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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. ST/37 /2008 - CU[DB] Date **14/03/2012**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.S.T. DELHI, 17-B, I.P. ESTATE
, IAEA HOUSE, NEW DELHI.

C.S.T. DELHI Appellant

Vs

M/S FANKAAR INTERIORS PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/182/ 2012 CU[DB]** dated 05.03.2012 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
M/S FANKAAR INTERIORS PVT. LTD.
B-1/156, PASCHIM VIHAR,
NEW DELHI

2. Adv. / Consult MR. A.K. BATRA,
C/O. **M/S FANKAAR INTERIORS PVT. LTD.**
B-1/156, PASCHIM VIHAR, NEW DELHI

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd.,1512-B, Bhishm Pitamah marg,Opp. ICICI Bank of Defence Colony, New Delhi-3
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Service Tax Appeal No. 37 of 2008

[Arising out of Review Order C. No. 39(1)ST/ Rev/Appl/42/07/1363 dated 16.1.2008 passed by the Commissioner of Service Tax, New Delhi]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, Member (Technical)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	Yes
3. Whether Their Lordships wish to see the fair copy of the Order?	:	Seen
4. Whether Order is to be circulated to the Departmental authorities?	:	Yes

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Commissioner of Service Tax
New Delhi — Appellants

Vs.

M/s. Fankaar Interiors Pvt. Ltd. — Respondent

Appearance:
Shri Sunil Kumar, SDR for the Appellants
Shri A.K. Batra, Advocate Proxy for the Respondent

CORAM:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing : 05.10.2011
Date of Pronouncement : 5.3.2012

Final **ORAL ORDER NO. ST/A/182/12-Cus.**

Per Archna Wadhwa:

Being aggrieved with the order passed by Commissioner (Appeals) vide which he has allowed the respondents appeal, Revenue has filed the present appeal. We have heard Shri Sunil Kumar, learned DR appearing for the Revenue and Shri A.K. Batra, learned advocate appearing for the respondents.

2. As per facts on record, the respondents filed an application on 27.4.05 for refund of Rs.5,44,421/- on the ground that the said amount stands wrongly deposited by them as Service Tax under the impression that the said activities undertaken by them amounts to providing construction services. However, subsequently, they were advised that the activities carried out by them does not amount to construction services inasmuch as they were carrying out the various works as per drawings and blue print supplied to them by the architects and interior decorators appointed by their clients directly.

3. They were issued a SCN proposing to deny the refund claim on the ground that the services undertaken by them correctly fall under the category of construction services as per Section 65 (30a) which existed during the period from 10.9.2004 to 16.6.2004. The adjudicating authority after hearing the respondents, rejected their refund claim on the above ground.

4. Being aggrieved with the order passed by the original adjudicating authority, the respondents filed an appeal before the Commissioner

(Appeals). The adjudicating authority set aside the order of the original adjudicating authority and allowed the appeal. Hence, the present appeal.

5. It is seen from the impugned order of the Commissioner (Appeals) that the respondents were engaged in the execution of interior, civil, electrical and miscellaneous work as per the work contract placed upon them by to M/s. ICICI Prudential Life Insurance Co. Ltd. The activities involve site preparation, civil works, carpentry, supply of loose furniture and other miscellaneous job such as laying of floor tiles, PVC pipes, power and lighting wiring, telephone wiring, fire alarm system wiring, music system wiring etc. By referring to the definition of Construction services as appearing in Section 65 (30a) of the Finance Act, dated 16.6.2005 and by referring to the Commercial and industrial construction services appearing in section 65 (25b) after 16.6.2005, he observed that the activities undertaken by the respondents were the services contained in the definition under newly introduced clause 'c' of Section 65 (25b) of the Act with effect from 16.6.2005 and not clause 'b' of Section 65 (30a) as it existed prior to 16.6.2005. For better appreciation of the arguments adopted by the Commissioner (Appeals), we reproduced the relevant paragraph from the impugned order:

> "...It is evident from the insertion of clause 'c in the Section ibid. w.e.f. 16.6.2005 that the services which are alike to that undertaken by the appellants were not covered by the clause (b) prior to 16.6.2005 as said services were inserted in newly named

'Commercial and industrial construction service' as per section 65 (25b) only w.e.f. 16.6.2005. The above changes in the statutory provisions have also been clarified by the department vide letter F.No. V/DGST/22/AUDIT/MISC/1/2004 dated 16.2.2005 that scope of construction services has been enlarged by introduction w.e.f. 16.6.2005 and scope of "Commercial or Industrial Construction Service" was expanded w.e.f. 16.6.2005 so as to include completion and finishing services. I find that some of the jobs undertaken by the appellants such as floor and wall tiling, wood and metal joinery and carpentry, acoustic applications or fittings find specific mention in the clause (c) of the Section 65 (25b) which came into effect from 16.6.2005 and never existed in the old Section 65 (30a) which come into effect from 16.6.2005 and never existed in the old Section 65(30a) covering 'Construction services' prior to 16.6.2005. In other words such activities undertaken by the appellants can be considered for taxability under the Section 65 (25b) by virtue of clause 'c' w.e.f. 16.6.2005 only and not prior to 16.6.2005 under clause 'b' of the Section 65 (30a) under "repair, alteration or restoration" as such services did not exist in the Section 65(30a) prior to 16.6.2005 and were not liable for service tax for this reason alone during the relevant period. I further find that the adjudicating authority has conceded that the some of the works undertaken by the appellants while executing the aforesaid contracts were of a kind of "renovation" of the existing buildings of the client. I find that even if the some of the jobs undertaken by the appellants are considered as "renovation", the services cannot be covered under the 'Construction Services' as per Section 65(30a) prior to 16.6.2005 as the service of 'renovation' has also been inserted in the clause (d) of the Section 65(25b) covered newly named 'Commercial and industrial construction service' only w.e.f. 16.6.2005 and never existed in the Section

65(30a). In view of the above I hold that the services undertaken by them appellants as per taxable contracts with M/s. ICICI Prudential Life Insurance Co. Ltd. were not taxable under the category 'Construction Services" as per Section 65(30a) during the relevant period. "

6. As against the above, Revenue's contention is that amendment effective from the 16.6.2005 has only defined services more specifically and it is not correct to infer that the services were not taxable prior to 16.6.2005. It is their contention that even after the amendment in the said section, the activities which are admittedly completion and finishing services would still be taxable under clause 'b' of Section 65 (30a) as it existed prior to 16.6.2005.

7. For the sake of easy reference, the definition as ~~they~~ it existed prior to 16.6.2005 and after 16.6.2005 are being reproduced below:

"Construction service" means,-

(a) construction of new building or civil structure or a part thereof; or

(b) repair, alteration or restoration of, or similar services in relation to, building or civil structure, which is-

(i) used, or to be used, primarily for; or

(ii) occupied, or to be occupied, primarily with; or

(iii) engaged, or to be engaged, primarily in,

commerce or industry, or work intended for commerce or industry, but does not include road, airport, railway, transport terminal, bridge, tunnel, long distance pipeline and dam –Section 65(30a)."

After 16.6.2005

"commercial or industrial construction service" means-

(a) construction of a new building or a civil structure or a part thereof; or

(b) construction of pipeline or conduit; or

(c) completion ~~competition~~ and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpendry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services, in relation to building or civil structure; or

(d) repair, alteration, renovation or restoration of, or similar services in relation to, building or civil structure, pipeline or conduit, which is –

(i) used, or to be used, primarily for; or

(ii) occupied, or to be occupied, primarily with; or

(iii) engaged, or to be engaged, primarily in,

commerce or industry, or work intended for commerce or industry, but does not include such services provided in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams' – Section 65 (25b)"

As is clear from the above, the definition of construction services was amended along with the new heading clause 'c' so introduced with effect from 16.6.2005 relate to the completion and finishing services. If the Revenue's stand that such services were covered by the earlier definition is accepted, the newly introduced clause 'c' would become redundant as in that case, there is no need to introduce the said clause. As such, we find full favour with the reasoning adopted by Commissioner (Appeals).

8. We also note that the Tribunal in the case of Spandrel vs., CCE, Hyderabad as reported in 2010 (20) STR 129 (Tri-Bang) has held that

the finishing services like False ceiling, partitions, flooring, modular system, painting, carpeting, wall panelling and interior decorator services having been brought to the commercial or industrial services from 16.6.2005 are not covered by the definition for the earlier period. As such, we are of the view that the Revenue has no case on merits. The appeal is liable to be rejected. The same is accordingly, rejected.

(Pronounced in the open court on 5/3/12

(Archana Wadhwa)
Member(Judicial)

(Rakesh Kumar)
Member(Technical)

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