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

Appeal(s) Involved:

ST/554/2008-DB

[Arising out of Order-in-Appeal No. 51/2008 dated 25/07/2008 passed by CCE(Appeals), Mangalore]

ENGINEERS COMBINE INDIA,
1182,SHESHALAYA, 80FT ROAD,
VIJAYANAGAR MYSORE,

Appellant(s)

Versus

Commissioner of Central Excise and Service Tax MANGALORE
NULL 7TH FLOOR...TRADE CENTRE,
BUNTS HOSTEL RD.,
MANGALORE, - 575003
KARNATAKA

Respondent(s)

Appearance:

Shri S. LOKNATH, CA
459, 'AASHIANAA', 6TH
MAIN, 1ST STAGE, VIJAYANAGAR,
MYSORE - 570017
KARNATAKA

For the Appellant

Shri Madhupsharan, Asst. Commissioner(AR)

For the Respondent

Date of Hearing: 17/07/2018
Date of Decision: 17/07/2018

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

Final Order No. 21036 / 2018

Per : S.S GARG

The present appeal is directed against the impugned order dt. 25/07/2008 passed by the Commissioner(Appeals) whereby the Commissioner(Appeals) has upheld the Order-in-Original dt. 15/02/2007 and rejected the appeal of the appellant.

2. Briefly the facts of the present case are that the appellant is a registered assessee and engaged in providing Erection, Commissioning and installation service. The Department observed that the appellant had failed to obtain the registration soon after the introduction of levy of service tax on the said service & had not paid the service tax during the period from 10/09/2004 to 15/06/2005. A show-cause notice was issued and the adjudicating authority had confirmed the demand of Rs.1,82,217/- for the period 10/09/2004 to 15/06/2005 with interest. Penalty of Rs.100/- per day under Section 76 of Finance Act, 1994, penalty of Rs.1000/- under Section 77 and penalty of Rs.1,82,217/- under Section 78 had been imposed. Aggrieved by the Order-in-Original, appellant filed appeal before the Commissioner(Appeals) who also rejected the appeal. Hence the present appeal.

3. Heard both sides and perused records.

4. Learned counsel for the appellant submitted that impugned order is not sustainable in law as the same has been passed without appreciating the facts and law. He further submitted that the activity carried out by the appellant is nothing to do with plant, machinery or equipment. The activity is relating to the erection of transmission line, transformers, circuit breakers etc. which Section 65(39a) does not cover prior to 16/06/2005. He further submitted that erection, commissioning or installation is defined after 16/06/2005 as any services provided by a commissioning and installation agency, in relation to electrical and

electronic devices, including wiring or fitting thereof. He further submitted that the Commissioner(Appeals) has not been able to substantiate the applicability of classification prior to the amendment. In support of his submission, he relied upon the following decisions:-

i. Chadalavada Infratech Ltd. Vs. CCE&ST, Hyderabad-II [2017 (7) TMI 296 – CESTAT Hyderabad]
ii. Badri Singh Vs. CCE &ST, Bhopal [2018(6) TMI 1255 – CESTAT New Delhi]
iii. Deepak Cables (India) Ltd. Vs. CCT, Bangalore [2018*6) TMI 673 – CESTAT Bangalore]

5. On the other hand, the learned AR defended the impugned order.

6. After considering the submissions of both the parties and perusal of the material on record as well as the decisions relied upon by the appellant, we find that in the present case, the appellants are only engaged in the erection of transmission lines, transformers, circuit breakers and this service was redefined vide DT dt. 16/06/2005 but it still does not include erection of transmission line, transformers, circuit breakers. In the present case, the period of dispute is 10/09/2004 to 15/06/2005 whereas erection, commissioning and installation service is leviable to service tax only after 16/06/2005 and therefore the services rendered by the appellant do not fall in the definition of erection, commissioning and installation and consequently, the appellants are not liable to pay the service tax. Further we find that the decisions relied upon by the appellant are on the same issue and by following the ratio of the above cited decisions, we are of the

view that the case is covered by the decisions cited supra. Therefore, the appellants are not liable for service tax. Consequently, we allow the appeal by setting aside the impugned order.

(Operative portion of the Order was pronounced
in Open Court on **17/07/2018**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

Raja...