IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. IV

Service Tax Appeal No. 686 of 2012

(Arising out of Order-in-Appeal No. 190/2012 dated 04.09.2012 passed by the Commissioner of Central Excise (Appeals), Central Revenue Building, Lal Bahadur Shashtri Marg, Madurai – 625 002)

M/s. TVS Interconnect Systems Limited, **: Appellant**
Madurai Melur Road, Vellaripatti,
Madurai – 625 122

VERSUS

The Commissioner of Central Excise & Service Tax, **: Respondent**
Madurai Commissionerate,
Lal Bahadur Shastri Marg,
Central Revenue Buildings,
Madurai – 625 002

APPEARANCE:

Shri. M.N. Bharathi, Advocate for the Appellant

Shri. L. Nandakumar, Authorized Representative (A.R.) for the Respondent

CORAM:

HON'BLE MR. C. J. MATHEW, MEMBER (TECHNICAL)
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 41686 / 2019

DATE OF HEARING: 12.12.2019

DATE OF DECISION: 12.12.2019

Order Per : Hon'ble Mr. P. Dinesha

By this appeal, the assessee is seeking refund of Service Tax erroneously paid which claim was not entertained by both the lower authorities.

2. The brief facts that are relevant are that the appellant was *inter alia* providing the services of erection, commissioning or installation, entered into an agreement for supply, erection and installation of communication systems in toll plaza with M/s. GMR SPV, Bengaluru, who

had undertaken highway road projects at different places across the country. In this regard, the appellant paid Service Tax of Rs. 11,36,755/- under the above category on the amounts received from the said customer executed by the appellant as a sub-contractor. The main contractor having refused to pay the Service Tax on the ground that the services relating to construction of road were covered under the category of Works Contract Service which was exempt, the appellant filed its refund claim for the above amount of Service Tax.

3. A Show Cause Notice dated 29.12.2010 came to be issued *inter alia* on the grounds that the appellant's refund claim was not correct and that the claim for refund was liable to be rejected. The appellant filed a detailed reply, but however, the Adjudicating Authority vide Order-in-Original No. 57/2011 (ST-Refund) dated 30.08.2011 rejected the refund claim. The appellant agitated its grievance before the First Appellate Authority namely, the Commissioner of Central Excise (Appeals), Madurai, but however, the First Appellate Authority having not been satisfied with the contentions of the assessee, upheld the rejection of refund vide impugned Order-in-Appeal No. 190/2012 dated 04.09.2012. The same has resulted in this appeal before this forum.

4. Today, when the matter was taken up for hearing, Shri. M.N. Bharathi, Learned Advocate appeared for the assessee-appellant and Shri. L. Nandakumar, Learned Assistant Commissioner (Authorized Representative) appeared for the Revenue-respondent.

5. Learned Advocate for the appellant submitted at the outset that the issue is no more *res integra* and in this regard, relied on the decisions of the co-ordinate Delhi and Mumbai Benches of the Tribunal in :

(i) *Phoenix Engineering v. C.C.E., Nagpur [2015 (39) S.T.R. 337 (Tri. – Mum.)];*

(ii) *Jagdish Prasad Agarwal v. C.C.E., Jaipur-I [2017 (3) G.S.T.L. 455 (Tri. – Del.)].*

6. On the other hand, Learned Authorized Representative for the Revenue supported the findings of the lower authorities.

7. Heard both sides.

8.1 In the case of *M/s. Phoenix Engineering (supra)*, the Mumbai Bench of the Tribunal has considered a more or less similar situation and the relevant finding reads as under :

> ***"5.1*** *Both from the show cause notice as well as the impugned order, especially paras 48 & 49, it is evident that the activity undertaken by the appellant pertain to widening/construction/maintenance of roads, construction of toll plaza and sheds including high mast poles, construction of bridges, etc. Therefore, there was enough material available before the adjudicating authority to verify the exact nature of work undertaken and to see whether the same was taxable or not. We have perused the work orders submitted by the appellant and find that all these work orders pertain to construction/repairs/maintenance of roads, construction of toll sheds/plaza located in the road, civil works relating to irrigation dams and so on. All these activities have been retrospectively exempted either by way of notification or by means of a specific provision in the Finance Act itself and therefore, the activities undertaken by the appellant is either exempted or falls outside the purview of the taxable services. Therefore, the impugned demands are clearly not sustainable in law and have to be set aside. Accordingly, we set aside the impugned order and allow the appeal."*

8.2 Similarly, in the case of *M/s. Jagdish Prasad Agarwal (supra),* the Delhi Bench has ruled as under :

> ***"5.*** *Heard both the sides and examined the case records. We find that services provided by the appellant in respect of maintenance and repair of roads during the period 16-6-2005 to 27-7-2009 were exempted from payment of service tax under Section 97 ibid. Since, the said statutory provision mandates that no service tax shall be levied on management, maintenance or repair of roads, we are of the view that service tax demand of Rs. 2,85,18,695/- confirmed by the lower authority will not be sustainable. Commercial or Industrial Construction service provided in respect of roads are specifically excluded from the purview of levy of service tax in terms of clause (25b) of Section 65 ibid. It is an admitted fact on record that the demand of Rs. 48,99,741/- is towards construction of Toll Plaza and Lanes, which are in relation to the service provided in respect of - roads. The phrase "in respect of roads" contained in clause (25b) of Section 65 ibid has a wider connotation and bears the widest possible scope and*

may be taken to mean "for the provision of". Thus, the service tax demand on Toll Plaza and Lanes will not be sustainable in this case."

9. In the case on hand, there is no dispute as regards the appellant rendering services to M/s. GMR SPV in the capacity of a sub-contractor with the main contractor rendering the services of construction of roads, which included installation of Highway Traffic Management System, Toll Management System, etc., to ensure complete functioning of the road in all respects. Further, there is also no dispute that the appellant was awarded the contract by the main contractor for supply and installation of toll collection and traffic control equipment with the scope of work including supply, installation, integration and commissioning of complete optic fibre based Gigabit Ethernet Communication Backbone Systems and also including detailed design of associated civil infrastructure and implementation.

10. The above facts read conjointly with the findings of the co-ordinate Benches make it clear that the nature of service being Works Contract, is clearly exempt since the service is provided only towards the construction of road and not for the benefit of any of the parties. Therefore, we are of the view that the rejection of refund is not in order and consequently, we set aside the impugned order.

11. The appeal of the assessee stands allowed with consequential benefits, if any, as per law.

(Operative part of the order pronounced in the open court)

Sd/-

(C.J. MATHEW)
MEMBER (TECHNICAL)

Sd/-

(P. DINESHA)
MEMBER (JUDICIAL)

Sdd