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

Appeal(s) Involved:

ST/454/2008-DB

[Arising out of Order-in-Appeal No. 100/2008 dated 11/05/2007 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Cochin.]

Commissioner of Central Excise, Customs and Service Tax Cochin-CCE
C R BUILDING,
I S PRESS ROAD, ERNAKULAM,
COCHIN, - 682018
KERALA

Appellant(s)

Versus

M/s. Sherbrooke Aluminium Products
Door No.41/1625, Ground Floor, S1 Kadavil Court, Arangath Cross Road, Pullepady
Cochin - 682018
KERALA

Respondent(s)

Appearance:

Mr. Pakshirajan, AR

For the Appellant

Mr. Raghavendra, Advocate
G.SAMPATH & S. RAGHU
543,12TH CROSS, 8TH MAIN
J.P NAGARA 2ND PAHASE,
BANGALORE - 560078
KARANATAKA

For the Respondent

Date of Hearing: 11/06/2018
Date of Decision: 11/06/2018

CORAM:

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

Final Order No. 20874 / 2018

Per : P. ANJANI KUMAR

This is an appeal by the Department. The respondents are engaged in construction of doors, windows, partitions, etc., of commercial buildings and residential complexes or units as per the contracts. The doors/windows/partitions are fixed along with the buildings at the time of construction of walls and become integral part of the buildings. The respondents are registered themselves for service tax under the categories of 'Commercial or Industrial Construction Service' and 'Construction of Residential Complex Service' and paid service tax after availing the benefit of exemption/abatement in terms of Notification No.15/2004-ST dated 10.9.2004.

2. Preventive officers of Cochin Commissionerate have visited the respondent's premises on 7.8.2006 and on conclusion of the investigations issued a show-cause notice dated 16.10.2006 alleging that the works undertaken by them were under completion and finishing services in relation to 'Commercial or Industrial Construction Service' and 'Construction of Residential Complex Service' and denied the benefit of abatement of 67% under Notification No.15/2004-ST dated 10.9.2004 as amended by No.19/2005-ST dated 7.6.2005 and No.1/2005 dated 1.3.2005. The Joint Commissioner of Central Excise and Customs vide Order-in-Original No.47/2007-ST dated 11.5.2007 confirmed the service tax demand along with interest and imposed penalties under Section 76, 77 and 78. The learned

Commissioner (A), Cochin vide Order-in-Appeal No.100/2008 dated 11.6.2008 allowed the appeal of the respondents.

3. The respondent submitted that the services provided post construction are only covered under completion and finishing service. In their case, they are fixing doors/windows/partitions at the time of construction of walls itself; the services provided by them are integral part of the construction activity and cannot be vivisected. Their services fall under the category of 'Commercial or Industrial Construction Service' and 'Construction of Residential Complex Service' and hence, they are eligible for the abatement provided in the Notification cited supra. The very meaning of the word "Completion and finishing service" presupposes that the services should be only after the main construction work is completed. CBEC vide letter F. No.B1/6/2005-TRU dated 27.7.2005 has clarified that it is the post construction services which are included in the completion and finishing services of 'Commercial or Industrial Services'. Therefore, the benefit of Notification should be allowed. As the issue involves interpretation of the definitions, no penalty is imposable under Finance Act.

5. The respondents have contended that their classification when they have taken the registration was accepted by the department. CBEC vide letter F. No.B1/6/2005-TRU dated 27.7.2005 have categorically clarified at para 13.5 of the Circular that:

> "13.5 Post construction, completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry and similar services done in relation to a residential complex, whether or not new, would be included as part of the construction activity of residential complexes for the purpose of levy of service tax."

5.1 Further, at para 14.2, it was categorically confirmed that:

> "14.2 Post construction completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, especially if undertaken as an isolated or stand alone contract, are also specifically included. Thus post construction completion and finishing services are specifically included in the definition of commercial or industrial construction services."

5.2 The respondent further drawing reference to para 15 of the Order-in-Original stated that completion and finishing works in relation to construction service have been defined to include wood and metal joinery and carpentry, structural glazing works. The term 'joinery' has been clearly defined in the Explanatory notes to HSN under Chapter 44.18 according to which joinery applies more particularly to builder's fittings such as doors, windows, shutters, stairs, doors or window frames. Similarly, metal joinery would also refer to the above builder's fittings.

6. Heard both sides and perused the records of the case.

7. We find that the respondents have registered themselves under the category of 'Commercial or Industrial Construction Service' and 'Construction of Residential Complex Service' on 30.10.2004 and were availing abatement under Notification No.15/2004-ST dated 10.9.2004. The department proposed to categorize the services rendered by the respondents under completion and finishing services in relation to 'Commercial or Industrial Construction Service' and 'Construction of Residential Complex Service'. We find force in the argument of the respondent that CBEC have clarified vide above cited Circular that post construction, completion and finishing services are specifically included in the definition of 'Commercial or Industrial Construction Service' as the activity undertaken by respondents

appears to be before the completion of the complex or buildings. The learned Commissioner (A) has also dropped the contention of the department. However, this being a matter of fact regarding the stage at which the services of respondents are rendered and what are the terms of the contracts and agreements and what are the payments, the respondents have received for. For a final appreciation of the facts of the case and to classify the services rendered by the respondents under appropriate heading and to see the eligibility of abatement claimed by the respondents, it will be fair that the case should go back to the original adjudicating authority who will examine the claim of the respondent afresh in the light of the contracts, agreements, etc., the respondents had with their clients.

8. In view of the above, we allow the appeal by way of remand.

(Operative portion of the Order was pronounced
in Open Court on **11/06/2018.**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

rv...