

REPORTABLEIN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**CIVIL APPEAL NOS. 4721 – 4723 of 2008**Commissioner of Customs and Central Excise
Vadodara – I

.. Appellant

Versus

M/s Jyoti Limited and Ors.

.. Respondents

J U D G M E N T**M. R. Shah, J.**

1. Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad passed in orders in Appeal Nos. 3085 to 3087 of 2007 by which the

learned Tribunal has allowed the said appeals preferred by the respondent assessee (by a majority) and set aside the demand of duty and penalty as per the Revisional Authority's order, the Revenue has preferred the present appeals.

2. The dispute is with respect to the period July, 1997 to December, 2000. A show cause notice dated 04.06.2001 was issued against the respondent – assessee, proposing demand of duty (service tax demand) of Rs.1,84,75,749/- and proposing the imposition of penalty on the grounds, *inter alia*, that the assessee is providing the services to its customers as consulting engineer and therefore liable to pay the service tax.

2.1 At this stage, it is required to be noted that the respondent - assessee company was engaged in the manufacture of mechanical, engineering and electrical goods falling under Chapters 84 and 85 of Central Excise Tariff Act, 1985. In respect of certain buyers, the assessee merely sold their products. In respect of certain buyers, at their request, the assessee had undertaken, at the customer's site, certain

activities like construction, civil works including installation, erection and commissioning of machinery to the specific requirements of the customers. They collected amounts billed variedly as charges towards erection, testing and calibrations, installation and commissioning, construction activities etc. In respect of some other buyers, they procured some accessories and miscellaneous goods from other manufacturers or open market and in such cases collected the price from their customers for supply of the said bought out items. According to the Revenue the assessee collected a sum of Rs.36,95,14,983/-towards post clearing activities relating to the aforesaid period on which the assessee was liable to pay the service tax of Rs.1,84,75,749/-. The original authority dropped the show cause notice on considering the various contracts and opined that the services rendered by the assessee cannot be said to be rendering services of consulting engineering.

2.2 The Commissioner took up the order by way of suo moto revision and held that the services rendered by the assessee

can be said to be rendering of services of the nature of "advice", "consultancy" or "technical assistance" while executing the works contract and therefore can be said to be services of consulting engineer and were liable to pay the service tax.

2.3 The order passed by the Commissioner was the subject matter of appeals before the learned Tribunal. There was a difference of opinion between the members of the Tribunal. The Member (Technical) confirmed the demand of duty and interest and also the penalty. However, the Member (Judicial) disagreed with the view taken by the Member (Technical) and was of the opinion that the Deputy Commissioner was justified in dropping the proceedings/show cause notice/demand. The matter was referred to the third member. The third member opined to set aside the order passed by the Commissioner in suo moto revision and held that the services rendered by the assessee cannot be said to be services rendered as Consulting Engineer and therefore not liable to pay the service tax.

2.4 Feeling aggrieved and dissatisfied with the majority view/decision of the Tribunal holding that the services rendered by the assessee cannot be said to be Consulting Engineer and therefore the assessee is liable to pay service tax, the Revenue has preferred the present appeals.

3. We have heard Shri A.K. Panda, learned Senior Advocate appearing on behalf of the Revenue and Mrs. Nisha Bagchi, learned Advocate, appearing on behalf of the assessee - respondents. We have gone through and considered the Order-in-Original passed by the Deputy Commissioner dropping the demand and show cause notice as well as the order passed by the learned Commissioner passed in Revision/Review and also the impugned orders passed by the Tribunal.

4. Having gone through the order passed by the Commissioner confirming the demand of service tax it appears that the Commissioner confirmed the demand of service tax merely on the ground that services rendered by the assessee

can be said to be services rendered as Consulting Engineer and therefore liable to pay the service tax. However, considering the various services rendered by the assessee like erection/installation/commissioning of goods at customers' site and incidentally they may also be providing the services of drawing, design etc., it cannot be said that the services rendered by the assessee was as a consulting engineer. The contract can be said to be 'works contract'. Hence, the assessee cannot be said to be rendering the services as a consulting engineer and therefore liable to pay the service tax. Therefore, once, the assessee at the relevant time cannot be said to be consulting engineer and/or rendering services as a consulting engineering the assessee is not liable to pay the service tax on the 'works contract' or the contract rendering services as consulting engineer for the period under consideration namely July, 1997 to December, 2000. No error has been committed by the learned Tribunal in setting aside the order passed by the Commissioner and restoring the Order-in-Original passed by the Deputy Commissioner

dropping the show cause notice and demand of service tax and penalty considering the nature of services rendered by the assessee. We are in complete agreement with the view taken by the Tribunal.

4.1 In view of the above discussion and for the reasons stated above all the appeals filed by the Revenue fail and the same deserve to be dismissed and are accordingly dismissed.

In the facts and circumstances of the case, there shall be no order as to costs.

.....**J.**
(M. R. SHAH)

.....**J.**
(B.V. NAGARATHNA)

New Delhi,
August 24, 2022