CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>BANGALORE</u>

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 20877 of 2018

(Arising out of Order-in-Appeal No.COC-EXCUS-000-APP-125-2017 dated 13.03.2018 passed by the Commissioner of Central Taxes & Central Excise(Appeals), Cochin)

M/s. E.M. Mani Constructions (P) Ltd.,
36/71, Kottai Canal Road,
Off. Lissie Hospital,
Cochin – 682 018. Kerala.

Appellant(s)

VERSUS

Commissioner of Central Tax & Central Excise,
C.R. Building, I.S. Press Road,
Cochin- 682 018.

Respondent(s)

<u>APPEARANCE:</u>

Mr. Abraham Joseph Markos, Advocate for the Appellant

Mr. Vinod Kumar Garwal, Superintendent (AR) for the Respondent

CORAM:
HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

<u>Final Order No. 20956 /2026</u>

DATE OF HEARING: 24.06.2026
DATE OF DECISION: 24.06.2026

PER : P.A. AUGUSTIAN

Issue in the present appeal is regarding service tax liability on the expenditure incurred on account of remuneration paid to the Directors during the period 2012-13 and 2013-14. Alleging that on perusal of the Income Tax Returns filed for the Directors, appellant had short paid service tax, proceedings were initiated and show-cause notice was issued on 12.06.2015; thereafter, adjudication authority as per the order dated 15.02.2016 confirmed the service tax with interest and also imposed penalties under various provisions of law. Aggrieved by the said order, appeal was filed before the Commissioner (Appeals) and Commissioner (Appeals) as per the impugned order dated 13.03.2018 rejected the appeal. Aggrieved by the said order, present appeal is filed.

2. When the appeal came up for hearing, learned counsel for the appellant drew our attention to the impugned order and submits that the demand is made only on the ground that in the Income Tax returns, payments were made. In this regard, the learned counsel drew our attention to the IT return and submits that as per the statement of income for the relevant period, the incomes were shown as salary from the appellant and fact being so, the impugned order demanding service tax on the appellant is unsustainable.

3. Learned counsel further submits that the directors of the appellant have in full-time employment of the company since the commencement of business and/or since their appointment as directors and are responsible for the day to day operations of the Company. As whole-time directors of the Company, they are therefore employees of the Company and are being paid a salary for their services as employees of the Company, which is clearly excluded from the definition of service under Section 65B(44)(b) of the Finance Act, 1994 and therefore no service tax can be levied on the remuneration as salary to directors. The relevant portion of Section 65B(44) defining "Service" is extracted hereinbelow:

> *"Service" means any activity carried out a person for another for consideration, and includes a declared service, but shall not include*

(a). … ….

(b) a provision of service by an employee to the employer in the course of or in relation to his employment
(c) … ….

4. Learned Counsel further submits that the appellant has not paid any sitting fees to the Directors in any of the years as they were drawing salary from the Company within the limits prescribed by the Companies Act, 1956. It is therefore evident from the above that the remuneration paid to the Directors is for their service as employees of the Company, which is therefore exempt from service tax liability. The impugned Order is therefore totally incorrect and erroneous and liable to be set aside. In any event, the mere fact that TDS was not deduced for some directors is immaterial and not a ground to disallow the exemption to levy of service tax under Sec. 65B(44)(b) of the Finance Act.

5. Learned counsel further submits that demand is confirmed by invoking extended period of limitation and there is no allegation regarding suppression of fact. Fact being so, impugned order confirming the demand by invoking extended period of limitation is also unsustainable.

6. Learned Authorized Representative (AR) for the Revenue reiterated the findings of the impugned order.

7. Heard both sides and perused the records.

8. We find that as per the evidence available on record, expenses shown as salary for the employees / directors is excluded as per the statutory provisions. Merely TDS was not

deducted on some directors is not a ground to levy of service tax under Section 65B(44)(b) of the Finance Act, 1994.

9. In view of the above, impugned order is set aside and appeal is allowed with consequential relief, if any, in accordance with law.

(Operative portion of this Order was pronounced in Open Court
On conclusion of the hearing)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

Raja…