IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. ST/60589/2013-CU[DB]

(Arising out of Order-in-Appeal No.MRT-EXCUS-002-APP-111/2013-14 dated 09/09/2013 passed by Commissioner (Appeals), Customs & Central Excise, Meerut)

M/s Kumar Trading Company **Appellant**

Vs.

Commissioner of Central Excise, Meerut-II (Now Greater Noida)
Respondent

Appearance:

Shri Kapil Vaish (C.A.) for Appellant
Shri Rajeev Ranjan (Joint Commr.) AR for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 04/04/2018
Date of Decision : 04/04/2018

FINAL ORDER NO. – 70796/2018

Per: Anil Choudhary

The issue in this appeal is whether the service rendered by the appellant is classifiable under the Head 'Works Contract' or 'Erection Commissioning & Installation Service'.

2. From the admitted facts, we find that the appellant had led evidence before the court below that they are engaged in construction of petrol pumps for 'Indian Oil Corporation Ltd.' For such work, other than the storage tank and dispensing unit, the appellant completes all the civil work providing

materials from its own sources like cement, steel, sand, chips etc. The appellant is also registered with the U.P. Trade Tax Department and for the relevant period 2006-07 have been assessed to Trade Tax/VAT on the turnover achieved through Indian Oil Corporation Ltd., the fact is confirmed from the copy of VAT assessment order annexed at Page-42 of the appeal paper book.

3. The learned counsel for the appellant states that the court below have erred in classifying the work done by them under 'Erection Commissioning & Installation Service'. The Order-in-Original was passed on 9th May, 2013. Subsequent to that, the Hon'ble Supreme Court have decided the classification issue by its order in the case of L & T 2015 (39) S.T.R. 913 (SC), order dated 20/08/2015, wherein it has been held that in a complex contract involving use of materials as well as service component which shall be classified under the heading 'works contract' and cannot be classified under other heads of services like 'Erection Commissioning & Installation Service', 'Commercial Construction Service' etc., prior to 01/06/2007. Further the appellant have taken registration which have been granted on 14/11/2007 after coming into force of the Service Tax liability under works contract with effect from 01/06/2007. Accordingly, the learned counsel for the appellant prays for allowing the appeal with consequential benefits and setting aside the impugned order.

4. Heard the learned A.R. for Revenue who supported the impugned order.

5. Having considered the rival contentions, we find that the learned Commissioner (appeals) have erred in holding that Service Tax is payable under the head ECIS in spite of taking notice that goods/materials have been used in the execution of the construction contracts for petrol pumps for Indian Oil Corporation Ltd. We further note that the appellant paid VAT on the material component utilised in such works contract. Accordingly, we hold that the work done by the appellant for Indian Oil Corporation Ltd. will be classifiable under the Heading Works Contract. Further works contract was not be taxable prior to 01/06/2007. Accordingly, we allow this appeal and set aside the impugned order. The appellant shall be entitled to consequential benefits, in accordance with law.

(Dictated & Pronounced in Court)

Sd/-	**Sd/-**
(Anil G. Shakkarwar)	**(Anil Choudhary)**
Member (Technical)	**Member (Judicial)**

Lks