CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL NEW DELHI

PRINCIPAL BENCH, COURT NO. 2

Service tax Appeal No. / 51924 / 2016

[Arising out of Order-in-Original No. 31-32/PR.COMMR/ ST/BPL/2015 Dated 30.12.2015 passed by the Commissioner, Central Excise, Customs & Service Tax, Bhopal]

Commissioner of Central Excise, Customs,
& Service Tax, 48, Administrative Area, **Appellant**
Hills, Bhopal 462011 (MP).

VERSUS

M/s. Institute of Geo Informatics Pvt. Ltd., **Respondent**
Arvind Vihar, Bagmugalia, Bhopal.

APPEARANCE:

Present for the Appellant : Shri R K Majhi, AR
Present for the Respondent: Shri Jitendra Singh, Advocate

CORAM: **Hon'ble Mr. Anil Choudhary, Member (Judicial)**
Hon'ble Mr. C L Mahar, Member (Technical)

FINAL ORDER NO. 51200/2019

Date of Hearing : 0**9/08/2019**
Date of Hearing : 0**9/08/2019**

PER ANIL CHOUDHARY:

The issue in this appeal relates to whether the respondent-assessee is liable to pay service tax under the category of survey and map making service, as defined under Section 65(105)(zzzc).

2. The brief facts are that the respondent-assessee is a private limited company incorporated on 1 April 2010. The respondent-assessee is engaged in civil construction wherein 'survey and mapmaking' was also involved as is evident from the work orders. The learned counsel for the respondent-assessee have demonstrated that they have done work mainly for Railways, works for road and towards dam construction. He also demonstrated from the work order that they are also required to

supply materials, and the work involves civil construction also. Thus, survey and mapmaking is an ancillary activity of civil construction which is classifiable as works contract as defined in section 65 (105) (zzzza) of the Finance Act.

3. The learned counsel have further urged that the respondent-assesees are registered with the Department since the beginning and have filed regular returns and disclosed their taxable as well as non-taxable turnover. He has further stated that there is no allegation in the Show Cause Notice of any suppression of facts or any contumacious conduct on their part. The paper book and the copy of returns filed by the learned counsel has demonstrated these facts. Further, he states that the demand for the period prior to 1 April 2010 have been dropped by the learned Commissioner in the impugned order, as the respondent-assessee did not exist prior to that date, and further work done earlier was by a partnership concern under similar name and style, wherein some of the Directors were partners, cannot be clubbed with this appellant.

4. The Revenue is not in appeal against this finding, and the said issue stands settled.

5. So far the issue of limitation is concerned, the learned counsel has demonstrated that they have filed the returns regularly and the return for October 2010 to March 2011 was filed on 23 December 2011. Accordingly, they contended that the demand for the said period becomes time barred on 25th April 2012.

6. The period in dispute in the present appeal from 1 April 2010 till 31 March 2012. From the findings recorded by the learned Commissioner, it is evident that he has held that the respondent-assesee is registered with the Narmada Valley Development Authority and Water Resources Department of Government of Madhya Pradesh as a class S–4 and A–4 contractor respectively. Thus, it can be inferred that the respondent-assesee is authorized by the requisite Department in order to carry out the aforesaid works contract. Further, by signing

the agreement with the appellant, Government has authorized them to carry on the works. The definition of service of 'survey and mapmaking' provides / means any service provided or to be provided to any person by any other person other than by an agency under the control of/ or authorized by the Government, in relation to survey and mapmaking.

7. Further, survey and mapmaking have been explained – means geological, geophysical or any other prospecting, surface, sub-surface or aerial surveying or map-making of any kind, but does not include survey and exploration of mineral. The learned Commissioner have also produced copies of the letters provided by the respondent-assesee issued by respective departments certifying them as S–4 category contractor. It was further observed by the learned Commissioner that after successfully bidding for the work in response to tender floated by Government Departments, they procured the work order and as such, the work was done by them only after they were authorized to do the same. It was also observed that the work done by respondent-assesee was under the supervision and direct control of the Government Departments and such work is also assessed by the government Department from time to time. The learned Commissioner had held that the respondent-assesee is exempt from payment of service tax under the category 'survey and mapmaking service'.

8. Assailing the impugned order, the learned Authorised Representative in support of the Revenue's appeal, urges that only for the reason that the respondent-assessee is registered under Government Agency like so many other companies, to get the contract through tender floated by the Government agencies, and this does not mean that all these are outside the tax net, just because they have taken registration to take part in a bid conducted by a Government agency. This kind of registration cannot be treated to mean that the party is under the control of/ or authorized by the Government. It is further urged that only the services provided by the Government agency to others are excluded and not the services provided by others to Government departments/agency. Being a Government agency and undertaking government work are two different and separate things. It

is further urged that the respondent assessee is not excluded and is liable to pay service tax on the services provided under the category 'survey and mapmaking service'. The learned Authorised Representative further urged that as this appeal has been filed by Revenue, the respondent-assessee, if they want to raise any issue other than the grounds of appeal filed by Revenue, should have filed a separate cross objection. It is also urged that if the respondent-assessee was aggrieved with any part of the impugned order, they should have filed cross objection for the same.

9. Having considered the rival contentions, we find that the respondent-assesee have prima facie rendered works contract service to the various Government departments/ agencies, and 'survey and mapmaking' is incidental work in the same. Further, we find that under the definition of 'works contract' as defined in Section 65(105)(zzzza), it specifically excludes works contract in relation to roads, railways, dams etc. Admittedly, the respondent-assessee have done the work in the nature of work for Railways, Dam or roads, which is not disputed. The view that in a work of complex nature, the predominant work being in the nature of works contract and survey/ map making being a part of it, can not be segregated and subject to tax under the different headings.

10. Further, we find that there is no case of suppression of facts or any collusion or mis-conduct on the part of the respondent-assessee as they had maintained proper records in the ordinary course of business and have filed their ST 3 – 3 returns regularly. In view of this, we hold that the demand for the extended period is barred by limitation. We hold that there is no error in the impugned order and is upheld. Accordingly, this appeal filed by the Revenue is dismissed. The respondent-assessee shall be entitled to consequential benefits, if any.

(Dictated and pronounced in the Court)

(C. L. Mahar)	**(Anil Choudhary)**
Member(Technical)	**Member(Judicial)**

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