CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

ST/102/2007-DB

[*Arising out of Order-in-Original No. 5/2007 (De novo) dated 16/01/2007 passed by the Commissioner of Service Tax, Bangalore.*]

NET PRO ACTIVE SERVICES PRIVATE LTD
(FORMERLY KNOWN AS BANGALORE LABS (P) LTD.)
UNIT NO.10, LEVEL 8, INNOVATOR,
WHITEFIELD ROAD, BANGALORE

Appellant(s)

Versus

Commissioner of Service Tax
BANGALORE SERVICE TAX- I
1ST TO 5TH FLOOR,
TTMC BUILDING, above BMTC BUS STAND,DOMLUR
BANGALORE, - 560071
KARNATAKA

Respondent(s)

Appearance:

Mr. Y. H. Raju, Advocate
M.S. SRINIVASA
#185, 'BRAHM', 'G' CROSS,
3RD BLOCK EXTENSION,
NAGARBHAVI 2ND STAGE,
BANGALORE – 72

For the Appellant

Mr. N. Jagadish, AR

For the Respondent

Date of Hearing: 28/05/2018
Date of Decision: 28/05/2018

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 20752 / 2018

Per : P. ANJANI KUMAR

M/s. Net Pro Active Services Pvt. Ltd., the appellants, earlier known as M/s. Bangalore Labs Pvt. Ltd., are alleged to have been engaged in the business of taxable services falling under the category of 'Consulting Engineer' and registered with Central Excise Department under Section 69 of the Finance Act, 1994 for payment of service tax. It was alleged that they have not paid service tax of Rs.18,99,196/- for the year 2000-01 and have short-paid service tax of Rs.10,04,517/- during the period 2001-02. It has been alleged that the appellants have failed to pay service tax in terms of Section 68 at the rates specified under Section 66 of the Finance Act, 1994 within the time specified under Rule 6 of the Service Tax Rules, 1994. A show-cause notice dated 29.4.2004 was issued to the appellants by the Assistant Commissioner of Central Excise and Service Tax. The same was adjudicated by the Commissioner of Service Tax, Bangalore vide Order-in-Original No.3/2005 dated 14.11.2005 upholding the demands raised in the show-cause notice.

2. Aggrieved by the Order-in-Original No.3/2005 dated 14.11.2005, the appellant filed appeal No.ST/46/2006 before this Tribunal and have contended that the Department cannot take

Profit and Loss Account filed with the Income Tax Authorities for arriving at the service tax duty liability; they produced enormous evidence pertaining to their exact liability and the same was duly discharged; they had produced FIRC, which should be the basis for demanding service tax and on which basis, they have duly discharged the service tax; evaluation of principles of natural justice inasmuch as the Commissioner did not consider the evidence produced by them. The Profit and Loss Account produced by them was a consolidated one showing the clubbed figures of three units whereas the Commissioner has misconstrued the figures of the Profit and Loss Account pertaining to only one unit; therefore, there is a factual mistake and legal inconsistency in the order of the Commissioner. This Bench of CESTAT vide Final Order No.1204/2006 dated 18.7.2006 has remanded the case back to the Commissioner directing the appellants to produce another set of papers and to satisfy the Commissioner with regard to discharge of duty liability and that the Commissioner shall reconsider the case and complete the adjudication proceedings within four months.

3. Pursuant to the remand proceedings by CESTAT, the adjudicating authority vide Order-in-Original No.5/2007 dated

15.1.2007 has taken into consideration the submissions made by the appellant and has concluded that admittedly the assessee is having three separate units having separate service tax registration; however, the assessee failed to produce any certificate from the concerned Income Tax Authorities to the effect that the Balance Sheet/ Profit and Loss Account filed with the Income Tax Authorities pertain to all the three units; the appellants have not produced any evidence regarding the discharge of service tax liability. The assessee is liable to pay service tax as alleged in the show-cause notice. Aggrieved by the above order, the appellants have filed the present appeal.

4. The learned counsel for the appellants have contended that the issue involved in the present appeal is the demand of service tax under the head "Consulting Engineering Service"; period involved was 2000-2001 and 2001-02. However, there is a material change in the definition of "Consulting Engineer Service" in the statute whereas prior to 1.5.2006 *"Consulting Engineer" means any professionally qualified engineer or an engineering 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 engineering*. In terms of Section

65(18) of the Act, prior to 1.5.2006, the definition of "Consulting Engineering Service" means *'Consulting Engineer' means any professionally qualified engineer or any body corporate or any other firm who, either directly or indirectly renders any advice, consultancy or technical assistance in any manner to any person in one or more disciplines of engineering*. The learned counsel for the appellants has stated that though the appellants have not taken this argument before the adjudicating authority they are within their rights to take the legal question before the appellate Tribunal. They have relied on the judgments of Hon'ble Supreme Court in the case of ***Assistant Collector of Central Excise vs. Ramdev Tobacco Company: 1991 (51) ELT 631 (SC)*** wherein it has been held that a pure question of law can be entertained at appellate stage, even if it was not raised before lower court.

4.1 The learned counsel further contended that as regards their liability to pay tax, there are many decisions of the Hon'ble High Courts and Supreme Courts in their favour and that the issue is now settled by the decision of the Hon'ble High Court of Karnataka in the case of *Commissioner of Service Tax vs. Turbotech Precision Engineering Pvt. Ltd.: 2010 (18) STR 545*

(Kar.), wherein in para 8 it has held as under:

> *"8. From the combined reading of the definition of Consulting engineer prior to 2006 and after 2006, it is clear to the Court that the service rendered by the Company had not been included under the definition of consulting engineer prior to 2006 as it stood under Section 65(13). As a matter of fact, this Court has decided the said point in CEA 12/2007 on 1st April 2010 stating that prior to the Amendment Act, 2006, the Companies were not included under the definition of consulting engineer. When we have taken such a view, considering the relevant assessment year in the present case we have to hold that the service rendered by the assessee-Company during relevant period cannot be brought under the category of consulting engineer. If the service rendered by the assessee cannot be considered as a consulting engineer, the question of calling upon the assessee to pay the service tax under the Finance Act, brought the assessee under the word consulting engineer does not arise at all. Therefore, the said point has to be answered against the revenue and in favour of the assessee."*

4.2 CESTAT, Delhi, in the following cases have also held that the company or body corporate was not covered in the scope of 'Consulting Engineer' before the amendment to the definition of "Consulting Engineering Service" with effect from 1.5.2006. It is seen that appellants being a company or body corporate were outside the ambit of 'Consulting Engineer' during the relevant period and consequently, the service rendered by them was outside the scope of "Consulting Engineering Service".

- *CCE & ST vs. Simplex Infrastructure & Foundry Works: 2014 (34) STR 191 (Del.)*
- *Simplex Infrastructure & Foundry Works vs. CCE, Raipur: 2012 (25)*

STR 106 (Tri.-Del.)

- *M.P. Lagu Udyog Nigam Ltd. vs. CCE, Bhopal: 2015 (37) STR 308 (Tri.-Del.)*
- *Sepco Electric Power Construction Corpn. Vs. CCE: 2016 (42) STR 37 (Tri.-Del.)*

4.3 CESTAT Mumbai has also expressed similar view in the case of ***Korpan Ltd. vs. CCE, Raigad: 2017 (51) STR 41 (Tri.-Mum.)***.

5. The learned AR for the Revenue has reiterated the findings of the adjudicating authority and stated that the appellants have accepted part of their duty liability and have paid the same during the relevant period and have not agitated on this legal aspect before the adjudicating authority; therefore, the same cannot be taken at the appellate stage now. The departmental representative, moreover, contended that in case the CESTAT considers that the issue can be raised at this juncture, the only recourse available could be to remand the case back to the adjudicating authority for proper appreciation in view of the legal position.

6. We have gone through the facts of the case and have carefully considered the averments made by the learned counsel for the appellant as well as the departmental representative. The

brief issue to be decided in this case is whether the appellants being a body corporate are liable to pay duty as Chartered Engineer prior to the period 1.5.2006. As submitted by the appellants, the definition of "Consulting Engineering Service" has been changed w.e.f. 1.5.2006. Prior to this date, the definition of *'Consulting Engineer' means any professionally qualified engineer or any body corporate or any other firm who, either directly or indirectly renders any advice, consultancy or technical assistance in any manner to any person in one or more disciplines of engineering*. With effect from 1.5.2006, *"Consulting Engineer" means any professionally qualified engineer or an engineering 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 engineering*.

6.1 It is very clear from the above definition that the appellants being a body corporate are liable to pay service tax as a 'Consulting Engineer' only post 30.4.2006 whereas the demand pertains to the period 2000-01 and 2001-02. We find that the issue is squarely settled by the decision of the Hon'ble High Court of Karnataka in the case of ***Turbotech Precision Engineering Pvt. Ltd.***

7. Coming to the second issue with regard to the learned departmental representative's objection to the question of law being raised at the appellate stage, we do not find any force in the arguments as discussed supra and as the issue pertaining in this appeal is covered by the decision of the Hon'ble Karnataka High Court ***Turbotech Precision Engineering Pvt. Ltd.*** The appellants are within their rights to raise their issue as held by the Hon'ble Supreme Court in the case of ***Ramdev Tobacco Company*** (supra). Moreover, the question of law being squarely settled by the decision of the Hon'ble Karnataka High Court remanding back the case to the original adjudicating authority at this juncture would not serve any purpose other than prolonging the litigation on a squarely settled matter. Therefore, appeal is allowed with consequential relief, if any.

(Operative portion of the Order was pronounced
in Open Court on **28/05/2018.**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

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