Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

Service Tax Appeal No. 10119 of 2019-DB

(Arising out of OIA-89-AGU-ADT-VAD-2017-18 dated 02/08/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I(Appeal))

COMMISSIONER OF CGST & CENTRAL EXCISE –
CGST & Central Excise Surat ....**Appellant**
New Central Excise Building,
Opp. Gandhi Baug, Chowk Bazaar,
Surat-395001

VERSUS

Shree Hindustan Fabricator ......**Respondent**
107 Chancellor Opp R T O Office Ring Road
Surat, Gujarat

APPEARANCE:
Shri Neilprakash G Makwana, Superintendent (AR) for the Appellant
Shri Jigar Shah & Ms. Rinkal Patel, Advocate for the Respondent

CORAM: HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR
HON'BLE MEMBER (JUDICIAL), DR. AJAYA KRISHNA VISHVESHA

Final Order No. 10080/2025

DATE OF HEARING: 21.01.2025
DATE OF DECISION: 21.01.2025

DR. AJAYA KRISHNA VISHVESHA

This appeal is directed against the impugned Order-In-Original No. 89/AGU/ADT-VAD/2017-18 dated 02.08.2018, through which the Commissioner CGST and Central Excise, Audit Commissionerate, Vadodara remanded the matter to the original adjudicating authority with a direction to re-adjudicate the show cause notice after quantifying the value of the service provided to different service recipients.

1.1 The brief facts of the case are that M/s. Shree Hindustan Fabricators held service tax registration No. AABFH4833RST001 and they provided services of fixing and laying of pipelines for water supply and drainage mainly to Surat Municipal Corporation and others. M/s. Shree Hindustan Fabricator failed to pay service tax on these services by availing benefit of exemption vide entry No. 12, 13 and 25 of Notification No. 25/2012-ST dated 20.06.2012. According to the department, the service provided by the respondent was falling under the category "Erection, Commissioning or Installation Service" and the said service is taxable under the Finance Act, 1994. In these circumstances, a show cause notice dated 9th March, 2016 was issued to the respondent M/s. Shree Hindustan Fabricators demanding service tax for the period of 2014-15. The adjudicating authority vide order dated 30.03.2017, confirmed the demand of Service Tax amounting to Rs.1,13,44,908/- against the respondent M/s. Shree Hindustan Fabricators under Section 73(2) of the Finance Act, 1994. The officer concerned also confirmed the demand of interest and imposed penalty of Rs. 11,34,491/- on the respondent M/s. Shree Hindustan Fabricators. Feeling aggrieved from this order, the appellant filed appeal before the Commissioner CGST and Central Excise, in which it was pleaded that exemption was, available to them under Notification No. 25/2012-ST as clarified vide Circular No. 199/09/2016-Service Tax dated 22.08.2016, wherein clarification has been provided in respect of services provided to the Government, a local authority or a Governmental authority with regard to water supply. The Commissioner of CGST and Central Excise disposed off the appeal through order dated 02.08.2018 and remanded the matter to the original authority with a direction to re-adjudicated the show cause notice after quantifying the value of service provided to different service recipients. Feeling aggrieved from this order, the present appeal has been filed before this Tribunal by the appellant.

2. Learned Authorized Representative argued before this Tribunal that the Commissioner, CGST and Central Excise, Surat has allowed the appeal by holding that the services provided by the assessee to Surat Municipal Corporation are exempted from service tax. However, in the absence of segregation of value for different service recipients, the appeal was disposed off by way of remand to original adjudicating authority. The impugned order has been passed without appreciating the facts and circumstances of the case. The Commissioner (Appeals) has erred in relying upon the decision of Hon’ble Tribunal in the case of **Indian Hume Pipe Co. Ltd** Vs. **CCE** (2008) 16 STT 136 (Chennai-CESTAT) and **Nagarjuna Construction** Vs. **CCE Hyderabad** (2009-TIOL-1156-CESTAT-BNG) as the facts and circumstance of the above mentioned cases and the facts of M/s. Shree Hindustan Fabricator are entirely different, diverse and distinguishable. In the case of **M/s. Indian Hume Pipe Co. Ltd** (Supra), there was a classification dispute of service provided by the assessee whereas in the case of **M/s. Nagarjuna Construction** (Supra), the issue before the Hon’ble Tribunal was whether activities of M/s Gujarat Water Supply and Sewerage Board (GWSSB) of purchasing and selling water, falls within the meaning of “Commerce” or a “Commercial activity” as defined in “Commercial and Industrial Construction Service”, under Section 65(25)(b) of the Finance Act, 1994. The Hon’ble Tribunal held that GWSSB primarily executes water supply and sewerage work for the benefit of both the rural and urban communities, excluding the Municipal Corporations and the charges

collected by them were nominal charges which was imposed by the State Government with the view to create a sense of responsibility and awareness towards the services amongst the people for its economic views. Contrary to the above, the Surat Municipal Corporation (SMC) is a local self-Government body which sells the water to huge number of commercial establishments and Industrial manufacturers at commercial rate. Apart from that the water is also sold to various theaters, hospitals, textile and diamond markets at purely commercial rate, but the water is not supplied at subsidised rate to any Gram Panchayat, Taluka Panchayat, etc. Thus, the referring to and relying upon the case law cited **M/s. Indian Hume Pipe Co. Ltd** (Supra) & **Nagarjuna Construction** (Supra) is erroneous and thus Order-In-Appeal needs to be reviewed on this ground alone.

2.1 It has also been argued by the Learned AR that the Commissioner (Appeals) has also erred in not appreciating the fact that the adjudicating authority has considered the contention of the assessee as regards the services rendered being covered under exemption Notification No. 25/2012-ST dated 20.06.2012. It has been concluded by the adjudicating authority that exemption from service tax is applicable only when it is provided in relation to services other than for commercial industry or any other business or profession. The Adjudicating Authority has also mentioned in his order that Surat Municipal Corporation houses various industrial zones such as Udhna Udyog nagar, Pandesara, Bhatena, Anjana, Katargam, textile markets at ring road, Diamond industry at Varachha, Commercial activities at Piplod, Umarwada etc. Further, it was gathered from the official website of Surat Municipal Corporation that Surat city and Surat District is one of the most important city on the industrial map of the country. The industries based in Surat are textile, weaving, textile processing (dyeing, printing, finishing etc.), trade in textile and diamonds, diamond cutting, polishing etc. Surat also has large industries like ONGC, Reliance, Essar Steel etc. All these entities are supplied water in a non-subsidized commercial rate by SMC. In adjudication order it is mentioned that Assistant Accountant of the SMC has shown his inability to segregate services to residential and industrial/commercial customers. It is submitted that Circular No. 199/09/2016 service tax dated 22.08.2016 is specifically as regards contractor providing services of construction of tube wells.

2.2 It has also been contended by the AR that the Commissioner (Appeals) has also erred in considering the judgment cited by the Adjudicating Authority in case of **Graphite India Ltd.** Vs. **CCE, Nashik** [2014(36) STR 948(Tri-

Mumbai)] where it was challenged that pipeline was laid for Government of Gujarat undertaking GIDC for providing water supply and so it is not liable to pay Service tax. It was held by Hon'ble Tribunal that GIDC has been set up to establish and organize areas/centres for commercial purpose or industries in State of Gujarat. The pipelines are for supply of water to industrial units and commercial establishments. Therefore, it has been held that the assessee were liable to discharge service tax liability on consideration received in respect of such, activities.

2.3 It has been prayed by the Authorised Representative that the Order-in-Appeal dated 02.08.2018 passed by the Commissioner (Appeals) may be quashed and set aside.

3. The Learned Counsel for the respondent submitted that the impugned order dated 02.08.2018, has been passed after appreciating the facts of the case and in accordance with law. Therefore, no interference is required in the impugned order-in-appeal dated 02.08.2018.

4. We have heard Learned Authorized Representative and the Learned Counsel for the respondent and perused the record.

4.1 The Learned Authorized Representative has challenged the impugned order mainly on the ground that Commissioner (Appeals) has wrongly placed reliance on the decision of Hon'ble Tribunal in **Indian Hume Pipe Co. Ltd** Vs. **CCE** (2008) 16 STT 136 (Chennai-CESTAT) and **Nagarjuna Construction** Vs. **CCE Hyderabad** (2009-TIOL-1156-CESTAT-BNG) as fact of both the cases are different form the present case. We do not agree with the contention of the Authorized Representative and we are of the opinion that the principles laid down in the above-mentioned cases are fully applicable in the facts of the present case. The Learned AR has also challenged the impugned order on the ground that benefit of exemption Notification No. 25/2012-ST dated 20.06.2012 cannot be extended for services provided to SMC as it is not applicable if such service is provided for commerce, industry or any other business or profession. In the present case according to him, SMC provides water to all industries based in industrial areas are at a non-subsidized rate. It was worth mentioning that the Respondents are entitled to get exemption from the service tax in respect of work undertaken by them for Surat Municipal Corporation as mentioned above. He has also challenged the impugned order on the ground that Commissioner (Appeals) has not taken into consideration the decision of Hon'ble Tribunal in the case of **Graphite India Ltd** Vs. **CCE, Nashik**- 2014 (36) STR 948, wherein it was held that service tax was payable for laying down pipeline for supply of water to GIDC, as GIDC has been set up to establish and organize area/centres for commercial purpose or industries in the state of Gujarat. In this connection we are of the view that the facts of that case are different from the facts of the present case, therefore, principles laid down in that case are not applicable in the present case.

4.2 In the impugned order dated 02.08.2018, the Commissioner CGST and Central Excise has observed that the main point to be decided in the Appeal is that, "whether the Appellant is eligible for the exemption under entry No. 12(e) read with 25(a) of Notification No. 25/2012-ST dated 20.06.2012, for the services of fixing and laying of pipelines for water supply and drainage, provided to Government body, i.e. Surat Municipal Corporation and others." There is no doubt regarding the taxability of these services. The fixing and laying of pipelines for water supply and drainage is chargeable to Service Tax. However, the Department mainly contended that the service of Erection, Commissioning and Installation provided by the appellant was utilized consolidatedly by the residential, commercial and industrial concerns and being the common pipeline for all type of customers, it is not possible to bifurcate proportionate uses of water supply or drainage among residential, commercial and industrial customers and therefore, the exemption under Entry No. 12(e) read with 25(a) of Notification No. 25/2012-ST dated 20.06.2012, is not available to them. Where ever services have been provided to non-government bodies, they have discharged their Service Tax liability.

4.3 In the impugned order, the Commissioner has also stated that the question involved here is "whether Surat Municipal Corporation (SMC) is a government, a local authority or a governmental authority, and consequently, whether the above work undertaken for SMC is exempted." M/s. Hindustan Fabricators contended that in the said Notification clear exemption is available to them. Further, CBEC has clarified the position vide Circular No. 199/09/2016-Service Tax dated 22.08.2016, that in respect of services provided to the Government, a local authority or a governmental authority with regard to water supply, the relevant Entry No. 12(e) and 25(a) of the Notification No. 25/2015-ST dated 20.06.2012 provides for service provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of …………… pipeline, conduit or plant for water supply, water treatment or sewerage treatment of disposal.

4.4 Entry No. 25(a) provides for services provided to government, a local authority or a governmental authority by way of ……………… carrying out any activity in relation to water supply, public health, sanitation, conservancy, solid waste management or slum improvement and upgradation. For the purpose of this Notification, *"Government authority" means an authority or a board, or any other body set up by an Act of Parliament or a State Legislature; or established by Government, with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution*.

4.5 in Para 3 of the Circular No. 199/09/2016-Service Tax, it has been mentioned that, among others, exemption is available to the following services provided to the Government, a local authority or a governmental authority, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of pipeline, conduit or plant for (i) water supply (ii) water treatment. The phrase "water supply" is a general phrase. Basically it will involve providing users, access to as source of water. The source may be natural or artificial like tanks, wells, tubes wells etc. Providing users access to such a source will involve construction of the source, if artificial and the transmission of water to the user. It will involve activities like drilling, laying of pipes, valves, gauges, etc., fitting of motors, testing etc., so as to eventually result in the supply of water. Similarly the word 'plant' need not necessarily involve a huge assembly of machinery and apparatus, for the reasons explained earlier.

4.6 Thus, the exemption under the entries at Serial No. 12(e) and 25(a) of notification 25/2012-Service Tax dated 20.06.2012, will cover a wide range of activities/services provided to a government, a local authority or a governmental authority and will include the activity of construction of tube wells.

4.7 In the impugned Judgment, reliance has been placed upon the case of **Indian Hume Pipe Co. Ltd.** v. **CCE** [2008] 16 STT 136 (Chennai - CESTAT), in which Tribunal held that in terms of "*'erection, commissioning or installation', we find it elementary that 'erection' connotes construction or building of a structure and laying of pipeline does not involve erection. We find no ambiguity in the expression 'installation'. It applies to machinery already made which are formally made ready to operate at the site. 'Installation' implies setting up the machinery ready for use, like giving power connections or installing driver software in the case of a machine ran with the aid computer* *software. 'Commissioning' involves the operationalisation of the machinery after which it starts functioning regularly. In laying of long distance pipeline, earth is dug and pipes laid and jointed, and the pipes pass through sumps with boosters at intervals, if necessary. This activity will not involve erection."*

4.8 In the impugned order, reliance has also been placed upon the case of **M/s. Nagarjuna Construction** vs. **CCE, Hyderabad** [2009-TIOL-1156-CESTAT-BANG], wherein it was held that GWSSB could not be treated as a commercial organization for selling drinking water to the community. This is a service sector establishment for fulfilling the needs of the people for this basic requirement. It was held that GWSSB primarily executes water supply and sewerage works for the benefit of both the rural and urban communities, excluding the municipal corporations. And the charges collected by them were nominal charge which was imposed by the State Government with a view to create a sense of responsibility and awareness towards the service amongst the people for its economic use.

4.9 The Learned Commissioner (Appeals), in view of the above discussion, came to the conclusion that water supply project is an infrastructure facility and a civic amenity which the State provides in public interest and not an activity of commerce or industry. **Thus, the services provided by the appellant to Surat Municipal Corporation are exempted from Service Tax.**

4.10 We find ourselves in agreement with the conclusion arrived at by the Commissioner (Appeals) in the impugned order.

4.11 We have heard both the sides and we find that matter is no longer res-integra as this Tribunal in case of C.C.E. & S.T.- Surat-I Vs. Shree Hindustan Fabricator (the appellant themselves) vide final order No. 12743 of 2024 dated 19.11.2024, has decided the issue in the favour of the respondent/assessee. The relevant extract of the findings of the above mentioned final order of this Tribunal in case of the respondent/assessee is reproduced here below:-

> *4. We have heard both the sides and perused the records of the appeal. We are of the view that, it will be appropriate to first have a glance at the impugned order-in-appeal by which the learned Commissioner (Appeals) has dropped the demand of service tax against the respondent assessee. The order-in-appeals read as follows:-*
>
> > *"From the above, I find that the services provided by the appellant to the SMC i.e. A local authority by way of laying and fixing of pipeline for supply of water and drainage are very well cover under Sl.no. 12(e) and 25(a) of the mega exemption notification. Also other structural work performed by the appellant to the SMC covered under the said*

notification. Hence, the said services provided by the appellant to the SMC, are exempt from the service tax. The adjudicating authority has misinterpreted the issue by finding that the said services are used for commercial purpose whereas the SMC has performed his statutory duty, by way of providing the system of transmission of fluid for public. Therefore, the said services are exempt from service tax.

5.8 Further, I rely upon the decision of Hon'ble High Court of Gujarat in the case of the Commissioner of CGST and Central Excise, Surat vs M/s. BMS Projects Pvt. Ltd. Vide order dated 21 September 2017[2017(9) TMI 1386-Gujarat High ourt] 1) wherein it was held that "service provided by the respondent in laying down long distance pipeline for transfer of drinking water in the state of Gujarat pursuant to a contract awarded by Gujarat Water Supply and Sewerage Board-levy of tax- Held that- GWSSB discharged an important duty and responsibility of providing drinking water to the people, industries etc. The Board was constituted mainly to supply drinking water and maintenance of Sewerage System. The usage charges recovered by the Board from Gram Panchayat, Nagar Palika and Nagar Panchayat are at highly subsidized rate and therefore, cannot be considered as an industry in the sense that the said word is used in the definition of taxable entry. The Board was sustaining on the grants released by the State Government.

The pipelines constructed were for providing drinking water facilities to the people of the State through different Gram and Taluka Panchayats. Only a small portion of the water was provided to the industry at commercial rates-levy of tax set aside"

Therefore, respectfully following the above decision which are binding on me, I hold that the appellant is not liable for payment of service tax and I do not find any merit in confirmation of the demand of service tax merely on the ground that the services of 'fixing and laying of pipelines for supply of water and drainage' provided by the appellant to the SMC, were used for commerce or industry. Since the Order in Original is not sustainable on merits, I do not go into the other contentions raised by the appellant on Limitation, Interest and penalty."

4.1 From the facts of the matter, it can be seen that the appellant has been provided services of lying down the water supply pipelines and sewerage discharged pipeline etc. for Surat Municipal Corporation which is a statutory body and not a profit making organization. we are of the view that the services provided by SMC are of non commercial nature and the water pipeline which have been laid by the respondent assessee for the Surat Municipal Corporation are for non commercial purpose. We are therefore of the view that provisions of the Notification No. 25/2012-ST dated 20.06.2012 under serial no. 12E and Serial No. 25A are fully applicable applicable towards activity undertaken by the respondent assessee and therefore fall under the category of the exempted services. It can be seen from the impugned order-in-appeal that Hon'ble Gujarat High Court in case of BMS Projects Pvt Ltd vs Commissioner of Central Excise-Surat reported under 2017 (9) TMI 1386 Gujarat High Court has held as follows:-

"wherein it was held that "service provided by the respondent in laying down long distance pipeline for transfer of drinking water in the state of Gujarat pursuant to a contract awarded by Gujarat Water Supply and Sewerage Board-levy of tax- Held that- GWSSB discharged an important duty and responsibility of providing drinking water to the people, industries etc. The Board was constituted mainly to supply drinking water and maintenance of Sewerage System. The usage charges recovered by the Board from Gram Panchayat, Nagar Palika and Nagar Panchayat are at highly subsidized rate and therefore, cannot be considered as an industry in the sense that the said word is used in the

definition of taxable entry. The Board was sustaining on the grants released by the State Government.

The pipelines constructed were for providing drinking water facilities to the people of the State through different Gram and Taluka Panchayats. Only a small portion of the water was provided to the industry at commercial rates-levy of tax set aside"

In view of the above decision of the Gujarat High Court and as well as by perusal of the mega Notification No. 25/2012 dated 20.06.2012. We have no doubt that the activity undertaken by the respondent assessee falls under the category of exempted services.

4.2 We also take note of the fact that for earlier period in assessee's own case in this tribunal vide its final order no. A/10337-10338/2020 dated 29.01.2020 reported under 2020 (2) TMI 110-CESTAT Ahmedabad has already decided the matter in favour of the respondent assessee wherein this Tribunal has held as follows:-

"4. Learned Counsel argued that the ground relating raised before the lower authorities and has been raised for the first time in tribunal. Learned Authorized Representative argued that the appellants have contended that the activity would fall under Works Contract Service. He pointed out that there is no exemption under Works Contract Service in the negative list. Leamed Authorized Representative further pointed out the services provided by them was not to SMC or GWSSB in all cases but was to other contractors who were in turn providing services to GWSSB, SMC & Surat Urban Development Authority. Learned Authorized Representative pointed out that the activity done by them is squarely covered under the definition of ECIS. He pointed out that the definition of ECIS at the material time reads as follows:

"Erection, Commissioning or Installation" means any service provided by a commissioning and installation agency, in relation to,-

(1) erection, commissioning or installation of plant, "machinery, equipment or structures, whether pre- fabricated or otherwise" or

(ii) installation of-

(a) electrical and electronic devices, including wirings or fittings therefor, or

(b) plumbing, drain laying or other installations for transport of fluids; or

(c) heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work: or

(d) thermal insulation, sound insulation, fire proofing or water proofing; or

(e) lift and escalator, fire escape staircases or travelators; or

(f) such other similar services,

He pointed out that the said category specifically covers plumbing, drain laying or other installations for transport of fluids.

5. We have considered rival submissions, we find that the primary defense of the appellant is that the activity under taken by them does not fall under the category of ECIS. It has been argued that since the *demand has been made under ECIS only, no demand under any other classification such as Commercial or Industrial Works Construction Service or Works Contract Service can be sustained. For this argument they have relied on the decision of REAL VALUE PROMOTERS PVT. LTD. (supra) and on the decision in the case of CONCEPT MOTORS PVT. LTD. (supra). In the case of CONCEPT MOTORS PVT. LTD. (supra) tribunal has observed as follows:*

> *"As regard the demand of service tax on referral fees received by the appellant from HDFC Chubb insurance company, we find that the service is in connection with business of insurance of HDFC Chubb. In terms of Sub Section 65 of Finance Act, 1994, the service provided by the appellant falls under definition of Insurance Auxiliary Services whereas the Revenue has raised the demand under wrong head. On this ground the demand of service tax under Business Auxiliary Services does not sustain. As per our above discussion, the impugned order is set aside and appeal is allowed."*

5.1 The next argument of the appellant is that the service provided by them is not covered under ECIS as held by tribunal in case of INDIAN HUME PIPE CO. LTD. (supra) affirmed by the Hon'ble High Court of Madras. In Para 8, 8.1 & 8.2 of the decision of tribunal in case of INDIAN HUME PIPE CO. LTD. following has been observed:

> *"8. We have considered the rival arguments. The dispute involves the meaning of the expression and legislative intent behind scope of the levy on erection, commissioning or installation. The impugned order found that up to 16-6-95, the assessee had rendered the taxable activity of erection, commissioning or installation of a plant. The Commissioner found that "plant represented a fixed investment for carrying out certain institutional activity for business". The water supply system involving pipelines is therefore seen as a plant. The activity undertaken by IHPL is construction of pipeline by earthwork excavation, conveying and lowering of PSC/MS pipes and MS specials, AC pipes, PVC pipes, CI/GI pipes and jointing materials into the trench; laying to proper grade and alignment; refilling the trenches with excavated soil after laying of pipes, construction of sluice valve pits, scour valve pits, air valve pits, thrust blocks, etc.*
>
> *8.1 We find ourselves in agreement with the appellants' reading of the expressions contained in the relevant entry, namely, 'erection, commissioning or installation'. We find it elementary that 'erection' connotes construction or building of a structure and laying of pipeline does not involve erection. We find no ambiguity in the expression installation. It applies to machinery already made which are formally made ready to operate at the site. Installation implies setting up the machinery ready for use, like giving power connections or installing driver software in the case of a machine ran with the aid computer software. Commissioning involves the operationalisation of the machinery after which it starts functioning regularly. In laying of long distance pipeline, earth is dug and pipes laid and jointed, and the pipes pass through sumps with boosters at intervals, if necessary. This activity will not involve erection.*
>
> *8.2 As rightly argued by IHPL, the CBEC Circular No. 62/11/2003-S.T., dated 21-8-2003, inter alia, clarified the levy to the same effect as follows:*
>
> *"1.2 As commonly understood, the activity of installation means the act of putting an equipment, machinery or plant into its place and making it ready for use. The activity of installation will start*

after erection which would refer to putting up civil structures. Commissioning of a plant would mean operationalising an installed plant/equipment/machinery."

Whereas erection became part of the entry only from 10-9-04, from 16-6-05 onwards meaning of 'erection, commissioning or installation' (Section 65(39a)) was enlarged to include installation of various devices and equipments. An entry "plumbing, drain laying, or other installation for transport of fluids" was introduced under sub-section (ii)(b). The Impugned order found that the service involved was specifically covered from 16-6-05 under the same head by the entry "plumbing, drain laying, or other installation for transport of fluids". We are inclined to agree with the appellants that this entry covers such facility provided in a building as it appears in the company of air-conditioning system, lifts, electronic devices including wiring etc. which are installed in a building. The Commissioner found that "plant represented a fixed investment for carrying out certain institutional activity for business". The Id. Consultant for the department has tried to defend the interpretation of the Commissioner of the expression plant. The Commissioner's interpretation of a plant would cover a long distance pipeline. We find it difficult to accept the above reading of the word plant in the context it is used. It is an inappropriate selection of the various meanings of this simple word. Plant in popular usage means a cluster of buildings or a building in which machinery are installed usually for manufacture of goods. Long distance pipeline is not even remotely associated with this common understanding of the word plant. We also find that a water supply project is an infrastructure facility and a civic amenity the State provides in public interest and not an activity of commerce or industry. The impugned order also did not hold it to come under a service of commercial or industrial nature as submitted by the Id. Consultant for the Revenue. Therefore, the impugned order demanding duty on the activity of laying of pipeline interpreting it to be erection, commissioning and installation of a plant is totally misconceived and unacceptable."

5.2 While affirming the decision of tribunal in case of INDIAN HUME PIPE(supra), the Hon'ble High Court of Madras relied on the decision of Larger Bench of tribunal in case of LANCO INFRATECH LTD. 2015 (38) S.T.R.709 (Tri.-LB). Hon'ble High Court observed as follows:

"10. On the question as to what happens if the case is covered by Section 65(25b), a larger Bench of the Customs, Excise and Service Tax has already held in Lanco Infratech Ltd. v. Commissioner of Customs, Central Excise and Service Tax, Hyderabad [2015 TIOL-768-CESTAT-BANG-LB = 2015 (38) S.T.R. 709 (Tri. - Bang)] as follows:

"Considered in the light of the precedents referred to herein above; the definitions of ECIS and CICS; the Board clarification dated 7-1-2010; the Dictionary meanings ascribed to the word "conduit"; and provisions of Section 65A(2)(a) and (b), we conclude that construction of a pipeline/conduit for transmission of water/sewerage and involving associated works like digging of the earth, supporting pipeline/conduit, construction of pumping stations together with associated machinery and other construction works, including for transmission of water in lift irrigation projects, cannot be classified under ECIS. These services are only classifiable as CICS. Where the pipeline/conduit laying is executed for Government or Government undertakings as part of irrigation, water supply, or sewerage projects, the works are not exigible to service tax under CICS (prior to 1- 6-2007), since these are not primarily for commercial or industrial

> *purposes and are excluded from the scope of the taxable services qua the exclusionary clause definition of CICS, in Section 65(25b) of the Act."*
>
> *11. As rightly pointed out by the Tribunal, the assessee was entrusted with the task of laying a long distance pipeline to enable the Tamil Nadu Water Supply and Drainage Board to supply water. It was an activity in public interest, to take care of the civic amenities liable to be provided by the State. Therefore, the Tribunal was right in holding in favour of the assessee. Hence, the question of law is answered in favour of the assessee."*
>
> *5.3 In view of categorical findings of Larger Bench as well as Hon'ble High Court of Madras cited above we respectfully hold that the activities under taken by the appellant cannot be classified under ECIS.*

5.4. The other arguments of revenue regarding classification of services under Works Contract Service or Commercial or Industrial Construction Service become irrelevant as no demand under the said head has been raised by revenue. No charge for classification of the serviced provided by the appellant under the head of Works Contract or Commercial or Industrial Construction Service has been made against the appellant. In these circumstances we are unable to uphold the demand raised against the appellant in respect of activities relating to laying of pipelines for Surat Municipal Corporation, Gujarat Water Supply and Sewerage Board (GWSSB), Canal Division, NHAI And M/s. Surat Urban Development Authority.

5.5. The revenue has also argued that in some cases the appellant have acted as sub-contractor and not as main contractor. We find that the said argument is of no use as the demand has been raised solely under the category of ECIS and in view of the decision of Hon'ble High Court of Madras and the Large Bench cited above, no demand under the said head can be raised against the appellant.

6. The second part of the dispute relates to service tax under the category of Business Auxiliary Service. A demand of 1,23,856 has been sustained in respect of sales commission received by the appellant from M/s. Electrosteel Castings Ltd., M/s. Lanco Industries Ltd., and M/s. Pacific Pipe Systems Pvt. Ltd. It has been argued by the appellant that the specific sub-clause of the Business Auxiliary Service under which tax is sought to be demanded has not been identified. He placed reliance on the decision of tribunal in case of SWAPNIL ASNODKAR (supra). We find that in Para 6.1 of the Show Cause Notice in the said para after identifying the amount received as the sales commission following has been expressly stated.

> *"It also reveals from the details submitted by M/s. Electrosteel Castings Ltd., Ahmedabad that t56hey have given work to M/s. Shree Hindustan to act as their sales commissioner agent for pipes. The said work of commissioner agent fails in the Business Auxiliary Services. M/s. Electrosteel Castings Ltd., Ahmedabad has paid 5,29,110/- to M/s. Shree Hindustan against the services provided to them which includes amount of Service Tax."*

6.1. Similar, assertions have been made in case of all such three clients of the appellant. We find that specific clarity of charge has been made to levy Service Tax under the category of Business Auxiliary Service and no prejudice is caused to the appellant on account of this the demand under the head of Business Auxiliary Service is confirmed. The interest and penalty in respect of Business Auxiliary Service is also upheld. The demand of duty, interest and penalties in respect of demand under ECIS category is set aside."

4.3 Since the facts before us in the present appeal are similar to the one which have been decided in the above cited decisions of this tribunal as well as by Hon'ble Gujarat High Court. We hold that the appeal filed by the revenue does not have any merit, therefore we set aside the same.

5. Accordingly, the appeal is dismissed."

Following the above decision, we find no merit in the appeal filed by the department and therefore, we uphold the order-in-appeal. The appeal filed by the department is dismissed.

5. Appeal is accordingly dismissed.

(Operative portion pronounce in the open court)

(C L MAHAR)
MEMBER (TECHNICAL)

(DR. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

Raksha