
(2023) 06 CESTAT CK 0030

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 12105 Of 2013

R C Patel

APPELLANT

Vs

Commissioner Of Central Excise & ST, Vadodara

RESPONDENT

Date of Decision : 14-06-2023

Acts Referred:

Finance Act, 1994 — Section 65(25b), 65 (105)(zzzza), 73, 73(1), 75, 76, 77, 78

Citation : (2023) 06 CESTAT CK 0030

Hon'ble Judges : Ramesh Nair, Member (J);C.L. Mahar, Member (T)

Bench : Division Bench

Advocate : Amal Dave, Vijay G Iyengar

Final Decision : Allowed

Judgement

C.L. Mahar, Member (T)

1. The brief facts of the matter are that the appellant are engaged in providing services such as laying, jointing and testing pipes for water supply/drainage/ effluent pipeline/ MLD water scheme, etc. provided to Gujarat Industrial Development Corporation. It has been the contention of the department that the activity undertaken by the appellant i.e. of laying down of the pipes for water supply, drainage or affluent pipeline for the GIDC falls under the category of the Commercial and Industrial Construction service as defined under Section 65(25b) of the Finance Act, 1994. It has also been contended by the department that the appellant had availed the abatement under Notification No.1/2006-CE dated 01.03.2006 without fulfilling the necessary conditions for availing the benefit of such notification for the period 2007-08 to 2010-11 and thereby the appellants have failed to pay service tax properly to the Government exchequer which resulted in short payment of service tax amounting to Rs. 3,27,05,009/-. The show cause notice dated 27th November 2012 came to be issued for the above mentioned amount of the service tax invoking the provisions of Section 73(1) of the Finance Act, 1994, Section 75 and penal provisions under Sections 76,77 & 78 of the Finance Act, 1994. The matter has been adjudicated by the learned

Commissioner vide Order-In-Original No. 15-STC-DEMAND-COMMR-I-2013 dated 15.04.2013 where under, all the charges alleged in the Show cause notice has been confirmed and the appellants are before us challenging the above mentioned Order-In-Original.

2. The learned advocate appearing on behalf of the appellant submits that it is wrong on the part of the show cause notice to alleged that they have taken abatement of 66% of the value by availing the Notification No. 1/2006 rather it was submitted that they have paid the service tax under Works Contract Service for the income earned by them by executing a work for GIDC. It has forceful been contended by the learned advocate that since the contract of laying down the pipeline for the GIDC was a composite contract of supply of material in the form of the pipes and other materials and service component of laying down of pipes for supply of water/drainage, affluent etc. as per the engineering designs.

2.1 Since the contract was of the composite nature involving both supplies of raw material and service, they have rightly classified their work under the Works Contract Service and paid the service tax as per the provision of the Works Contract Service. It has further been added by the learned advocate that as per ST-3 returns filed by them for these contracts, they have disclosed the entire income earned from GIDC, was also reporting payment of service tax on such income under the Works Contract Service at the rate applicable for such service at the relevant time.

2.2 It has further been submitted by learned advocate that the issue of laying pipes for drainage, water supply etc. falling under the category of Works Contract Service has been settled by the larger bench in the case of M/s LANCO INFRATECH LIMITED reported at 2015 (38) STR 709. It has been the contention of the learned advocate that the Hon'ble Larger Bench of the CESTAT has categorically held that after 01.06.2007 such activity of laying of the pipeline would be classifiable under clause (b) Explanation II of Section 65 (105)(zzzza). It has also been the contention of the learned advocate that the activity undertaken by the appellant for GIDC as a service of the Government organization is engaged in fulfilling mandatory statutory liabilities prescribed for them under the consideration of GIDC and therefore, the activity undertaken by the appellant to GIDC falls under the exclusion clause of the Works Contract Service therefore, no service tax is eligible on them. It has also been the contention of the learned advocate that demand is squarely barred by limitation since they have regularly been filing their return under the Works Contract Service and paying service tax properly. At the same time, it has also been argued that on 18.08.2008 on a query from the departmental officer, they have informed the department that they have executed a work with GIDC for providing and laying of the water pipeline and they paid service tax on the said contract under protest thereafter on 03.09.2008 they have written letter to the Superintendent of Service Tax cell and raised certain queries regarding their liability to pay service tax on activities undertaken by them for GIDC. Again on

20th November 2008, they have informed the Superintendent of Service Tax that they are making payment of service tax under protest and also sought clarification regarding their liability to pay service tax on the work undertaken by them for a Government agency namely Gujarat Industrial Development Corporation.

2.3 It has further been argued that since they have been regularly filing service tax returns under the Works contract Service at the same time as stated in the above para, they have been informing the department regarding the nature of activity undertaken by them and issue of service tax with the department, the extended time proviso under Section 73 cannot be invoked.

2.4 The learned Advocate has cited case law of M/s. JYOTI BUILDTECH (P) LTD reported under 2017 (3) GSTL 116 (Tri. Allahabad) and said that extended period of limitation would not be available to the issue being interpretational in nature on the above grounds. He pleaded that Order-In-Original is bad in law and need to be set aside.

3. We have also heard the learned Departmental representative who has reiterated the findings as given in the Order-In-Original.

4. We have considered the arguments submitted by both the sides. We find that the appellant have been providing service of laying down of pipes for drainage, water supply, affluent, etc. The work undertaken by the appellant is of the composite nature involving both supply of the goods as well as service. The appellants have classified their service under the Works Contract Service and has paid service tax. Before proceeding further, it will be appropriate to have a look at the definition of the Works Contract Service as given under Section 65 (105) (zzzza) of the Finance Act, 1994 :-

"(zzzza) to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

Explanation: For the purposes of this sub-clause, "works contract" means a contract wherein,-

(i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and

(ii) such contract is for the purposes of carrying out,-

(a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or

(b) construction of a new building or a civil structure or a part there or of a

pipeline or conduit, primarily for the purposes industry; or of commerce or industry; or

(c) construction of a new residential complex or a part thereof; or

(d) completion and finishing services, repair, alteration, renovation a restoration of, or similar services, in relation to (b) and (c); or

(e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects;"

The work orders which have been executed by the appellant for Gujarat Industrial Development Corporation have been perused by us and we find that the work orders involved supply of pipes for water supply, drainage as well as laying the same as per the engineering drawings. Thus, it is accepted that that the activity undertaken by the appellant involves both supply of material as well as service.

4.1 It has also been claimed by the learned advocate that they have paid VAT/ service tax on the goods supplied by them to M/s. GIDC. In view of the above facts, we are convinced that the activity undertaken by the appellant is properly classifiable under Works Contract Service and since they have already paid service tax under the Works Contract Service, we find that Order-In-Original is devoid of merit.

4.2 In this regard, we also note of the decision in the case of M/s. JYOTI BUILDTECH (P) LIMITED reported under 2017 (3) GSTL 116 (Tri. Allahabad), the relevant extract of the said order is reproduced below:-

"5. Having considered the rival contentions, we are satisfied that the issue now stands settled by the Larger Bench of this Tribunal in M/s. Lanco Infratech Ltd. (supra) and also confirmed by order of the Hon'ble Madras High Court (supra) in Indian Hume Pipes Ltd. wherein it has been held that such works executed by the appellant in the nature of sewerage works, laying of pipe and for water supply falling under Explanation (ii)(b) fall under the definition of "works contract service" and were also exempted under the classification commercial and industrial construction service prior to 1-6-2007, as explained by the Larger Bench. Further, we find that the issue is wholly interpretational and thus the longer period of limitation is not invocable under the facts and circumstances. Accordingly, we allow the appeal setting aside the impugned order, except the demand for normal period, if any, in the case of erection of service station for the gross amount of Rs. 3,25,200/- for labour/charges. The appellant will be entitled to consequential benefits in accordance with law."

In view of the above on merit, we find that the service provided by the appellant is rightly classifiable under the category of Works Contract Service as defined under Section 65 (105)(zzzza) of the Finance Act, 1994. We also find that the period of demand under the show cause notice covers the period from 2007-08 to 2010-11 invoking the provisions of Section 73(1) of the Finance Act, 1994

invoking extended time period.

4.3 We take note of the fact that the assessee has been regularly filing their service tax returns under the Works Contract Service as well as they have entered into a correspondence with the department during August 2008 upto 20th October 2008 and therefore, we are of the view that no element of fraud, collusion or wilful mis-statement or suppression of facts are involved therefore, we also are of the view that demand is barred by limitation and deserves to be set aside on limitation ground also.

5. In view of the above, we hold that the impugned Order-In-Original is devoid of merit and therefore, we set aside the same. Accordingly, the appeal succeeds and the same is allowed.