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(2014) 05 CESTAT CK 0007

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 468 Of 2007

?C.C.E., Jaipur I APPELLANT

Vs

Consulting Engineers Groups Ltd. RESPONDENT

Date of Decision : 15-05-2014

Acts Referred:

Finance Act, 1994 — Section 65(31), 65(105)(g), 65(31), 67

Citation : (2014) 05 CESTAT CK 0007

Hon'ble Judges : G. Raghuram, J;Rakesh Kumar, Technical Member

Bench : Division Bench

Advocate : Suchitra Sharma, Yogendra Aldak

Final Decision : Dismissed

Judgement

1. Revenue has preferred this appeal against the order passed by the Commissioner (Appeals), Customs and Central Excise, Jaipur dated 18.5.2007

whereby the appellate authority allowed the appeal preferred by the respondent/ assessee.

2. The Joint Commissioner, Central Excise, Jaipur I passed the adjudication order dated 30.3.2007 confirming service tax demand of Rs.17,85,768/-,

apart from interest and penalties on the conclusion that assessee had provided â??consulting engineerâ? service, defined in Section 65(31) read with

Section 65(105)(g) of the Finance Act, 1994 during the period 2001-03. Show cause notice was issued alleging that the assessee had suppressed the

gross consideration received for having provided the taxable service in its ST-3 returns; and that the suppression came to light when the ST -3 returns

were compared with the income tax returns filed by the assessee.

3. In response, the assessee inter alia submitted that Rs.1,40,26,960/- is the consideration received for having provided the activity of soil testing,

survey work, drilling survey to the National Highways Authority of India and this consideration falls outside the ambit of â??consulting engineerâ?

service. Another contention of the assessee was that amounts received by way of reimbursement of expenses for providing the â??consulting

engineerâ? service are liable to be excluded i.e. an amount of Rs.90,03799/-. The third defence was that Rs.1,24,35,805/- was the service tax liability

i.e. remittable by the principal consultants, namely Louis Berger Inc. and Scott Wilson Kirkpatrick India Pvt. Ltd. A general defence was also

asserted, that since the assessee was a company registered under the Companies Act, 1956, it was outside the ambit of the definition of â??consulting

engineerâ? which includes only a consulting engineering firm; and only with effect from 1.5.2006 that Section 65(31) was amended to bring within the

ambit of the definition â??any body corporateâ??.

4. The primary authority rejected the contention of the assessee and confirmed the liability to service tax, interest and penalties, as specified.

5. Aggrieved, the assessee preferred an appeal. The Appellate Commissioner allowed the appeal holding : (a) that soil testing and survey work

services provided by the assessee were outside the scope of â??consulting engineerâ? service, defined in Section 65(31) read with Section 65(105)

(g); (b) since the assessee had provided service as an associate consultant to principal consultants, a service provided not to a client but to another

consultant, the activity falls outside the specified taxable service and is not liable to tax as â??consulting engineerâ? service. The Appellate authority

also deleted reimbursement of expenses amounts received by the assessee from the taxable value under provisions of Section 67 of the Act. As a

consequence, the appeal of the assessee was allowed.

6. Ld. Counsel for the respondent/assessee refers to the decision of the Karnataka High Court and the Delhi High Court in C.S.T., Bangalore vs.

Turbotech Precision Engineering Pvt. Ltd. - 2010 (18) STR 545 (Kar.) and C.C.E.& Service Tax vs. Simplex Infrastructure & Foundry Works - 2014

(34) STR 191 (Del.), for the contention that since the assessee is a company registered under the provisions of Companies Act, 1956, it falls outside

the purview of the definition of â??consulting engineerâ? in Section 65(31), as the provisions stood during the relevant period 2001-03. It requires to

be noticed that with effect from 1.5.2006, Section 65(31) was amended to bring

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within the ambit of the definition of â??consulting engineerâ?,

â??any body corporateâ?. Prior to 1.5.2006, consulting engineer is defined to mean â??any professionally qualified engineer or any other firm who

either directly or indirectly renders any advice, consultancy or technical assistance in any manner to a client in one or more disciplines of

engineeringâ??.

7. The scope of the amendments to Section 65(31) with effect from 01.05.2006, was considered by the Karnataka and Delhi High Courts in the

aforesaid decisions. Both Courts concluded that it is only with effect from 1.5.2006 that a body corporate comes within the ambit of â??consulting

engineerâ?? service in Section 65(31).

8. In the light of the above decisions, the respondent/assessee falls outside the purview of the definition â??consulting engineerâ?, since it is a

company registered under the Companies Act,1956, and the relevant period is 2001-03, prior to 1.5.2006. On the aforesaid analysis, there is no merit in

Revenueâ??s appeal which is dismissed but in the circumstances without costs.

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