv. The remaining pre-deposit shall be made within three months.

v. Upon the pre-deposit being made, the appeal against the impugned order shall be adjudicated on merits without any further pre-deposit or going into the aspect of limitation.

13. The writ petition along with the pending application is disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

AUGUST 29, 2025
kk/ck