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

Appeal No. ST/58647/2013-CU[SM]
[Arising out of Order-in-Appeal No. 78(ST)/RPR-I/2013 dated03.04.2013, passed by the Commissioner of Central Excise, Raipur]

CCE, Raipur ....Appellant

Vs.

Anand Construction ....Respondent

Appearance:

Sh. M.R. Sharma, AR for the Appellant
None, for the Respondent

CORAM:
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: 11.01.2017

FINAL ORDER NO. 50395 /2017-CU[SM]

Per V. Padmanabhan

The present appeal has been filed by Revenue challenging the Order-in-Appeal dated 03.04.2013 passed by the Commissioner (Appeals), Raipur. The appellant is a holder of Service Tax Registration No. AAEFA4251DST001, and are engaged in rendering services of "Site formation and clearances, excavation and earth moving and demolition services" among others, defined under Section 65 of Chapter V of the Finance Act, 1994. During the audit of the books and accounts of M/s Raipur Infrastructures Co. Pvt. Ltd., Raipur (hereinafter referred to as the RICPL), it was noticed that the Appellant has undertaken various civil works in the Railway siding of M/s Raipur Infrastructures Co. Pvt. Ltd. The scope of the said civil work covered development & construction of Platform, construction & fixing of pre cast kerb wall stones etc. 'Site formation and clearance, excavation and earthmoving and demolition services' has been defined under Section 65(97a) of the Finance Act, 1994. The Section 2(31) of the Railways Act, 1989, defines the term 'railway' has been defined. In the light of the above definitions, the services carried out by the Appellant appeared to be taxable under the *ibid* service. It also appeared that the benefit of the exemption Notification No. 17/2005-ST dated 07.06.2005 was not applicable to the instant case, as the siding cannot be a part of 'railway' unless it is used for the purpose of 'Public carriage of passengers or goods'. Accordingly, the department issued a Show Cause Notice for demand of Service Tax amount of Rs. 21,10,072/- along with payment of interest & levy of penalties under various Sections of the Finance Act, 1994. The Original Authority confirmed the demand of Service tax. However, the Commissioner (Appeals), vide the impugned order, set aside the demand for Service Tax. Aggrieved by the impugned order, Revenue has filed the present appeal.

2. Heard Shri M.R. Sharma, ld. DR for the appellant. None appeared for the respondent.

3. The nature of work carried out by the respondent is- 'Site formation and clearance, excavation and earth moving and demolition services'. This has been rendered in connection with

Railway siding for M/s Raipur Infrastructures Co. Pvt. Ltd. The claim of the respondent before the lower authorities was that they were entitled to the benefit of Notification no. 17/2005-ST dated 07.06.2005. The notification is reproduced below:

> "*In exercise of the powers conferred by sub-section (1) of Section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessity in the public interest so to do, hereby exempts the site formation and clearance, excavation and earthmoving and demolition and such other similar activities, referred to in sub-clause (zzza) of clause (105) of Section 65 of the Finance Act, provided to any person by any other person in the course of construction of road, airports, railways, transport terminals, bridges, tunnels, dams, ports or other ports, from the whole of Service Tax leviable thereon under Section 65 of the Finance Act, provided to any person by any other person in the course of construction of road, airports, railways, transport terminals, bridges, tunnels, dams, ports or other ports, from the whole of Service Tax leviable thereon under Section 66 of the said Finance Act".*

4. From the above notification, it is evident that service provided by any person for construction of roads, airports, railways, transport terminals, bridges, tunnels, dams, ports are exempted from Service Tax. There is no dispute that the activity carried out by the respondent was in connection with construction of railways. However, the Original authority had reservation in extending the benefit of this notification, since, the construction work has been carried out for a private railway and not for the Government railway.

5. In the Impugned order, the Commissioner (Appeals) has taken the view that the benefit if Notification 17/2005 is to be extended irrespective of whether the construction has been carried

out for private or Government railway. The relevant findings are reproduced below:

"5.3 In the instant case, I find that the department alleged in the show cause notice that appellant has provided services for constructions of various civil works in the Railway sideing of M/s Raipur infrastructures Co. Pvt. Ltd. services which are falling under category of "Site formation and clearance, excavation and earth moving and demolition services" under Section 65(97a) of the Finance Act, 2005. From the above allegation, it is clear that they have provided services for construction of railway or railway sidings which is exempt from payment of service tax by virtue of notification no. 17/2005-ST, dated 07.06.2005 irrespective of private or government railway. From the on line fedinition of railway means "A frack providing a runway for wheeled equipment" irrespective of government or private. Further in the above notification also exemption has been provided to railways it means the railway includes private or government". Thus, the construction of civil works relating with railways and railway siding such as construction of platform, construction & fixing of pre cast kerb wall stones etc are exempt from payment of service tax by virtue notification no. 17/2005-ST, dated 07.06.2005. Thus, the demand for payment of Service tax for railway or railway siding works is not sustainable by virtue of above notification. Held accordingly".

6. I find no reasons to take a different view. Accordingly, the Impugned order is upheld and Revenue's appeal is dismissed.

[Dictated and Pronounced in the open court]

V. Padmanabhan
(Member Technical)

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