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

Appeal(s) Involved:

ST/119/2008-DB

[Arising out of Order-in-Appeal No. 38/07 ST dated 31/12/2007 passed by Commissioner of Central Excise & Service Tax (Appeals), Bangalore]

ABB LTD,
GIDC,MAKARPURA, MANEJA,
VODADARA-390013

Appellant(s)

Versus

Commissioner of Central Excise,Customs and Service Tax
BANGALORE-LTU
100 FT RING ROAD JSS TOWERS,
BANASHANKARI-III STAGE,
BANGALORE, - 560085
KARNATAKA

Respondent(s)

Appearance:

Mr. G. Shivdas, Advocate,
LAKSHMI KUMARAN & SRIDHARAN
WORLD TRADE CENTRE NO.404-406, 4TH FLOOR, SOUTH WING BRIGADE GATEWAY CAMPUS NO.26/1, DR. RAJKUMAR ROAD,
BANGALORE - 560 055
KARNATAKA

For the Appellant

Mr. Matrupsharan, AR

For the Respondent

Date of Hearing: 18/07/2018
Date of Decision: 18/07/2018

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

Final Order No. 20969 / 2018

Per : P.ANJANI KUMAR

The appellants are registered under the Companies Act, 1956. The Appellant s are engaged in setting up of electrical switchyards (sub-stations). The scope of project work included making survey and preparation of project report, feasibility studies of project, network optimization and distribution automation studies for power distribution, provide technical services like establishing systems etc. On an inquiry conducted by DGCEI, the Department has demanded Service Tax of Rs.9,09,041/- under the category of "Consulting Engineers" for the period from 10.09.2004 to 30.04.2006. The appellants submitted that statutorily the "consulting engineering service" rendered by corporate bodies have come into existence w.e.f. 01.05.2006.

2. The learned counsel for the appellants submitted that Section 65 (31) of the Finance Act, 1994 "Consulting Engineer" wherein the word ' body corporate' was included w.e.f. 01.05.2006 and the definition reads as Section 65 (31) "Consulting Engineer" means any professionally qualified engineer or any body corporate or any 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. We place reliance on the case of ***CST Bangalore Vs. Turbotech Precision Engineering Pvt. Ltd.2010 (18) STR 545 (Karnataka)*** wherein the Hon'ble High Court of Karnataka held that the assesse being company was not covered under "consulting

engineering service" prior to 01.05.2006 and the Department's appeal on similar cases was dismissed by Hon'ble Supreme Court which is reported in ***Commissioner of C.Ex. & Cus., Kerala Vs. Larsen & Toubro Ltd. 2015 (39) STR 913 (SC).*** They also relied upon the following case laws:

(i) Commissioner of Service Tax, Bangalore Vs. Araco Corporation 2010 (19) STR 169(Kar.).
(ii) CCE & ST Vs. Simplex Infrastructure & Foundary Works, 2014 (34) STR 191 (Del).
(iii) Simplex Infrastructures Ltd. Vs. Commissioner of Service Tax, Kolkata, 2016 (41) STR 634 (Cal.).
(iv) Speco Electric Power Construction Corporation Vs. CCE, Raipur, 2016 (42) STR 37 (Tri. Del).
(v) Korpan Ltd. Vs. CCE, Raigad 2016-VIL-912-CESTAT-MUM-ST.
(vi) CCE. & ST Vadodara-I Vs. Vijay Tanks & Vessels Ltd. 2017-VIL-461-CESTAT-AHM-ST.
(vii) Net Pro Active Services Pvt. Ltd. Vs. Commissioner of Service Tax, Bangalore 2018-VIL-423-CESTAT-BLR-ST.

3. The learned Authorized Representative has reiterated the findings of OIO and OIA.

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

5. We find that the issue is squarely covered by the decision of Hon'ble Karnataka High Court and other Benches of this Tribunal. We find that the word "body corporate"

being included after amendment in Section 65/31 w.e.f. 01.05.2006 there can be no question of levy of Service Tax for "Consulting Engineering Services" of body corporates before 01.05.2006 going by the ratio of the judgments cited supra. In view of the same, we allow the appeal with consequential relief, if any.

(Operative portion of the Order was pronounced
in Open Court on **18/07/2018**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

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