IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:05.01.2017

Service Tax Appeal No.59116/2013

[Arising out of Order-in-Appeal No.129/S.Tax/II/2013 dated 20.05.2013 passed by the Commissioner (Appeals), Service Tax, Delhi].

M/s.K.K. Spun Pipe Appellants

Vs.

C.S.T. Delhi-II Respondent

Appearance:

Rep. by Shri Manish Gaur, Advocate for the appellant.
Rep. by Shri Ranjan Khanna, DR for the respondent.

Coram: Hon'ble Shri S. K. Mohanty, Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No.50454/2017

Per B. Ravichandran:

The appellants are aggrieved by the order dated 20.05.2013 of Commissioner (Appeals), Service Tax, Delhi-I. The appellants are engaged in providing certain services with reference to water pipelines of Delhi Jal Board.

2. The dispute in the present appeal is relating to work executed by them in terms of the work order dated 28.4.2005. The Revenue entertained a view that the said services are taxable under "Management, Maintenance or Repair Services" as defined under Section 65(64) of the Finance Act, 1994. Accordingly, proceedings initiated against the appellant resulted in confirmation of service tax liability of

Rs.19,25,459/-. Penalty under Section 77 and 78 of the Finance Act, 1994 was also imposed. On appeal, the ld. Commissioner (Appeals) confirmed the original order.

3. Ld. Counsel for the appellant submitted that as per the terms of the work order, the appellants were given work of excavating trenches along with the water pipelines, cutting them at two places and restoration after cleaning joints and filling up of trenches to restore pipe lines to the original condition. The work order specifically mentions scrubbing/cleaning, scouring, flushing of water line including disinfecting etc. with the help of mechanical equipment. The pipelines are running into many kilometers. He further submitted that in terms of the definition of "Tax Entry, Management, Maintenance or Repair Service", the Department confirmed the liability under the category (c) which only deals with the goods. The pipelines of running length, which are embedded into the earth, were not removed by the appellants and cannot be considered as goods. The cleaning and restoration activities have to be carried out in terms of the work order.

4. Ld. AR submitted that the service tax liability can be correctly covered under the category (b) of the said Tax Entry, which stipulates, "Maintenance or Repair of Properties, whether immovable or not".

5. We have head both the sides and perused the appeal records.

6. The work order clearly stipulates the scope of work to be carried out by the appellant. The appellants are to employ the mechanical equipments for scrubbing, clearing, scouring, flushing of water line including disinfectation. The work also

involves cutting of pipelines at two places and after cleaning the joint and filling up of trenches after such restoration. First of all, we note that these pipelines running into long lengths were laid and embedded into earth. The appellants are not dismantling or carrying out any moving work of these pipe lines. The pipe lines running into many kilometers embedded into earth and connected to other distribution lines cannot be considered as goods and hence, coverage under category (c) of management, maintenance or repair service is not sustainable. The definition of tax entry under Section 65(64) of Finance Act, 1994 reads as under:-

> "(64) "management, maintenance or repair" means any service provided by—
>
> (i)any person under a contract or an agreement; or
>
> (ii)a manufacturer or any person authorized by him, in relation to—
>
> (a) management of properties, whether immovable or not;
> (b) maintenance or repair of properties, whether immovable or not; or
> (c) maintenance or repair including reconditioning or restoration, or servicing of any goods, excluding a motor vehicle]
>
> [Explanation –For the removal of doubts, it is hereby declared that for the purposes of this clause—
>
> (a) "goods" includes computer software;
> (b) "properties" includes information technology software;]"

We note that the said entry specifically covers “re-conditioning or restoration or servicing of any goods”. Though the appellant did restoration, reconditioning servicing work of water pipelines, the same is not with reference to any goods. Since the scope of contract is clear, we note that this will not fall under the category of a general “maintenance or repair of properties” . In any case, the lower authorities confirmed the demand under the category (c) only. In view of the above analysis, we find the activities of the appellants cannot be covered under the said tax entry as confirmed by the lower authorities. Accordingly, the impugned order is set aside. The appeal is allowed.

[order dictated and pronounced in the open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.