

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Division Bench
Court - I

Appeal No. ST/1663/2011

(Arising out of Order-in-Original No.20/2011-Adjn. (Commr) ST dated 17.03.2011
passed by CCCE, Hyderabad - IV)

Axis Engineers

..... **Appellant(s)**

Vs.

CCCE & ST, Hyderabad - IV

..... **Respondent(s)**

Appearance

Shri B. Venugopal, Advocate for the Appellant.

Shri B. Guna Ranjan, Superintendent/AR for the Respondent.

Coram:

Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 19.12.2018

Date of Decision: 19.12.2018

FINAL ORDER No. A/31622/2018

[Order per: M.V. Ravindran]

1. This appeal is directed against Order-in-Original No. 20/2011-Adjn. (Commr) ST dated 17.03.2011.

2. The relevant facts that arise for consideration, after filtering out unnecessary details are, the appellant herein has, during the period September, 2004 to December, 2005 has entered into various contracts of erection and painting of transmission towers, preparing the foundation for such structures, etc; they claimed abatement of 67% on the gross amount billed and discharged service tax on 33% of billed amount. Lower authorities are of the view that appellant herein has not discharged service tax liability under Erection, Commissioning and Installation Services (ECIS) entirely and on the Commercial or Industrial Construction Services (CICS). The said

show cause notice was contested before the adjudicating authority, claiming that services are not liable to tax and show cause notice is hit by limitation and that in the definition of ECIS, tax is liable only on erection of plant machinery and equipment and erection of radiotelephony tower will not fall under the category and CICS is integral part of ECIS as they had entered into contract of supply of materials along with erection of the towers. Adjudicating authority, after following due process of law, dismissed the contentions of the appellant and confirmed the demands raised along with interest and imposed penalties.

3. Learned counsel would draw our attention to the records and submit that demand is based upon the amount which is billed by the appellant for erection of towers under ECIS and CICS. On ECIS it is his submission that the period involved is prior to 01.05.2006 wherein the definition of ECIS would not cover activity undertaken by the appellant as the structures were not included in the definition. He submits this view is taken by the Tribunal in the case of Neo Structo Construction Ltd [2010 (19) STR 361] wherein the Bench has held that Erection, Commissioning and Installation services of structures or prefabricated structures would fall under service tax net only from 01.05.2006. As regards demand of service tax liability on CICS, it is his submission that show cause notice itself accepts that appellant had supplied materials along with construction activity and the contract entered by them is a composite contract and hence not liable to tax as the period involved is prior to 01.06.2007. He brings to our notice the said annexure to the show cause notice. It is his submission that impugned order be set aside.

4. Learned departmental representative, on the other hand, submits that appellant herein has entered into contract with various telephone service providers for erection of transmission towers for radiotelephony and hence it

would fall under category of ECIS and thus erection of tower services is specifically covered under the heading Erection, Commissioning and Installation services. It is his further submission that the appellant herein had not taken any registration for the services rendered under ECIS and hence demands have been correctly confirmed. It is his further submission that having availed the abatement of 67% from the billed value, appellant was very much aware that tax liability arises in this case. He would submit that appellant's claim of abatement of 67% from the billed value would be incorrect as the said benefit may not be applicable to ECIS. He would submit that the adjudicating authority has correctly confirmed the demands on ECIS and CICS.

5. On careful consideration of the submissions made, we find that as regards the demands raised under Commercial or Industrial Construction services, we find that the demand is for the period prior to 01.06.2007 and there being no dispute as to the fact that all the contracts were composite contracts for supply of materials and services, we hold that law laid down by the Apex Court in the case of Larsen & Toubro Ltd (supra) would apply directly in the case in hand and accordingly, the demands confirmed under CICS are liable to be set aside and we do so.

6. As regards demands raised under category of ECIS, we find that the demands have been raised on the ground that appellant herein has entered into contracts for erection of towers. The lower authorities have classified the services under category of ECIS. We find that similar issue came up before the Bench in the case of Neo Structo Construction Ltd (Supra). After analysing the definition of Erection, Commissioning and Installation services, pre and post 01.05.2006, and also considering the Board's Circular No. 334/4/2006-TRU dated 28.02.2006, the Bench held that erection of

fabricated and prefabricated structure will be covered under the heading of ECIS only after 01.05.2006. The said ratio is directly applicable in the case in hand as the period involved in this case is prior to 01.05.2006. Accordingly, we hold that there cannot be any demand on the appellant under ECIS.

7. Since, we set aside the demands confirmed by the impugned order, consequently, the demand for interest and penalties is unsustainable and accordingly set aside.

8. The appeal stands allowed as indicated herein above.

(Operative part of the order was pronounced in the Open Court
on conclusion of hearing)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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