CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 20279 of 2020

(Arising out of Order-in-Original No. 01/ST/COMMR/2020 dated 19.02.2020 passed by the Commissioner of Central Tax, Bengaluru South Commissionerate, Bengaluru.)

M/s. GMR Airport Infrastructure Ltd
New Udaan Bhawan,
Indira Gandhi International Airport,
Opp Terminal No.3,
NEW DELHI 110037.

Appellant(s)

VERSUS

The Commissioner of Service Tax
C.R. Building,
Queens Road,
Bengaluru - 560 001.

Respondent(s)

APPEARANCE:

Mr. Syed Peeran and Ms. Purvi Asati for the Appellant

Mr. P. Saravana Perumal, Addl. Com. (AR) for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 21321 /2024

DATE OF HEARING: 11.12.2024
DATE OF DECISION:11.12.2024

PER : D.M. MISRA

This is an appeal filed against Order-in-Original No 01/ST/Commr/2020 dated 19.02.2020 passed by the Commissioner of Central Tax, Bangalore.

2. Briefly stated the facts of the case are that the appellants are providing taxable services under the category of Construction Services (Commercial or Industrial Buildings or Civil Structure), Business Auxiliary Services, Consulting Engineering Services, Management or Business Consultancy Services, etc., and registered with Department, accordingly. During the course of audit of their records for the period from October 2007 to March 2012, it was noticed that the appellant had executed various projects which are for construction of roads namely, Hyderabad Vijayawada, Hungund-Hospet and Chennai outer ring road. It was alleged that the road construction activity had been exempted from service tax, however, construction of toll plaza, administrative building, rest areas and other miscellaneous work are taxable under Service Tax. Also, on scrutiny of the records, it was revealed that the appellant had wrongly availed cenvat credit on various input services viz., Advertising and Marketing, Banking and Financial Services, Management Consultancy, Works Contract, Air Travel Agency and Security services during the period 2007-2008 to 2011-2012. Consequently, a show-cause notice was issued to them on 07.10.2014 for recovery of a total amount of Rs.4,29,55,368/- pertaining to non-payment of service tax and Rs.3,88,91,726/- for availing inadmissible cenvat credit with interest and penalty. On adjudication, the demands were confirmed with interest and penalty. Hence, the present appeal.

3. At the outset, the learned advocate for the appellant has submitted that the activity undertaken by the appellant is construction of other facilities such as toll plaza, administrative building , rest rooms, etc., which is for the purpose of collection of toll fees and the impugned order wrongly held that the same activities do not fall under the category of 'Construction of Roads' and accordingly, exemption for the 'Construction of

Roads' services was denied to the appellant. He has submitted that under subcontract Agreement entered into between the appellant and the Engineering Procurement and Construction (EPC) contractor, it is evident that clause (1) of the said subcontract Agreement states that the scope of work shall include "engineering, procurement, construction of roads" as per the specification given in the EPC contract, clause (2) states that "scope of the projects shall include performance and execution of the projects by the EPC contractor of all design, engineering, procurement and construction and completion of the Project Highway. The construction has been defined under the said Agreement which includes 'Construction of Roads' along with other facilities. Also, invoices raised by the appellant for the works completed by them indicates the activity undertaken by appellants includes 'Construction of Roads' i.e., road works along with other facilities. Further, he has submitted that under Notification No.25/2012-ST at Sl. No.13(a), the activities undertaken by the appellant are exempted from the payment of service tax. However, he submits that the issue is no more *res integra* and is covered by the judgement of this Tribunal in their own case vide Final Order No. 20364-20365/2020 dated 17.06.2020 and Final Order No.A/20362/2020 dated 17.06.2020. Further, he has submitted that appeal carried against the said order before the Hon'ble Supreme Court, resulted in dismissal of the same.

3.1 On the issue of admissibility of cenvat credit, the learned advocate has submitted that the inputs services on which they have availed credit viz., Advertising and Marketing, Banking and Financial Services, Management Consultancy, Works Contract, Air Travel Agency and Security services; there services have been held to be admissible to credit under various judgements of this Tribunal. In support, he has referred to the following judgments:

(i) General Manage, BSNL vs. CCE: 2015 (39) STR 278 (Tri.-Del.)

(ii) Megma Design Automation vs. CST: 2015 (40) STR 800 (Tri.-Bang.)

(iii) RMZ Infotech vs. CCT: 2022 (64) GSTL 599 (Tri.-Bang.)

(iv) Bharat Heavy Electricals Ltd. vs. CCE: 2016 (45) STR 426 (Tri.-Hyd.)

4. Per contra, learned Authorised Representative for the Revenue reiterated the findings of the learned Commissioner.

5. Heard both sides and perused the records.

6. The issues involved in the present case for consideration are: (i) whether the appellants are entitled to exemption from service tax for construction services like toll plaza, administrative building, rest areas, etc., as part of 'Construction of Road'; (ii) cenvat credit availed on Advertising and Marketing, Banking and Financial Services, Management Consultancy, Works Contract, Air Travel Agency and Security services, admissible to the appellant during the relevant period.

7. As regards the issue relating to admissibility of benefit of exemption Notification for construction of toll plaza, administrative building, rest rooms, etc., being part of the activity of 'Construction of Roads' was considered by this Tribunal in appellant's own case as reported at **2021 (44) GSTL 110 (Tri.-Bang.)**. After analysing the agreements, this Tribunal held as follows:-

> **"6.** Having considered the rival contentions and perusal of record, we hold that construction like toll plaza, cattle/pedestrian crossing facilities, parking bay for buses/trucks, rest room for staff and common public at large, etc. are also part of the road, as these are meant for exclusive use by the highway staff and the people using these roads. Further we take notice of several judgments of the Tribunal wherein even greenery done in the middle of the road, by way of divider or on the side of the roads, as well as crash barriers erected on the side of the roads all form part of the road and not exigible to service tax. We also take note of the decision of the Delhi Bench of this Tribunal in the case of *Jagdish Prasad Agarwal* v. *CCE, Jaipur-I* [2017 (3) G.S.T.L. 455 (Tri. - Del.)]. Accordingly, we hold that the appellant is entitled for the exemption under Section 65(105)(zzzza). We also hold that the show cause notice is bad for invocation of extended period of limitation as the same is issued merely on change of opinion on the part of the Revenue. Accordingly, this appeal is allowed and the impugned order is set aside. The appellant is entitled to consequential benefits in accordance with law."

8. On the second issue of admissibility of cenvat credit on input services viz., Advertising and Marketing, Banking and Financial Services, Management Consultancy, Works Contract, Air Travel Agency and Security services, etc., are covered by the judgments of this Tribunal referred by the appellant.

9. In view of the above, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Operative portion of the order was pronounced in open court on conclusion of hearing.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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