

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 378 of 2010

*(Arising out of Order-in-Original No.14/2009 dated
26.11.2009 passed by the Commissioner of Central
Excise, Mangalore.)*

**Dix Engineering Projects
Services Pvt. Ltd.**

MNC Complex, Beach Road,
Panambur,
Mangalore - 575 010.

Appellant(s)

Versus

**The Commissioner of Central
Excise**

7th Floor, Trade Centre,
Bunts Hostel Road,
Mangalore - 575 003.

Respondent(s)

Appearance:

Mr. N. Anand, Advocate

For the Appellant

Mr. Dyamappa Airani, AR

For the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)

HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

FINAL Order No. 20098 /2024

Date of Hearing: 13.02.2024

Date of Decision: 13.02.2024

Per : D.M. MISRA

This is an appeal filed against Order-in-Original No.14/2009 dated 26.11.2009 passed by the Commissioner of Central Excise, Mangalore.

2. Briefly stated the facts of the case are that during the period 2005-2006 to 30.09.2008, the appellant provided management,

maintenance or repair service of State and National Highway roads. Alleging that the service tax leviable under taxable category of Management, Maintenance or Repair service, show-cause notice was issued to them for recovery of service tax amounting to Rs.1,87,03,880/- with interest and penalty. On adjudication, the demand was confirmed with interest and penalty. Hence, the present appeal.

3. At the outset, the learned advocate Shri N. Anand, for the appellant submits that the issue is no more res integra as it is covered by the retrospective amendment issued in the year 2012 vide Section 143 of the Finance Act, 2012 whereby Section 97 has been inserted into Finance Act, 1994. Thereafter, taking note of the said retrospective amendment, the Hon'ble Allahabad High Court in Delta Erectors Pvt. Ltd. vs. UOI: 2016 (42) STR 238 (All.) and Madhya Pradesh High Court in the case of M. P. Audhyogik Kendra Vikas Nigam vs. Chief Commissioner: 2015 (40) STR 875 (MP) decided the issue in favour of the assessee.

4. Learned Authorised Representative for the Revenue reiterated the findings of the learned Commissioner.

5. Heard both sides. The short issue involved in the present appeal for determination is whether maintenance or repair service rendered in relation to roads i.e., State and National Highways be subjected to service tax during the period 2005-2006 to 30.09.2008. We find that the relevant provision has been

amended retrospectively by insertion of Section 97 of the Finance Act, 1994 which reads as below:

“Special Provision for exemption in certain cases relating to management, etc., of roads

97. (1) Notwithstanding anything contained in Section 66, no service tax shall be levied or collected in respect of management, maintenance or repair of roads, during the period on and from the 16th day of June 2005 to the 26th day of July, 2009 (Both days inclusive).

(2) Refund shall be made of all such service tax which has been collected but which would not have been so collected had sub-section (1) been in force at all material times.

(3) Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2012 receives the assent of the President.”

5.1 Also, the Hon’ble High Court of Allahabad and Madhya Pradesh interpreting the retrospective amendment held that service tax during the said period is not leviable under maintenance and repair service in relation to repair and maintenance of roads.

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

(Order dictated and pronounced in Open Court.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)