
(2012) 09 BOM CK 0199

In the Bombay High Court

Case No : Central Excise Appeal (L) No. 36 of 2012

Synefra Engineering and Construction Ltd.

APPELLANT

Vs

Commr. of C. Ex., Pune-III

RESPONDENT

Date of Decision : 05-09-2012

Acts Referred:

Finance Act, 1994 — Section 73, 75, 76, 78

Citation : (2012) 286 ELT 10 : (2013) 39 STT 91

Hon'ble Judges : R.D. Dhanuka, J; J.P. Devadhar, J

Bench : Division Bench

Advocate : V. Sridharan, with Prakash Shah instructed by PDS Legal, for the Appellant; R. Ashokan with J.B. Mishra, for the Respondent

Judgement

1. The following questions of law are raised by the appellant in this appeal.

(a) Whether the impugned order stands vitiated since the hearing was concluded on 17-8-2011 and the order was passed on 14-2-2012 with a delay of nearly six months in passing the order from the date of conclusion?

(b) Whether the impugned order stands vitiated due to non-consideration of inter alia the crucial submissions made by the Appellants :

(i) Both Civil work and electrical installation are in the nature of works contract service and hence would not be taxable prior to 1-6-2007.

(ii) The sub-contractor had provided taxable services to the customer and had discharged the Service Tax liability on the same. The Appellants are only re-seller of such service and re-selling of service is not liable to Service Tax in India.

(iii) Definition of Erection, Commissioning and Installation Service has been amended with effect from 1-5-2006 to cover structures. Therefore, since the tower is a structure, erection, commissioning and installation of Tower prior to 1-5-2006 is not liable to Service Tax.

(iv) Service Tax can only be levied on the value of services and not on the value

of materials. Since the total value of material supplied by the Appellants during this period amounts to Rs. 210,79,68,878/- out of the total contract value of Rs. 320,31,34,243/-, the demand of service tax amounting to Rs. 21,50,12,825/- is liable to be set aside. Accordingly, the demand of Service Tax, if any, cannot exceed Rs. 98,49,419/-.

(v) Section 75 of the Finance Act, 1994 relating to levy of interest is inapplicable, since Service Tax demand in question has not been collected by the Appellants from customer.

(vi) In any case, penalty is not imposable.

(c) Whether the findings by Appellate Tribunal applying proviso to Section 73 of the Finance Act to the present case is vitiated as being perverse, perfunctory and not considering all the grounds/submissions having bearing on the issue?

(d) Whether in the facts and circumstances of the case, the Appellate Tribunal erred in not holding that there are four distinct supplies in the form of civil work, electrical work, erection commissioning of WTG and final testing and commissioning?

(e) Whether in the facts and circumstances of the case, the Appellate Tribunal's finding that the material involved in the execution of electrical works is only incidental is perverse?

(f) Whether the Appellate Tribunal's finding that the material involved in the execution of electrical works is only incidental stands vitiated on account of non-consideration of relevant evidence to the effect that the value of material is Rs. 95,67,79,881/- against the total contract value of electrical work of Rs. 162,77,87,937/-.

(g) Whether in the facts and circumstances of the case, the Appellate Tribunal was right in applying the proviso to Section 73 of the Finance Act, 1994 for invoking the extended period of limitation.

(h) Whether in the facts and circumstances of the case, the Appellate Tribunal was right in upholding the order-in-original dated 22-11-2007 passed by the Commissioner and dismissing the appeal of the Appellants?

(i) Whether in the facts and circumstances of the case, the Appellate Tribunal was right in confirming the demand of service tax amounting to Rs. 22,04,53,114/- along with interest and also imposing equivalent penalty amounting to Rs. 22,48,62,245/- u/s 78 of the Finance Act and Rs. 100/- per day from the date it was payable to the date it is actually paid u/s 76 of the Finance Act, 1994?

Since the impugned order of the CESTAT has been passed almost after six months from the date of concluding the hearing of the appeal and the Tribunal has not specifically dealt with some of the aforesaid vital issues in spite of the directions given to that effect by this Court in the earlier round of litigation,

counsel for the parties state that the impugned order be set aside and the matter be restored to the file of the CESTAT for fresh adjudication in accordance with law.

2. Accordingly, the impugned order of CESTAT dated 14th February 2012 2012 (283) ELT 49 is quashed and set aside and the CESTAT is directed to pass fresh order on all the issues as per the directions given by this Court in its order dated 2nd May 2009, as expeditiously as possible and preferably within a period of six months from today. All contentions of both the parties are kept open. The appeal is accordingly disposed of with no order as to costs.