

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL NO. 717 of 2017**

=====

THE COMMISSIONER OF CGST AND CENTRAL EXCISE,
SURAT....Appellant(s)

Versus

M/S B M S PROJECTS PRIVATE LTD....Opponent(s)

=====

Appearance:

MR ANKIT SHAH, ADVOCATE for the Appellant(s) No. 1

=====

CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**
and
HONOURABLE MR.JUSTICE BIREN VAISHNAV

Date : 21/09/2017

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. Department has filed this appeal to challenge the judgment of CESTAT dated 30.01.2017. Following questions are presented for our consideration:

"i) Whether the activities of M/s GWSSB i.e. purchasing and selling water falls within the meaning of 'commerce' or a 'commercial activity' as defined under 'Commercial or Industrial Construction Service' in Sec. 65 (25b) of Chapter V of the Finance Act, 1994?

ii) Whether the activities of M/s GWSSB and its status as an 'industry' under Industrial Disputes Act, 1947 falls within the meaning of 'industry' or 'industrial activity' as defined under 'Commercial or Industrial Construction Service in Sec. 65(25b) of Chapter V of the Finance Act, 1994?

iii) Whether the usage of pipelines laid/constructed by M/s. BMS Projects Pvt. Ltd. for M/s GWSSB for transporting the traded water, falls within the scope of the expressions 'used, occupied, or engaged, primarily in, commerce of industry or work intended for commerce or industry as specified in the above mentioned definition of Commercial or Industrial Construction Service?

iv) Whether CESTAT was justified in treating the activities of M/s GWSSB as not being commercial or industrial activities or that the usage of Pipelines laid by Ms/. BMS Projects Pvt. Ltd., were not for use in commerce or industry?"

v) Whether CESTAT was justified in holding that all activities which are concerned with welfare of citizens are excluded from liability of Service tax?

and

vi) Whether in the facts and circumstances of the case, CESTAT was justified in setting aside the Order in Original passed by the Commissioner and in allowing the appeal filed by M/s BMS Projects Pvt. Ltd. ?

2. Respondent is engaged in providing construction services, for which purpose, it is registered in the category of commercial or industrial construction service with the Central Excise Authorities. Issue pertains to levy of service tax on the service provided by the respondent in laying down long distance pipelines for transfer of drinking water in

the State of Gujarat pursuant to a contract awarded by Gujarat Water Supply and Sewerage Board ('GWSSB' for short). The stand of the department is that such service is taxable service under the category of commercial and industrial construction service as defined under section 65(25b) of the Finance Act, 1994 (hereinafter to be referred to as 'the Act' for short). When such demand was confirmed by the Commissioner, the assessee approached the Tribunal. The Tribunal by the impugned judgment reversed the decision of the Commissioner by relying on two decisions of the Tribunal involving similar issues in case of Dinesh Chandra Agarwal Infracon P. Ltd. v. C.C.E-Ahmedabad reported in 2011 (21) S.T.R. 41 (Tri.-Ahmd.) and in case of Larsen & Turbo Ltd. v. Commissioner of Service Tax, Ahmedabad, reported in 2011 (22) S.T.R. 459 (Tri.-Ahmd.). The Tribunal has not recorded its independent detailed reasons but primarily relied on the earlier decisions on the issue. Learned counsel for the department has made available a judgment of Bangalore bench of the Tribunal in case of Nagarjuna Construction Co. Ltd. v. Commr. Of C.Ex.,-Hyderabad reported in 2010 (19)

S.T.R. 259 (Tri.-Bang.), in which similar issue came up for consideration and was discussed at length. We have perused such judgment in which, the Tribunal has analyzed the constitution of GWSSB, its status and its activities. The Tribunal noted that GWSSB was created by the Government of Gujarat to plan and implement the drinking water supply and sanitation policy and to operate and maintain the water supply schemes to develop human resources for the effective implementation of programmes among others. It was noted that GWSSB was created under statute. It was not enacted under a trade or commerce and was engaged solely in supplying potable water to supply different parts of the State. It was noted that only a small portion of the water is supplied to the industries at a higher cost. Such sale was merely incidental and ancillary to their main objective. The Tribunal noted that 90% of the water supplied by the Board was to the Gram Panchayats, Nagar Palikas and Nagar Panchayats at a non commercial rate. The Board did not have any profit motive in carrying out such activities. In this context, the Tribunal noted the definition of commercial or industrial construction

service provided under section 65(25b) of the Act, which reads as under:

'Commercial or Industrial Construction Service' means -

"(a) construction of a new building or a civil structure or a part thereof; or

(b) construction of pipeline or conduit; or

(c) completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services, in relation to building or civil structure; or

(d) repair, alteration, renovation or restoration of, or similar services in relation to, building or civil structure, pipeline or conduit, which is -

(i) used, or to be used, primarily for; or

(ii) occupies, or to be occupied, primarily with; or

(iii) engaged, or to be engaged, primarily in,

commerce or industry, or work intended for commerce or industry, but does not include such services provided in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams."

3. In the context of our case, as per this definition therefore, a service to be included within the meaning of commercial or industrial construction services, different activities specified in clauses (a) to (d) thereof are such which are used or to be

used primarily for commercial or industry. In this context, the Tribunal noted that GWSSB was constituted under an Act for carrying out following duties and functions:

“(a) To prepare, execute, promote and finance the schemes for supply of water and for sewerage and sewage disposal;

(b) To render all necessary services in regard to water supply and sewerage to the State Government and local bodies and on request to private institutions or individuals also;

(c) To prepare draft State Plans for water supply, sewerage and drainage on the directions of the State Government.

(d) To assess the requirements of materials and arrange for their procurement and utilization;

(e) To assess the requirements of materials and arrange for their procurement and utilization;

(f) To establish State standards for water supply and sewerage services;

(g) To review annually the technical, financial, economic and other aspects of water supply and sewerage system of every scheme of the Board of the local-bodies which have entered into an agreement with the Board;

(h) To establish and maintain a facility to review and apprise the technical, financial, economic and other pertinent aspects of every water supply and sewerage scheme in the State;

(i) To operate, run and maintain any water works and sewerage system, if and when directed by the State Government, on such terms and conditions and for such period as may be specified by the State Government;

(j) To assess the requirements for manpower and training in relation to water supply and sewerage services in the State;

(k) To carry our applied research for efficient discharge of the duties and functions of the Board;

(l) To perform such of the duties and functions, which are being performed by the Gujarat Public Health Engineering Services, as may be entrusted to it by the State Government."

4. In that context, the Tribunal was of the view that GWSSB discharged an important duty and responsibility of providing drinking water to the people, industries etc. The Board was constituted mainly to supply drinking water and maintenance of sewerage system. The usage charges recovered by the Board from Gram Panchayats, Nagar Palikas and Nagar Panchayats are at highly subsidized rates and therefore, cannot be considered as an industry in the sense that the said word is used in the definition of taxable entry. The Board was sustaining on the grants released by the State Government. It was therefore concluded that the pipelines were not laid to facilitate any commercial or industrial activity.

5. We are broadly in agreement with the view of the Tribunal. The Tribunal noted the purpose for which

the Board was constituted and its nature of activities. The pipelines constructed were for providing drinking water facilities to the people of the State through different Gram and Taluka Panchayats. Only a small portion of the water was provided to the industries at commercial rates.

6. In the result, no question of law arises. Tax Appeal is dismissed.

(AKIL KURESHI, J.)

(BIREN VAISHNAV, J.)

ANKIT

सत्यमेव जयते
THE HIGH COURT
OF GUJARAT

WEB COPY