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

Date of Hearing/ Decision:27.12.2017

Service Tax Appeals Nos.50422-50423 and 50609/2014

[Arising out of Order-in-Original No.39-41/S.Tax/D-I/2013 dated 11/09/2013 passed by the Commissioner of Central Excise, New Delhi]

M/s.Era Infra Engg. Pvt. Ltd. ….Appellants

Vs.

CST, Delhi-I …Respondent

Appearance:

Rep. by Shri Alok Arora, Advocate/Shri N. Shyam, Advocate for the appellant.
Rep. by Ms. Neha Garg, AR for the respondent.

Coram: Hon'ble Shri Ashok Jindal, Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Orders Nos.58624-58626/2017

Per Ashok Jindal:

The appellant are in appeals against the impugned order for demanding service tax of Rs.10,45,18,675/- along with interest and various penalties under the Finance Act, 1994 under the category of "Commercial or Industrial Construciton Services". The said demand pertains to 4 construction projects undertaken by the appellants viz. (a) Era Business School, (b) National Automotive Testing and R& D Infrastructure Projects, (c) Office Building for Naya Raipur Development Authority and (d) Hostel for NIT Calicut.

2. The Revenue is of the view that all the above projects fall under the category of "Commercial and Industrial Construction Service". Therefore, the show cause notices were issued to the appellant to demand service tax on the activities undertaken by them and consequently, by adjudication, the above mentioned

demand has been confirmed along with interest and various penalties have been imposed. Against the said orders, the appellant is before us.

3. Ld. Counsel for the appellant submits that the projects in question are not commercial in nature as Era Business School is an educational institution recognized by AICTE and awarding degrees/diploma recognized by law. It is his further submission that National Automative Testing Centre is for testing the vehicles for homologation which is a statutory requirement as per motor vehicle rules for compliance by the manufacturer of automobiles. It is further submitted that Naya Raipur Development Authority is Governmental Organisation engaged in development, which cannot be considered having engaged in commercial activities. He further submits that Hostel for students of NIT Calicut cannot be considered as commercial building as the hostel is constructed by the appellant for staying of students, who are getting education from the educational centre. Therefore, he pleaded that the demand under category of "Commercial or Industrial Construction Service" is not sustainable against them as they have not constructed the buildings which have been used for commercial purpose.

4. On the other hand, ld. AR appearing for the Revenue reiterated the findings of the impugned and supported the impugned order.

5. Heard the parties and considered the submissions.

6. We find that in this case four various projects were involved for which the appellant has taken activities of construction thereof. All are to be dealt with separately as under:-

(a) <u>Era Business School</u>

We find that Era Business School is an educational institution recognized by AICTE and awarding degrees/diploma recognized by law. Therefore, Era

Education School is imparting only education and the same cannot be considered as a commercial activity. Therefore, for the project carried for construction of Era Business School cannot be taxed under "Commercial or Industrial Construction Service" .Therefore, the demand pertains to that project is set aside.

(b) **<u>National Automative Testing and R& D Infrastracture Projects</u>**

We find that although the said centre has been registered with the Government but the said centre is not recognized as a centre for testing the vehicles for homologation by the Government of India. The said testing centre is charging money for testing and giving its reports. The said activity is commercial in nature. Therefore, for the construction of building for National Automative Testing Centre does qualify to be taxed under the category of "Commercial or Industrial Construction Service" . Therefore, on the said project, the appellant is liable to pay service tax.

<u>(c) Naya Raipur Development Authority</u>

Admittedly, although the said authority is Governmental Organisation but the same is involved in development of land and engaged in the activities of purchase/sale of land. The said activity has been reflected in their business model and shown Profit and Loss Account in their books of accounts. As per the definition for service tax levy, it is sufficient if building is meant/occupied primarily for commerce or industry or for work intended for commerce or industry is liable to service tax. From the scope of the project undertaken by the appellant for construction of building for Naya Raipur Development Authority, who involves in commercial activity of sale and purchase of land qualifies to be taxed under the category of "Commercial and Industrial Construction Service" . Therefore, for the said project also, the appellant is liable to pay service tax.

(d) Hostel for NIT Calicut.

We find that the hostel constructed by the appellant for residential purpose of the student, who are getting education from the NIT Calicut, therefore, the construction of the said hostel cannot be considered as construction of building which is used for business commerce or commercial building. In that circumstance, for the said project , the appellant is not liable to pay service tax. Accordingly, the demand confirmed against the said project is set aside.

7. In view of the above analysis, we hold that the appellant is liable to pay service tax for the projects of construction of building of National Automative Testing and R&D Infrastructure Projects and office building for Naya Raipur Development Authority. The appellant is not liable to pay service tax for construction projects of Era business school and hostel for NIT Calicut.

8. Accordingly, the appeals are partly allowed.

[Operative portion already pronounced in open court]

(Ashok Jindal)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.