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

ST/797/2010 & ST/CO/6/2011

(Arising out of Order-in-Appeal No. 390/2010 dated 20.08.2010 passed by the Commissioner of Central Excise, (Appeals), Madurai).

CCE, Tirunelveli — Appellant

Vs.

M/s. Immanuel & Co. — Respondent

Appearance

Shri P. Arul, AC (AR)
for the Appellant

None
for the Respondents

CORAM :

Hon'ble Smt. ARCHANA WADHWA, JUDICIAL MEMBER
Hon'ble Shri B. RAVICHANDRAN, TECHNICAL MEMBER

Date of Hearing/Decision: **20.12.2017**

FINAL ORDER No. 43488 **/2017**

Per: Archana Wadhwa

Being aggrieved by the order passed by the Commissioner (Appeals), Revenue has filed the present appeal.

2. Ld. AR, Shri P. Arul, AC, appeared on behalf of the Revenue and nobody appeared on behalf of the respondent.

3. The dispute in the present appeal relates to the fact as to whether the services provided by the respondent under a contract relatable to widening and strengthening of the link road with bituminous concrete would attract service tax or not.

4. The Commissioner (Appeals) has extended the benefit by observing as under:-

> "9. The above circular stated that strengthening of road is covered under the "Maintenance of Repair activities of road whereas "widening of narrow road" is covered under the Construction activities of road and the later is not liable to service tax. In the above circumstance, with reference to "Maintenance or repair service" it is observed that the maintenance means to keep in a good condition and the repair means to restore in good condition and in both cases, the product does not lose its identity. In this case the respondents have widened the existing road and thereafter they have strengthened the new broader road. The work of widening of narrow road to broader rad would be completed only after the strengthening of new existing road for keeping in good condition. Therefore, the work "widening and strengthening of link road with bituminous concrete" rendered by the respondents is not liable to service tax under "Maintenance or Repair Services"

5. As against the above finding, Revenue has not been able to give us any ground to object the said ground of the Commissioner (Appeals). We note that the above finding has been given by the appellate authority based upon the Board's Circular No. 110/4/09-ST dated 23.02.2009. We also have reasons to believe that specifically the repair of roads were also exempted by a 11C

Notification though the Ld. AR has not been able to produce the said notification before us.

6. In any case and in any ~~way~~ view of the matter, we find no infirmity in the views of the Commissioner (Appeals). Accordingly, Revenue's appeal is rejected.

7. The cross-objection filed by the respondent is in the nature of written submissions also gets disposed of.

(Order dictated and pronounced in the open Court on)

15/2/18

(B. RAVICHANDRAN)
TECHNICAL MEMBER

(ARCHANA WADHWA)
JUDICIAL MEMBER

BB

Customs, Excise & Service Tax Appellate Tribunal

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