

2010-TIOL-438-HC-P-H-ST

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

C.E.A.No.64 of 2008

On appeal from [2008-TIOL-568-CESTAT-DEL](#)

COMMISSIONER OF CENTRAL EXCISE, CHANDIGARH

Vs

M/s RAJEEV ELECTRICAL WORKS

Ashutosh Mohunta And Mehinder Singh Sullar, JJ

Dated : May 11, 2010

Appellant Rep. by : Mr. Sanjeev Kaushik, Senior Standing Counsel

Respondent Rep. by : None

Service Tax - laying the pipe in wall/roof/floor for crossing of wires, fixing the junction box, MS box, etc. would not amount to commissioning, installation of plant, machinery and equipment.: the activities like laying the pipe in wall/roof/floor for crossing of wires, fixing the junction box, MS box, Wooden Box, fixing the cables trays to lay the cables, digging the earth to lay the cables and digging the earth pits for earthing of equipments would not amount to commissioning, installation of plant, machinery and equipment.

JUDGEMENT

Per : Mehinder Singh Sullar, J :

The symposium of the facts, culminating in the commencement of, relevant for disposal of present appeal filed by the revenue and emanating from the record, is that the respondent-assessee M/s Rajeev Electrical Works (for short "the assessee") (electrical contractor) was engaged in electrical fittings and registered on 30.11.2004 for providing erection, commissioning and installation services. The revenue claimed that during the course of audit, it revealed that although the service of commissioning and installation was brought under the service tax net with effect from 1.7.2003 by the Finance Act, 1994 (for brevity "the Act"), but the assessee started paying service tax with effect from December, 2004. Therefore, a show cause notice dated 1.11.2006 (Annexure A1) was issued to the assessee, as to why the service tax be not recovered alongwith interest by invoking the extended period and penal action be not taken for violation of the provisions of the Act and Rules.

2. In pursuance of the notice (Annexure A1), the assessee filed the reply and explained that as no incidental service in relation to the installation of plant, commissioning, machinery and equipment was taxable in respect of the period with effect from 1.7.2003, therefore, it (assessee) was not liable to pay any tax. According to the assessee, it has generally laid the pipe in wall/roof/floor for

crossing of wires, fix the junction box etc. and at no point of time, it was entrusted with the job relating to the installation of plant, commissioning, machinery and equipment, which would attract the provisions of the Act. In all, according to the assessee, it was not liable to pay any service tax, during the relevant period. It will not be out of place to mention here that the assessee has stoutly denied all other allegations contained in the notice (Annexure A1) and prayed for its reversal.

3. The explanation put forth by the assessee did not find favour and the Assessing Authority confirmed the demand of service tax amounting to Rs.1,62,705/-, pertaining to the period from 10.9.2004 to 30.11.2004 with interest. However, the proposal of penal action was dropped, vide order dated 7.12.2006 (Annexure A2).

4. Aggrieved by the order (Annexure A2), the assessee filed the appeal, which was dismissed by the Commissioner (Appeals) Customs and Central Excise, vide order dated 30.4.2007/1.5.2007 (Annexure A3).

5. Still aggrieved by the order (Annexure A3), the assessee filed the appeal, which was accepted by the Customs, Excise and Service Tax Appellate Tribunal, vide impugned order dated 17.12.2007 (Annexure A4).

6. The revenue did not feel satisfied with the impugned order (Annexure A4) and filed the present appeal, which was admitted to consider the following substantial question of law by this Court:-

“Whether the activities like laying the pipe in wall/roof/floor for crossing of wires, fixing the junction box, MS box, Wooden Box, fixing the cables trays to lay the cables, digging the earth to lay the cables and digging the earth pits for earthing of equipments fall within the scope of erection and thus liable to Service Tax in the category of “erection, commissioning or installation” with effect from 10.9.2004?”

7. We have heard the learned counsel for the revenue and have gone through the record with his valuable help.

8. It is not a matter of dispute that the assessee was registered on 30.11.2004 for providing erection, commissioning and installation services and started paying service tax with effect from December, 2004. According to the revenue, the assessee was liable to pay service tax with effect from 1.7.2003 as such service was brought under the service tax net with effect from that date by the Act.

9. On the contrary, according to the assessee, it generally laid the pipe in wall/roof/floor for crossing of wires, fix the junction box etc. and it will not amount to installation of plant, commissioning, machinery and equipment. Thus, it would be seen that the facts of this case are neither intricate nor much disputed.

10. Above being the position on record, the core question, that arises for determination in this appeal, is whether the work carried out by the assessee, during the relevant period with effect from December, 2004, would amount to installation of plant, commissioning, machinery and equipment or not.

11. Having regard to the contention of the learned counsel for the revenue and having gone through the record, we are of the considered opinion that as laying the pipe in wall/roof/floor for crossing of wires, fix the junction box etc. would not amount to installation of plant, commissioning, machinery and equipment, therefore, service tax was not leviable in this regard.

12. Clause (39a) of the Act postulates that "erection, commissioning or installation" means any service provided by a commissioning and installation agency in relation to erection, commissioning or installation of plant and machinery or equipment". In order to bring the assessee in the purview of tax, it was incumbent upon the revenue to prove by cogent evidence that during the relevant period, the work carried out by it (assessee) would amount to installation of plant, commissioning, machinery and equipment, which is totally lacking in this case.

13. The learned counsel for the revenue miserably failed to point out any material to prove that the assessee has provided any service of commissioning, installation of plant, machinery and equipment during the relevant period. Moreover, as per circular bearing No.62/11/2003 dated 21.8.2003, it has clarified that putting up electric wires and fitting in residential premises would not be covered in the definition of taxable service and thus not liable to tax. Meaning thereby, no incidental service in relation to the installation of plant, commissioning, machinery and equipment, was taxable, during the relevant period with effect from 1.7.2003. The Tribunal has rightly held that the assessee is not liable to pay service tax as it has not erected or commissioned or installed any plant, machinery or equipment. No other illegality in the impugned order has been pointed out by the learned counsel for the revenue.

14. In the light of the aforesaid reasons, we are of the considered view that the activities like laying the pipe in wall/roof/floor for crossing of wires, fixing the junction box, MS box, Wooden Box, fixing the cables trays to lay the cables, digging the earth to lay the cables and digging the earth pits for earthing of equipments would not amount to commissioning, installation of plant, machinery and equipment. Therefore, the question is answered against the revenue and in favour of the assessee.

15. No other point, worth consideration, has been urged or pressed by the learned counsel for the revenue.

16. For the reasons recorded above, the present appeal is dismissed, with no order as to costs.

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