(2010) 03 GUJ CK 0023

In the Gujarat High Court

Case No : Tax Appeal No. 757 of 2009

C.C.E. and C. APPELLANT

Vs

Mascon Multiservices and Consultants P. Ltd. RESPONDENT

Date of Decision : 04-03-2010

Acts Referred:
Finance Act — Section 65, 88

Citation : (2010) 19 STR 484 : (2010) 29 STT 56 : (2010) 34 VST 337

Hon'ble Judges : Harsha Devani, J;D.A. Mehta, J

Bench : Division Bench

Advocate : Amee Yajnik, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

H.N. Devani, J.—The appellant-revenue has proposed the following question stated to arise out of order dated 1st December 2008 (2009) 17 STJ 61 made by the Central Excise & Service Tax Appellate Tribunal (the Tribunal).

Whether CESTAT is right in holding that the Assessee is not liable to service tax under the head ''Consulting Engineering Services'' on the activities of detailed engineering survey, cadastral survey, soil investigation and drawing/submission, inspite of clarification issued by Central Board of Excise and Customs vide Circular No. 49/11/2002-S.T., dated 8-12-2002?.

2. The respondent assessee was engaged in the activity of Reconnaissance Survey, Detailed Route Survey, Detailed Engineering Survey etc. among several other activities/services. The Deputy Commissioner, Central Excise issued show cause notice dated 30th March 2004 demanding service tax of Rs. 44,39,548/- covering period from 1999-2000 to 2003-2004 (upto December 2003) alleging suppression of facts with intent to evade payment of service tax. The Deputy Commissioner, Central Excise made Order-in-Original dated 27th December 2004 holding that some of the services provided by the assessee fall within the category of ''consulting engineering'' and confirmed the demand of service tax of

Rs. 3,15,050/- out of the total demand of Rs. 44,39,548/-. The assessee carried the matter in appeal before Commissioner (Appeals), who held that the appellant was not liable to pay service tax in respect of activities pertaining to engineering survey for pipeline, detailed reconnaissance survey and detailed engineering survey and detailed route survey, but confirmed the demand of service tax and interest in respect of other activities i.e. approach road planning and bridge design work, design of site grading work, design and supervision work of sewage system and project consultancy for sewage system, and, design and construction supervision for storm water disposal. The revenue carried the matter in appeal before the Appellate Tribunal. The respondent assessee filed its cross objections. The Tribunal dismissed the appeal of the revenue and disposed of the cross objections filed by the respondent assessee.

3. Ms. Amee Yajnik, learned Senior Standing Counsel for the appellant revenue submitted that the activities pertaining to engineering survey for pipeline, reconnaissance survey, detailed engineering survey and detailed route survey, require engineering skills and technical expertise and as such, would fall squarely within the scope of ''consulting engineering'' services.

4. As can be seen from the order of Commissioner (Appeals), Commissioner (Appeals) has referred in detail to the nature of the activities pertaining to Detailed Engineering Survey, Cadastral Survey, Soil Investigation and Drawing/ Submission and has found that the said activities do not fall within the ambit of the definition of ''consulting engineer'', as the said definition envisages liability to pay service tax by any qualified engineer or firm engaged in the business of rendering advice, consultancy or technical assistance as a profession. Commissioner (Appeals) has recorded the contention of the assessee that their activities pertaining to engineering survey for pipeline, detailed reconnaissance survey, detailed engineering survey and detailed route survey, do not involve any engineering skill and has found that the adjudicating authority has also not recorded sufficient findings as to in what manner these activities are covered under the category of ''consulting engineer'' for the purpose of levy of tax. Commissioner (Appeals) has also recorded that the activities of survey of land and preparation of maps'' has been proposed to be taxed vide amendment in the Budget 2005 (Bill), and that vide Section 88 of the Finance Bill, Section 65 of the Finance Bill, 1994 (sic) has been amended and Clause (b) has been inserted, which provides as follows:

Survey and map making means geological, geographical or any other prospecting surface, sub-surface, or aerial surveying or map making of any kind, but does not include survey and exploration of minerals.

5. Commissioner (Appeals) has found that the survey of the kind carried on by the assessee would be taxable only when the aforesaid provision comes into force. Hence, the assessee is not liable to pay service tax in respect of the activities pertaining to engineering survey for pipeline, detailed reconnaissance survey, detailed engineering survey and detailed route survey as the said

activities did not attract the levy of service tax during the relevant period.

6. A plain reading of the impugned order of the Tribunal dated 1st December 2008 makes it clear that though the Tribunal has not recorded any independent findings, it has accepted the findings of fact recorded by Commissioner (Appeals) after appreciating the evidence on record and has, thus, upheld the order made by Commissioner (Appeals). In absence of any evidence to the contrary, it is not possible to find any legal infirmity in the impugned order of the Tribunal. In the circumstances, no question of law, much less any substantial question of law arises out of the impugned order of the Tribunal.

7. The appeal is, accordingly, dismissed with no order as to costs.