**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**SOUTH ZONAL BENCH, CHENNAI**

**Appeal No. ST/395/2010**

(Arising out of Order-in-Appeal No.35/2010-ST dated 29.3.2010 passed by the Commissioner of Customs, Central Excise and Service Tax (Appeals), Coimbatore)

M/s. BHR Constructions Appellant

Vs.

CCE, Coimbatore Respondent

Appearance

Shri S. Murugappan, Advocate for the Appellant
Shri K. Veerabhadra Reddy, JC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **12.04.2018**

Final Order No. **41101 / 2018**

**Per Bench**

Brief facts are that the appellant who was a sub-contractor was engaged by M/s. Indian Hume Pipes, Thanjavur for carrying out the works of laying, jointing etc. of concrete pipes manufactured and supplied by Indian Hume Pipes to TWAD Board. The department was of the view that the said services of laying, jointing etc. of pipes would fall under the category of Erection, Commissioning or Installation Services as defined under section 65(39a) of Finance Act, 1994. Show cause notices were issued proposing to demand the service tax along with interest and for imposing penalties. After due process of law, the original authority confirmed the demand, interest and also imposed penalties. In appeal, the Commissioner (Appeals) set aside the penalty imposed under section 76 but however upheld the rest of the demand. Aggrieved, the appellants are now before the Tribunal.

2. On behalf of the appellant, ld. counsel Shri S. Murugappan submitted that the issue whether the activity of laying pipes, jointing etc. would fall under Erection, Commissioning or Installation Service is settled by various decisions and relied upon the decision of the Tribunal in the case of Lalit Constructions Vs. Commissioner of Central Excise, Raigad reported in 2012 (27) STR 138 (Tri. Mum.).

3. The ld. AR Shri K. Veerabhadra Reddy reiterated the findings in the impugned order.

4. Heard both sides.

5. On identical facts, the Tribunal in the case relied by the ld. counsel for appellant has observed that digging earth and laying long distance pipeline is not covered under the definition of Erection, Commissioning or Installation Service. The Tribunal in the said case followed the decision in the case of Indian

Hume Pipe Co. Ltd. Vs. Commissioner of Central Excise – 2008 (12) STR 363.

6. Following the same, we are of the view that the demand cannot sustain. The impugned order is set aside and the appeal is allowed with consequential relief if any.

(Operative portion of the order was pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

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