CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 07.02.2017

**Service Tax Appeal No. 1600 of 2010**
(Arising out of order- in- appeal No. 151-CE/MRT-I/2010-11 dated 30.07.2010 passed by the Commissioner (Appeals), Customs & Central Excise, Meerut-I).

M/s Spectra Colors Appellant

Vs.

CCE, Meerut Respondent

Appearance:

Sh. S. K. Pahwa, Advocate for the appellant
Dr. Neha Garg, AR for the Respondent

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. Ashok K. Arya, Member (Technical)

F. O. No. 50795 / 2017

Per: **Justice (Dr.) Satish Chandra**:

The present appeal is filed against the order-in-appeal No. 151-CE/MRT-I/2010-11 dated 30.07.2010 passed by the Commissioner (Appeals), Customs & Central Excise, Meerut-I.

2. The brief facts of the case are that he appellant are primarily engaged in providing services of spray plaster/ paint job of official/ residential areas for Government & Industrial Institutions and registered with the service tax department under 'Works Contract Service' on 15.05.2008. The allegation of the department is that the appellant has not paid service tax for the period April 2008 to March, 2009 on the "Works Contract service". So, the service tax demand was raised. However, partial relief was provided by the impugned

order, still the appellant was not satisfied with the same. Being aggrieved, the appellant has filed the present appeal.

3. With this background, we heard Sh. S. K. Pahwa, ld. Counsel for the appellant and Dr. Neha Garg, ld. AR for the Revenue.

4. Ld. Counsel for the appellant submits that Section 65 of the Finance Act, 1994 is not providing any service tax on residential and government building. He also drawn our attention to the Board Circular dated 17.09.2004 wherein para 13.2 where it is stated that:

> "*Generally, government buildings or civil constructions are used for residential, office purposes or for providing civic amenities. Thus, normally government constructions would not be taxable*".

Hence, no service tax is leviable on the "Works Contract service" provided on government building by the appellant. He has drawn our attention to the contracts assigned by Pay Jal Sansthan and other government agencies. No case law has been produced by the ld. Advocate for the appellant to support his argument.

5. On the other hand, Dr. Neha Garg, ld. AR for the Revenue submits that the services of the appellant has come to the service tax net w.e.f. 01.06.2007 so any circular or clarification prior to this is not applicable in the instant case. Hence, no benefit can be provided of the Board circular dated 17.09.2004. It is also her submission that "Works contract" is subject to service tax as per Section 65 of the Finance Act, 1994.

6. We have perused the impugned order. From the record, it appears that the appellant had paid the service tax pertaining to M/s Century Pulp and Paper but claiming that the "Works contract" provided for the government

building, no tax is chargeable for the reason that the service tax is not applicable to the government building and government residences.

7. Considering the totality of facts and circumstances of the case, it appears that Section 65 of the Finance Act, 1994 is not providing any specific exemption to the appellant. Though, exemption category has already been mentioned in the said section like roads, railways etc. In the instant case, the appellant has performed a contract on the basis of 'Works Contract' which was brought under the service tax net w.e.f. 01.06.2007, no prior clarification is applicable in the instant case. The Commissioner has already given partial relief to the appellant. In the peculiar facts and circumstances of the case, there is no further scope to provide any relief. Hence, we uphold the impugned order alongwith the reasons mentioned therein.

8. In the result, appeal filed by the appellant is dismissed.

(Dictated and pronounced in the open Court).

(Ashok K. Arya)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

Pant