CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Miscellaneous Application No. 86223 of 2024
In
Service Tax Appeal No. 86630 of 2024

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP49/2021-22 dated 31.08.2021 passed by the Commissioner (Appeals-I), Central Tax, Pune)

Thermax Engineering Construction Co. Ltd. .... **Appellant**
Energy House, D-II Block, Plot No 38 & 39,
MIDC, Chinchwad, Pune-411 019.

Versus

Commissioner of Central Excise and Service Tax, Pune-I .... **Respondent**
ICE House, 41-A, Sasson Road,
Pune- 411 001.

APPEARANCE:

Shri Aditya Jain, Chartered Accountant for the Appellant

Shri Aditya Parihar, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86232/2024

Date of Hearing: 21.10.2024
Date of Decision: 21.10.2024

Per: S.K. MOHANTY

Applicant/appellant have filed this miscellaneous application, seeking for early hearing of appeal. On going through the averments made in the said application, we are of the view that the prayer made by applicant/appellant for early hearing of appeal can be considered in the interest of justice.

2. Learned Authorized Representative appearing for the Revenue also submitted that the issue involved in the present appeal has been dealt with and decided by the Tribunal vide Final Order No. A/86206-86207/2023 dated 14.03.2023. Since the issue lies in a narrow

compass, with the consent of both sides the appeal is taken up for the hearing and disposal today.

3. The appellant herein is engaged in providing services under the category of Erection, Commissioning and Installation of Boilers. The work order issued by the service recipient has specified the scope of work, which is to be performed by the appellant. The said scope of work *inter-alia,* includes deployment of labour and supply of goods such as welding electrodes, nuts, bolts, gases etc., for carrying out the assigned work. For executing the assigned task, the appellant had supplied the goods, which were procured by them on payment of sales tax/ Value Added Tax (VAT) into the State Government exchequer. The dispute involved in the present appeal is from April 2016 to June 2017. We find that for the earlier period i.e., October 2008 to July 2014, identical issue was decided by the Tribunal in favour of the appellant, holding that wherever there is involvement of goods for execution of the works contract, the taxable service should be categorized under the works contract service. The relevant paragraphs in the Final Order No. A/86206-86207/2023 dated 14.03.2023 are extracted herein below:

> *"5. Heard both sides and examined the case records. On perusal of the works order placed in file, we find that the scope of work defined therein relate to both sale of goods as well as rendition of service. It has further been spelt out that out of the entire contract value, 10% of the value was towards sale of material component for execution of the contract. Thus, the contract clearly envisaged that there were separate and distinct contract, one for rendition of service and other for supply of materials, the fact of which has also not been disputed by the Department. Since the supply component has suffered VAT / Sales Tax and the assessment were not disputed by the statutory authority dealing with such subject, the same in our considered view, cannot be questioned or altered by the Service Tax authority, holding that supply of material should also be considered as a value of taxable service for the purpose of levy of Service Tax thereon. We find that the learned adjudicating authority has referred to the provisions of sub-rule (1) of Rule 5 ibid to conclude that the material components supplied for execution of the assigned task at the service recipient's end should be added to the taxable value. In this context, we find that the constitutional validity of Rule 5 ibid was challenged before the Hon'ble Delhi High Court in the case of Intercontinental Consultants (supra) and upon analysis of the statutory provisions and more specifically the valuation provisions contained under Section 67 of the Finance Act, 1994, the Hon'ble Court has stuck down the said rule, holding as ultra*

vires. The judgment of the Hon'ble Delhi High Court was also upheld by the Hon'ble Supreme Court. The relevant paragraph in the judgement of the Hon'ble Supreme Court is extracted herein as below:-

24. In this hue, the expression 'such' occurring in Section 67 of the Act assumes importance. In other words, valuation of taxable services for charging service tax, the authorities are to find what is the gross amount charged for providing 'such' taxable services. As a fortiori, any other amount which is calculated not for providing such taxable service cannot a part of that valuation as that amount is not calculated for providing such 'taxable service'. That according to us is the plain meaning which is to be attached to Section 67 (unamended, i.e., prior to May 1, 2006) or after its amendment, with effect from, May 1, 2006. Once this interpretation is to be given to Section 67, it hardly needs to be emphasised that Rule 5 of the Rules went much beyond the mandate of Section 67. We, therefore, find that High Court was right in interpreting Sections 66 and 67 to say that in the valuation of taxable service, the value of taxable service shall be the gross amount charged by the service provider 'for such service' and the valuation of tax service cannot be anything more or less than the consideration paid as quid pro qua for rendering such a service.

In view of the settled position of law, we are of the considered opinion that addition of the cost of material in the contract value for deployment of labour is not sustainable in law."

3. In view of the foregoing discussions, we do not find any merits in the impugned order passed by the learned Commissioner (Appeals), insofar as it has upheld confirmation of Service Tax demand on the appellant. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellant.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM