IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT –IV

Service Tax Appeal No. ST/55339/2013-ST [DB]

[Arising out of Order-in-Original No. 40/2012-13 (ST)-Commissioner dated 22.11.2017 passed by the Commissioner, Central Excise & Customs, Jaipur.]

M/s. Rajendra Singh Bhamboo. ...Appellant

Vs.

C.C.E. & S.T. Jaipur-I. ... Respondent

Present for the Appellant : Mr. M.S. Dhankhad, (CA)
Present for the Respondent: Mr. Sanjay Jain, DR

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. B.RAVICHANDRAN, MEMBER (TECHNICAL)

Date of Hearing: 29.11.2017
Date of Decision:__13.03.2018

FINAL ORDER NO. ____50968____ /2018

PER: S.K. MOHANTY

This appeal is directed against the impugned order dated 19.11.2012 passed by the Commissioner Central Excise and Customs, Jaipur.

2. In this case, the appellant had constructed approach and internal road for various parties namely, M/s. Ericson India Pvt. Ltd. Kukas, Jaipur, Textile Weaving Park Ltd., Shree Cement Ltd. Beawar and Rajasthan State Agricultural Marketing Board. The

Department interpreted that since road constructed by those organizations are used for their Commercial purpose only and the right to use the passage was with them, the roads constructed by the appellant should not be considered as Public roads, in order to fall within the exclusion clause provided under the Definition of Commercial and Industrial Construction Service, under Section 65(105)(zzq) of the Finance Act, 1994. Accordingly, the adjudged demand was confirmed against the appellant under such category of taxable service.

3. The ld. Consultant appearing for the appellant submitted that the definition of Commercial or Industrial Construction Service excludes construction of roads from its preview for payment of Service Tax. Thus, he submitted that since there is no specific mention about public or private road in the definition clause, the roads constructed by the appellant for different organizations should be eligible for the exclusion provided under the said definition and no Service Tax demand can be confirmed under such taxable category of service.

4. On the other hand, the ld. DR appearing for the Revenue reiterated the findings recorded in the impugned order.

5. Heard both sides and perused the records.

6. The taxable entry of "Commercial or Industrial Construction" has been defined under Section 65(25)(b) of the Finance Act, 1994 as under:

(a) Construction of a new Building or a civil structure or a port thereof; or

(b) Construction of pipeline or conduct; or

(c) Completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction or 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, <u>but does not include such services provided in respect of roads, airports railways, transport terminals, bridges, tunnels an dams</u>;

7. On perusal of the above definition, it would reveal that construction of roads is excluded from the preview of such taxable service. The definition of taxable service does not specify the type of roads, whether private or public for the purpose of consideration of such exclusion clause. Since the definition is specific to service provided in respect of road only, in our considered view, it cannot be interpreted that only construction of public roads should get the benefit of exclusion provided in such definition clause. In other words, irrespective of the purpose of

construction of the road, whether for public utility or for the utility of organization concerned for their use, the benefit of exclusion clause provided in the definition under 65(25)(b) of the Act should be available, for non-levy of Service Tax. Since there is no ambiguity in plain reading of the definition and in view of the admitted fact that the appellant had constructed roads for different commercial entities/organization, the benefit of the exclusion provided in the definition clause should be available to it.

8. Therefore, the impugned order, confirming the Service Tax demand against the appellant will not stand for judicial scrutiny. Accordingly, after setting aside the same, we allow the appeal in favor of the appellant.

(Pronounced in the open court on __13.03.2018_)

(**B. Ravichandran**) Member(Technical)	(**S. K. Mohanty**) Member (Judicial)

Sakshi