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

**Appeal No.: ST/00010/2012**

(Arising out of Order-in-Appeal No. 329/2011 dated 17.10.2011 passed by the Commissioner of Central Excise (Appeals), Madurai)

M/s. The Indian Hume Pipe Co. Ltd. : Appellant

Vs.

The Commissioner of Central Excise, Madurai : Respondent

Appearance:-
Shri. Santhana Gopalan D., Advocate
for the Appellant
Shri. R. Subramaniyan, AC (AR)
for the Respondent

**CORAM:**
**Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)**
**Hon'ble Shri P Dinesha, Member (Judicial)**

Date of Hearing/Decision:**13.08.2018**

**Final Order No. 42271 / 2018**

**Per Madhu Mohan Damodhar :**

After hearing both sides we find that the issue involved concerned demand of service tax under Works Contract Service in respect of supply, transporting, excavating, laying, joining, testing and commissioning of PSC Pipes on a Work Order issued by the Tamil Nadu Water Supply and Drainage Board ("TWAD Board").

2. The impugned Order has sustained the demand of the Original Authority on the conclusion that appellants are not executing the impugned Works Contract Service "free of cost" to the public and that they are executing the contract as per the terms and conditions entered into by them with TWAD only for commercial consideration. There would not be any dispute that appellants are undertaking such projects as a charitable venture without any consideration. They definitely are a commercial organization and would be receiving some consideration under the Work Order from TWAD. However, what is relevant to note is that construction *inter alia* of a pipeline should be for "commerce or industry" as envisaged in the Explanation (ii) of the Definition of taxable service relating to Works Contract Service in Section 65(105)(zzzza) of the Finance Act, 1994.

3. At the same time, there is no allegation however that the pipeline is being laid by TWAD for supplying water to public which is in the realm of a public service activity. We find that the Hon'ble High Court of Madras in the appellants own case in ***C.C.E. Trichy Vs. Indian Humes Pipes Co. Ltd. – 2015 (40) S.T.R. 214 (Mad.)*** in a similar issue relating to supply of pre-stressed concrete pipes to TWAD has held that laying of long distance pipelines to enable

TWAD to supply water was an activity in public interest to take care of civic amenities liable to be provided by the State.

4. Following the same ratio, we hold that the appellants cannot come within the fold of taxable service for Works Contract under Section 65(105)(zzzza) of the Finance Act, 1994. This being so, the impugned Order inter alia upholding the demand of Service Tax of Rs. 3,13,552/- with interest and imposition of penalties cannot sustain and will have to be set aside, which we hereby do.

5. The appeal is therefore allowed with consequential benefits if any, as per law.

*(Dictated and pronounced in open Court)*

**(P Dinesha)**
Member (Judicial)

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

Sdd