

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

Appeal(s) Involved:

ST/262/2008-DB & ST/640/2009-DB

[Arising out of:

- (i) Order-in-Appeal No. 14/2008-CE dated 28/03/2008;
- (ii) Order-in-Appeal No.151/2009 dated 21.4.2009

Both passed by the Commissioner of Central Excise
(Appeals), Mangalore.]

**M/s. ABIDEEP INTERLOCK
PAVERS PVT. LTD.**

4B, SHIVALLY INDUSTRIAL AREA,
MANIPAL, UDUPI DISTRICT

Appellant(s)

Versus

**The Commissioner of Central
Excise**

7TH FLOOR, TRADE CENTRE,
BUNTS HOSTEL RD.,
MANGALORE – 575 003.
KARNATAKA

Respondent(s)

Appearance:

Mr. Raghavendra, Advocate

S. RAGHU ADV
NO.543, 12TH CROSS, 8TH MAIN,
J.P.NAGAR 2ND PHASE,
BANGALORE 560 078

For the Appellant

Mrs. Kavitha Podwal, AR

For the Respondent

Date of Hearing: 17/08/2018

Date of Decision: 31/08/2018

CORAM:

HON'BLE SHRI S.S GARG, JUDICIAL MEMBER

HON'BLE SHRI P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 21244 - 21245 /2018

Per : P. ANJANI KUMAR

The appellants, M/s. Abhideep Interlock Pavers Pvt. Ltd., are engaged in the manufacture of interlocking concrete bricks and is availing the benefit of SSI under Notification No.8/2003-CE. The appellants are also undertaking embedding of interlocking bricks at the site of the customers for laying of internal roads and approach roads to the compound of the building on labour basis as per Section 65(105)(zzq). The Department alleged that the appellants are providing construction services during the period September 2004 to November 2005. A show-cause notice dated 31.3.2006 which was confirmed by the Assistant Commissioner vide Order-in-Original No.71/2006-07 dated 14.2.2005 and OIO No.17/2008-ST JD dated 28.5.2008. The Commissioner (A) vide Order-in-Appeal No.14/2008-CE dated 28.3.2006 and OIA No.151/2009 dated 21.4.2009 has upheld the Orders-in-Original and confirmed the service tax with interest; however, he set aside the penalties imposed under Section 78 of the Finance Act, 1994 and remanded back the case to the original adjudicating authority for reworking the duty liability taking into account the cum-duty price in terms of Section 67(2) of the Finance Act, 1994. The details of the appeals are given below:

Appeal No.	Period	SCN date	OIO	OIA	Service Tax
ST/262/2008	16.6.2005 to Nov. 2005	31.3.2006	No.71/2006-07 dated 14.2.2005	No.14/2008-CE dated 28.3.2006	Rs.4,57,270/-
ST/640/2009	Dec. 2005 to July 2006 & Aug. 2006 to May 2007	15.2.2007 & 22.10.2007	No.17/2008-ST JD dated 28.5.2008	No.151/2009 dated 21.4.2009	Rs.3,60,014/- Rs.5,78,683/-

2. Aggrieved by the above, the appellants filed appeal No. ST/262/2008-DB & ST/640/2009-DB on the grounds that:

- (i) Ld. Commissioner having fairly accepted the legal position prior to 16.6.2005 erred in confirming the demand for the period after 16.6.2005.
- (ii) The Ld. Commissioner has taken a new point and has held that the activity undertaken by them falls under completion and finishing services.
- (iii) The Ld. Commissioner has failed to appreciate that the activity to be liable for service tax should be carried in relation to a new building or a civil structure or a part thereof.
- (iv) The findings recorded by the Ld. Commissioner in para 6-7 of the impugned order held that the services rendered by the appellant is taxable under the heading 'Construction of commercial or industrial construction service' and also construction of residential building is

beyond the scope of show-cause notice inasmuch as the show-cause notice only referred to a category of 'Commercial or Industrial Service'.

3. The learned counsel for the appellant has submitted that the activity of laying of internal roads and approach roads to the compound of the building was undertaken by the appellant as a separate and exclusive activity and not as part of the contract for construction of a factory / building. Therefore, they are specifically covered under the exclusive clause of definition of 'Commercial or Industrial Construction Service'. The CBEC vide Circular No.B1/6/2005-TRU dated 27.2.2005 clarified that if contract for construction is a single contract, then the construction of road is not recognized as a separate activity as per the contract and consequently, service tax would be leviable on the gross amount charged for construction including the value of construction of roads. The learned counsel submitted that the aforesaid Circular has been followed by the Tribunal in the following cases, wherein it was held that construction of driveway in petrol pump is not taxable.

- ***CST, Ahmedabad vs. Shilpa Construction Pvt. Ltd.: 2010 (19) STR 830 (Tri.-Ahmd.)***
- ***ATN Advertising Services vs. CCE, Allahabad: 2018 (9) GSTL 301 (Tri.-All.)***

4. The learned DR has reiterated the findings of the Orders-in-Original and Orders-in-Appeal.

5. Heard both sides and peruse the records. We find that CBEC vide Circular cited supra has clarified at para 14.4. and 14.5 as under:

“14.4 At present, services rendered for construction of commercial or industrial buildings is taxable. However, construction of roads is not liable to service tax. A point has been raised that if a commercial complex is constructed which also contains roads whether the value of construction of roads would be liable to service tax.

14.5 If the contract for construction of commercial complex is a single contract and the construction of road is not recognized as a separate activity as per the contract, then the service tax would be leviable on the gross amount charged for construction including the value of construction of roads.”

5.1 From the above, it is clear that construction of roads if undertaken as a part of contract for construction of a commercial complex or industrial building, is taxable. In the instant case, the appellants have not undertaken any such activity and their contract with their buyers was limited to laying of interlocking paver blocks and the approach roads. Therefore, the findings of the impugned order appear to be yond the scope of provisions of law and the Circular issued. We also find that the Tribunal in the cases cited above has taken the same view. The Tribunal in the case of Shilpa Construction Pvt. Ltd. (supra) in para 7 has held that:

“In this connection we find that the Board’s Circular No. B1/6/2005-TRU dated 27-7-05 is to the effect that - “if the contract for construction of commercial complex is a single contract and the construction of road is not recognized as a separate activity as per the contract, then the service tax would be leviable on the gross amount charged for construction including the value of construction of road”. As such it becomes clear that the value of construction of road is to be included in the value of the service only when there is no segregation between the construction of commercial complex and construction of the road. If the contract recognizes the two activities as separate activities, even though the construction of the road is in connection with the commercial complex, the benefit has to be allowed. As such the fact whether the road is being constructed for public utility purpose or as a part of a commercial complex is not relevant, in terms of the Board’s Circular above.....”

6. In view of the above, we allow the appeals filed by the appellants.

(Order was pronounced in Open Court on **31.08.2018.**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

RV