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

Appeal(s) Involved:

ST/718/2008-DB

[Arising out of Order-in-Appeal No.151/2008 dated 19/09/2008 passed by Commissioner of Central Excise (Appeals), Mangalore]

M/s Kk.lonappan
Jose Brother Compound Kottara Chowki
Mangalore
KARNATAKA
575006

Appellant(s)

Versus

C.C.E. & S.T.-Mangalore
7TH FLOOR...TRADE CENTRE,
BUNTS HOSTEL RD.,
MANGALORE,
KARNATAKA
575003

Respondent(s)

Appearance:

MR. Rajesh Kumar, CA
HIRAGANGE & ASSOCIATES
#1010, 1st floor(Above Corp.Bank) 26th Main,
4th T Block, Jayanagar,
BANGALORE
KARNATAKA
560041

For the Appellant

Mr. K.Veerabhadra Reddy, Addl. Commissioner, AR

For the Respondent

Date of Hearing: 26/03/2019
Date of Decision:29/03/2019

CORAM:

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

Final Order No.20296/2019

Per : P. ANJANI KUMAR

The appellants, Shri K.K. Lonappan, have been issued a SCN dated 24.04.2007 alleging that the appellants have rendered the services of construction of roads and clearing and cooling pond materials which are chargeable under Management Maintenance or Repair Services to M/s. Kudremukh Iron Ore Company Ltd., Mangalore-10 during the period January 2006 to September 2006 and that they have not paid the applicable Service Tax on the same. A SCN dated 30.04.2007 was issued and was confirmed by OIO No. 67/2007 dated 10.06.2007. Commissioner (A) vide Order No. 151/2008 dated 19.09.2008 has upheld the order passed by the lower authority. Hence, the present appeal.

2. Learned Counsel for the appellants submitted that the service related to the road was demanded under Management Maintenance and Repair Service for the period January 2006 to September 2006 which was exempted by special provision of Section 97 of the Finance Act, 1994 which is reproduced as under:

> *"Section 97.* ***Special provision for exemption in certain cases relating to management, etc., of roads-*** *(1) Notwithstanding anything contained in Section 66, no service tax shall be levied or collected in respect of management, maintenance or repair of roads, during the period on and from the 16th day of June, 2005 to the 26th day of July, 2009 (both days inclusive)."*

Learned Counsel has further submitted that the activity undertaken in construction of road was in the nature of Works Contract and therefore was not liable for Service Tax prior to 01.06.2007 as per Hon'ble Supreme Court decision in the case of *CCE & C, Kerala vs.*

Larsen & Tubro Ltd., 2015 (39) STR 913 (SC).

2.1. As regards the clearing of cooling pond materials, the nature of work was clearing of cooling/dump pond materials and transportation to dumping pits and consideration was paid on the basis of the quantum of the material shifted and not for any repair or maintenance of the pond. Moreover, they have paid VAT on the total value of the work related to cleaning of cooling pond therefore no Service Tax is leviable.

3. The Learned AR of the Department reiterated the findings of OIO and OIA and submitted that the Hon'ble Madras High Court in the case of *K.O. Periyakaruppan v. UOI, 2018 (16) GSTL 78 (Mad.)* it was held that Notification No. 25/2012-ST dated 20.06.2012 at Serial No. 13 mentions at 13(a) that Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-

(a) a road, bridge, tunnel, or terminal for road transportation for use by general public;

He therefore submitted that as the road built or maintained by the appellants is not for use by general public, the exemption is not available.

4. Heard both sides and perused the records.

5. On going through the work order dated December 24, 2005 given to the appellants by M/s Kudremukh Iron Ore Co. Ltd., it is seen that the work order was given for asphalting and parthole filling of existing roads at various locations inside the plant premises, KIOCL, Pannambur, it is seen that work was awarded to the appellants therefore it's a works contract. Therefore, it is squarely covered by the decision of Hon'ble Supreme Court in the case of *L&T Ltd.* (supra). The submission by the Learned AR on the basis of the case of *K.O. Periyakaruppan* (supra) that the road for which the work undertaken should be for use of general public in order to be eligible for the exemption under Notification No. 25/2012-ST dated 20.06.2012, does not appear to be applicable in view of the special provision of Section 97 as cited above. Notification mentiones that the road should be for use by general public whereas Section 97 does not mention any such condition. We find that Notification cannot go beyond the statute and in case of a difference; statute shall prevail over the Notification. Moreover, as held above, the work undertaken by the appellant comes under the category of Works Contract and therefore is not taxable before 01.06.2007 as held by Hon'ble Supreme Court in the case of *L&T Ltd.* (supra).

6. Coming to the issue of the clearing of cooling pond materials undertaken by the appellants that the description of the work allotted to the appellants by KIOCL vide work order dated 04.08.2006 was for *(clearing of cooling/dump pond material by engaging, suitable mobile equipment such as JCB, Proclain/excavator etc, and transporting the materials in tippers form cooling/dump pond to dumping pits in laydown area, Shed I, II and III, triangular or any other place inside KIOCL's Plant premises, all as per note given below and as per the instructions of the Engineer-in-charge)*. The work order was for 10,000 Cu.M @ 180 per Cu.M. Therefore, this work also comes under the ambit of Works Contract and therefore not chargeable Service Tax before 01.06.2007. In view of this the other submissions of the appellants that they come under transportation service and that VAT has been paid on the work undertaken for clearing of cooling pond become redundant.

7. In the result, the appeal is allowed.

(Order was pronounced
in Open Court on **29/03/2019**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

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