

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 2

Service Tax Appeal No. 612 of 2012

(Arising out of Order-in-Original No. 206/2011 dated 30.12.2011
passed by the Commissioner of Service Tax, Bangalore.)

M/s. Technocon Builders

SF-9 and 10, Karuna Complex,
337, Sampige Road,
Malleswaram,
Bangalore - 560 003.

Appellant(s)

VERSUS

Commissioner of Service Tax,

No. 16/1, 5th Floor,
S. P. Complex,
Lalbagh Road,
Bangalore - 27.

Respondent(s)

APPEARANCE:

Mr. Akbar Basha, Chartered Accountant (CA) for the Appellant.

Mr. M. A. Jithendra, Asst. Commissioner (AR) for the Respondent.

CORAM:

**HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)**

Final Order Nos. 21860 /2025

DATE OF HEARING: 25.07.2025

DATE OF DECISION: 25.11.2025

PER : P.A. AUGUSTIAN

The issue in the present appeal is whether the value of material freely supplied has to be included while claiming the benefit of abatement under Notification No.1/2006, whether the mobilization advance received for providing taxable services during the period of 01.04.2006 to 31.12.2007 is liable to service tax and whether the Appellant is liable to pay service tax on expenditure incurred while availing GTA services on RCM basis.

2. Appellant is providing service and registered under the category of residential construction service, GTA...etc. During audit, it is observed that Appellant is providing construction services to their customers and the material supplied free of cost for construction is not included in the assessable value and also by raising other issues, show cause notice was issued. Adjudication authority as per the impugned order denied the benefit of Notification No. 1/2006 dated 01.03.2006 and confirmed the demand and also imposed penalty. Aggrieved by said order, present appeal is filed.

3. When the appeal came up for hearing, the Learned Counsel draw our attention to the finding given by the Adjudication authority against denial of benefit of Notification, confirmed demand against advance received and also on the freight amount paid by the Appellant. The Learned Counsel further submits that even as per the Circular issued by the Board vide Circular No. 128/10/2010 dated 24.08.2010, even for a long term contract which is entered prior to 01.06.2007 and if any service was classified under the respective taxable category prior to 01.06.2007, when new works contract service was made effective, classification of aforesaid Service Rule undergo a change even though part of service was classified under the respective taxable service prior to 01.06.2007, because the works contract described the nature of the activity more specifically and therefore as per the provisions of Section 65A of the Finance Act, 1994, it would be appropriate classification for the part of service provided after that date. Thus in the absence of any demand under works contract, entire demand is unsustainable. However Adjudication authority held that the Appellant is at liberty to classify the said activities under the earlier respective category and pay the applicable taxes, against the said classification. Further held that work contract composition scheme is available only on exercising the option before payment of service tax as held in the case of **M/s. Nagarjuna Construction Co. Ltd. Vs. G.O.1-** reported in

2010(19)S.T.R. 321(AP-) by the High Court. Such finding is unsustainable, since the issue is settled by various decisions of the High Court/Supreme Court. The Learned Counsel further submits that the issue is squarely covered by the judgment of the Hon'ble Supreme Court in the matter of **Commissioner of Service Tax Vs. M/s Bhayana Builders Pvt. Ltd. (2018 (10) GSTL 118 (S.C.))**, where it is held that:-

*"16. In fact, the definition of "gross amount charged" given in Explanation (c) to Section 67 only provides for the modes of the payment or book adjustments by which the consideration can be discharged by the service recipient to the service provider. It does not expand the meaning of the term "gross amount charged" to enable the Department to ignore the contract value or the amount actually charged by the service provider to the service recipient for the service rendered. The fact that it is an inclusive definition and may not be exhaustive also does not lead to the conclusion that the contract value can be ignored and the value of free supply goods can be added over and above the contract value to arrive at the value of taxable services. **The value of taxable services cannot be dependent on the value of goods supplied free of cost by the service recipient.** The service recipient can use any quality of goods and the value of such goods can vary significantly. Such a value, has no bearing on the value of services provided by the service recipient. **Thus, on first principle itself, a value which is not part of the contract between the service provider and the service recipient has no relevance in the determination of the value of taxable services provided by the service provider"**.*

4. The Learned Counsel also draw our attention to the decision of this Tribunal in the matter of **M/s M Far Construction Pvt. Ltd.** and other decisions. The issue is also covered by the decision of the Tribunal in the matter of **M/s M Far Construction Pvt. Ltd. Vs. CCE & CST, Bangalore vide Appeal No. ST/2388/2011 (DB)** where it is held that:-

"15. In view of the above, we are of the considered opinion that the benefit cannot be denied to the appellants. We find that Tribunal and Courts have been setting aside the demands raised in respect of Composite Works Contracts after the judgment in the case of L&T. The appellants have

been paying duty albeit under a different Head before 01.06.2007. It would be miscarriage of justice if the appellants are denied the compounded scheme of payment of duty under Works Contract after 01.06.2007 which could have been easily exercised by those who were not paying duty before 01.06.2007. The appellants cannot be put to jeopardy for the reason that they have been paying service tax before 01.06.2007 though they were not legally required to pay in view of the judgment in the case of L&T. 16. Coming to the other issues regarding demand of duty on advances, client held disputed amounts and liability to service tax as a sub-contractor, we hold that as the service itself is not taxable before 01.06.2007, the demands pertaining to the period before 01.06.2007 are not sustainable. The demand on service rendered as a sub-contractor is prior to 01.06.2007. Liability to duty on other two counts after 01.06.2007 requires to be verified as the appellants claimed that they have paid duty at the compounded rates as per the option exercised by them. Moreover, we find that the show cause notice has been issued invoking the extended period. Looking into the fact that the appellant had been a regular service tax payer and have informed the Department vide letter dated 14.06.2007 and as the issue involves interpretation of statute, no mala fides can be imputed to the appellants. Therefore, we hold that for this reason also, the demand for the extended period needs to be set aside”.

5. As regarding the issue whether service tax is applicable on mobilization of advances, the Learned Counsel for the Appellant submits that in view of the above submissions made in regard to the non-taxability of works contract prior to 01.06.2007, the Advances received pursuant to a Works Contract Service would also be beyond the scope and ambit of the Finance Act, 1994 prior to 01.06.2007. The Appellant further submits that, in the construction industry, it is a normal practice that the advances are received for the purchase of machinery and other materials, which are nomenclated and accounted as 'mobilization advance', which is evidenced by agreement executed. The mobilization advance gets adjusted in the subsequent bills on completion of the stages of construction only. From the above reading it is clear that the taxability is with respect to amount received for

services only, however in construction industry the amount received in advance would generally not be received for the service. It would be essentially for mobilizing the goods that may be required or raw materials or capital goods or equipment required for the execution of the project. Since section 67(3) of Finance Act, 1994 states that "Gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service", it would not be right on the part of dept to demand service tax any amount received in advance. Without prejudice to the foregoing the Appellant submits that the mobilization of advances received in the instant case is only towards the materials and not towards providing the taxable service which is clearly evident from the terms of the contract. Hence, the service tax liability on the advances received on the supply of materials, does not arise. The Learned Counsel also draw our attention the contract and submits that as per the contract, it is specifically stated that no service tax was collected as per the contract.

6. As regarding demand of service tax under GTA services, the Learned Counsel has submitted that as per the show cause notice itself, the Appellant had engaged transporters for transportation of goods like sand, jelly..etc. It is important to note that there is difference between service of goods, transport agency services and services of goods transport operator. In the instant case, engagement was for transporters and they operate as operators not as agencies. There cannot be service tax on the service received by the Appellant. Learned Counsel further submits that since they have paid entire amount, they are not pressing for the demand against Goods Transport agency services. However since they paid entire amount of service tax as applicable with interest before issue of show cause notice, dispute is only as regarding penalty.

7. The Learned Authorized Representative (AR) for the revenue reiterated the finding in the impugned order.

8. Heard both sides. As regarding first issue, the Commissioner in the impugned order has observed as follows 'the assessee's claim for classification of the impugned service under works contract is only an afterthought, on issue of notice for denial of benefit of notification No.1/2006 and hence all submissions made in the context of works contract service in the instant case are to be rejected as non-maintainable -----' However this issue now stands settled in favour of the appellant by the supreme court in the case of Commissioner of C. EX. & CUS., Kerala Vs. **Larsen & Toubro Ltd. 2015 (39) STR 913 (SC)** followed by the decision of this Tribunal in the matter of **M/s M Far construction** (supra) hence the demand prior to 01.06.2007 cannot be sustained. Moreover, the supreme court in the case of **Commissioner of Service Tax Versus Bhayana Builders (P) Ltd. 2018 (10) G.S.T.L. 118 (S.C.) dated 19.02.2018** held that value of free supply needs to be excluded, accordingly the demand of differential tax on this ground is set aside.

9. As regarding demand of service tax on mobilization advances received for providing taxable services during the period of 01.04.2006 to 31.12.2007, since we have held that prior to 01.06.2007 the appellant is not liable to discharge service tax the question of sustaining the demand on mobilisation advances for that period does not arise. Therefore, the appellant is liable to pay service tax along with interest on advances received only after 01.06.2007. As regarding third issue related to service tax on the GTA services, since the entire amount is paid before issue of show cause notice, penalty imposed by Adjudication authority is unsustainable.

10. Accordingly, the appeal is partially allowed by confirming the demand against the appellant for the period after 01.06.2007 allowing the benefit of Notification No.1/2006 dated 01.03.2006, demand on GTA services is upheld and service tax

on mobilization advances received for the period after 01.06.2007 is also upheld. All penalties stand set aside.

Appeal partially allowed with consequential relief if any in accordance with law.

(Order pronounced in Open Court on 25.11.2025.)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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