CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH – COURT NO.1

Appeal(s) Involved:

Service Tax Appeal No.554 of 2009-DB

[*Arising out of Order-in-Appeal No. 133/2009 dated 13/04/2009 passed by the Commissioner of Central Excise (Appeals), Mangalore.*]

M/s. 3G Consultants
No.40, Balaji Towers
Adi Chunchanagiri Road,
T.K. Layout, Mysore Road,
MYSORE – 570 023.
KARNATAKA

Appellant(s)

Versus

The Commissioner of Service Tax
S1-S2, VINAYA MARGA,
SIDDHARTHA NAGAR,
MYSORE – 570 011.
KARNATAKA

Respondent(s)

Appearance:

Mr. M.S. SRINIVASA, Advocate
#185, 'BRAHM', 'G' CROSS,
3RD BLOCK EXTENSION,
NAGARBHAVI 2ND STAGE,
BANGALORE – 560 072
KARNATAKA.

For the Appellant

Mr. S. Devarajan,
Joint Commissioner (AR)

For the Respondent

Date of Hearing: 17/12/2019
Date of Decision: 09/01/2020

CORAM:

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

Final Order No. 20037 / 2020

Per : S.S GARG

The present appeal is directed against the impugned order dated 13.4.2009 passed by the Commissioner (A) whereby the Commissioner (A) has confirmed the demand of service tax and education cess along with interest. However, the penalty under Sections 76, 77 and 78 were set aside by the Commissioner (A).

2. Briefly the facts of the present case are that the appellant was registered under the category of 'Consulting Engineering Services'. During the period 2003 to 2006, they had provided technical support services to civil engineering projects undertaken by the Government agencies such as Rural Panchayath Engineering Department, Irrigation Department and Public Works Department. The appellant had not paid the service tax for the services rendered. The department noticed this lapse and issued a show-cause notice and confirmed the service tax of Rs.537577/- along with interest and imposed penalty of Rs.100/- per day under Section 76, Rs.1000/- as per Section 77 and equivalent penalty under Section 78. Aggrieved by the Order-in-Original, the appellant filed appeal before the Commissioner (A), who partially allowed the appeal.

3. Heard both the parties and perused the records.

4. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the definition of 'Consulting Engineering Services' as well as the definition of 'Survey and Map Making Service' as provided in the Finance Act, 1994. He further submitted that the Commissioner (A) has failed to appreciate that on perusal of the definition of taxable service as per Section 65(105)(zzzc) in respect of Survey and Map Making Service, it is clear that the appellant's activities of providing Survey and Map Making Service under the authorization of the Government is excluded from the scope of taxable service of Survey and Map Making Service and it cannot be subjected to levy of service tax. He further submitted that Commissioner (A) also failed to appreciate the Board's Circular No.B1/06/2005-TRU dated 27.7.2005

wherein the Survey and Map Making Services rendered by any agency under the control of Government or authorized by the Government are specifically excluded from the levy of service tax. He further submitted that the appellants were not involved in providing any sort of technical assistance, advice or consultancy. The process of surveying and map making are in no way related to any form of technical assistance, advice or consultancy, therefore, the department has wrongly classified the activity of the appellant under 'Consulting Engineering Services'. He further submitted that the service of Survey and Map Making was taxable with effect from 16.6.2005 and by virtue of the ratio of the decision in the case of ***Board of Control of Cricket in India vs. Commissioner of Service Tax reported in 2007-TIOL-684-CESTAT-MUM***, the appellant's services could not be taxed prior to 16.6.2005. In support of his submissions, he relied upon the following decisions:

- ***Geo Foundations & Structures (P) Ltd. vs. CCE, Cochin: 2009 (15) STR 408 (Tri.-Bang.)***
- ***Commissioner of Central Excise and Service Tax, Vadodara vs. Deshpande Patil Consultants: 2016 (46) S.T.R. 748 (Tri.-Ahmd.)***
- ***CCE & C, Vadodara-II vs. Mascon Multiservices & Consultants P. Ltd.: 2010 (19) STR 484 (Guj.)***
- ***Commissioner of Central Excise, Nagpur vs. ADCC Infocad Pvt. Ltd.: 2014 (35) STR 421 (Tri.-Mum.)***
- ***Mahakoshal Beverages Pvt. Ltd. vs. CCE, Belgaum: 2007 (6) STR 148 (Tri.-Bang.)***
- ***CCE & Cus. Belgaum vs. Mahakoshal Beverages Pvt. Ltd.: 2014 (33) STR 616 (Kar.)***
- ***Balaji Contractor vs. Commissioner of Central Excise, Jaipur-II: 2017 (52) STR 259 (Tri.-Del.)***
- ***Glass Fibres vs. Commissioner of Central Excise, Cochin: 2010 (18) STR 726 (Tri.-Bang.)***
- ***Board of Control for Cricket in India vs. Commissioner of Service Tax, Mumbai: 2007 (7) STR 384 (Tri.-Mum.)***

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, it is pertinent to reproduce the definition of Survey and Map Making Service as provided under Section 65(104b) of the Finance Act, 1994, which reads as under:

> *"Survey and Map-making means geological, geophysical or any other prospecting, surface, sub-surface or aerial surveying or map-making of any kind, but does not include survey and exploration of mineral."*

It is also relevant to see the definition of taxable service as provided under Section 65(105)(zzzc) in respect of 'Survey and Map-making Service' read as under:

> *"Service provided or to be provided to any person, by any other person, other than by an agency under the control of, or authorized by, the Government, in relation to survey and map-making."*

6.1 Further, we find that it is not disputed that the appellants during the relevant period were providing technical support service to civil engineering projects undertaken by the Government agencies and therefore, by the definition of taxable service, the activities undertaken by the appellants are excluded from the scope of taxable service of Survey and Map-making. Further, we find that this has also been clarified by the Circular issued by the Board dated 27.7.2005. Further, we have also examined the definition of 'Consulting Engineering Service' and the activities carried out by the appellant do not fall in that category. If the activities of the appellant fall under the 'Consulting Engineering Service', then there was no necessity to carve out specific service of Survey and Map-making Service with effect from 16.6.2005. Further, I find that in the case of Board of Control of Cricket in India vs. Commissioner of Service Tax cited supra, it was held that the assessee’s service cannot be taxed prior to 16.6.2005. In the said decision, the Tribunal has held that a subsequent entry having been enacted covering the activity without any change of the existing entry, the same has to be interpreted as if the earlier existing entry did not cover the subsequently created entry. Further, we find that in the case of Geo Foundations and Structures (P) Ltd. cited supra it has been held that the Survey and Map-making other than Government Department are liable to service tax with effect from 16.6.2005 and not under ‘Consulting Engineering Service’. By following the ratio of the above said decisions, we are of the considered view that the impugned order is not sustainable in law and therefore, we set aside the same by allowing the appeal of the appellant.

(Order was pronounced in Open Court on **09/01/2020.)**

S.S GARG
JUDICIAL MEMBER

P. ANJANI KUMAR
TECHNICAL MEMBER

RV