(2015) 08 MAD CK 0038

In the Madras High Court

Case No : C.M.A. No. 1140 of 2009 and M.P. No. 1 of 2009

Commissioner of C. Ex. APPELLANT

Vs

Indian Hume Pipes Co. Ltd. RESPONDENT

Date of Decision : 28-08-2015

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35G
Income Tax Act, 1961 — Section 75

Citation : (2015) 40 STR 214

Hon'ble Judges : V. Ramasubramanian and T. Mathivanan, JJ.

Bench : Division Bench

Advocate : T. Chandrasekaran, for the Appellant; K.S. Venkatagiri, for the Respondent

Judgement

V. Ramasubramanian, J.—This appeal filed under Section 35G of the Central Excise Act, 1944, by the Revenue, has been admitted on the following question of law:--

"Whether, on the grounds raised above, the service rendered by M/s. Indian Hume Pipe Co., Ltd., in laying, jointing, testing and commissioning of PSC Pipes, construction of pumps, civil structures, supply, delivery and commissioning of submersible pump set and turbine pump sets, maintenance etc., is chargeable to Service Tax?

Heard Mr. T. Chandrasekaran, learned counsel for the appellant and Mr. K.S. Venkatagiri, learned counsel for the first respondent.

2. The assessee was manufacturing pre-stressed concrete pipes and was supplying the same to Tamil Nadu Water Supply and Drainage Board for use in water supply projects.

3. The Commissioner of Central Excise found that the assessee had rendered taxable services under the category "Commissioning or installation" during the period from 1-7-2003 to 9-9-2004 and the taxable services under the category

"erection, commissioning and installation" during the period from 10-9-2004 to 30-9-2006. As a consequence, the Commissioner demanded the service tax under Section 75 of the Income-tax Act.

4. The appeal filed by the Assessee was allowed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai Bench, Chennai [2008 (12) S.T.R. 363 (Tri. - Chennai)], forcing the department to come up with an appeal.

5. The Tribunal recorded a finding of fact that the activity carried on by the assessee would not come within the meaning of the expression "erection, commissioning or installation". The Tribunal on the contrary found that the Assessee was merely laying a pipeline after digging the earth and closing the same thereafter. This activity was construed by the Tribunal to be part of the "construction activity", which is not commercial in nature and hence, was exempt.

6. There are two issues. If there is a finding on fact as to whether the activity carried on by the assessee was a construction activity or an activity of erection, installation and commissioning, then there can be no appeal on such question of fact.

7. The second aspect is that if there is no dispute about the nature of the activity carried on, whether the assessee would be liable to pay service tax or not.

8. It is seen that with effect from 16-6-2005, the definition of the expression "commissioning or installation of construction service" under Section 65(25b) was amended to include the construction of a pipeline or conduit. Therefore after 16-6-2005 there was no dispute. Consequently, the department cannot now raise a question as to the very nature of the activity carried on by the appellant.

9. 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."

10. 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. In the result, this Civil Miscellaneous Appeal is dismissed. Consequently, M.P. No. 1 of 2009 is closed.