



[2016] 68 taxmann.com 239 (Mumbai - CESTAT)

CESTAT, MUMBAI BENCH

Commissioner of Service Tax, Mumbai-II

v.

**Global S.S. Construction (P.) Ltd.**

M.V. RAVINDRAN, JUDICIAL MEMBER  
AND C.J. MATHEW, TECHNICAL MEMBER  
ORDER NOS. A/86337-86338/2016/STB  
APPEAL NO. ST/165/2012-MUM.  
APPLICATION NO. ST/CO/86/2012  
FEBRUARY 11, 2016

#### EDITOR'S NOTE

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Presently, these services are liable to service tax.

**A.B. Kulgod**, Asstt. Commissioner (AR) *for the Appellant.* **R.V. Shetty**, Adv. *for the Respondent.*

#### ORDER

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**M.V. Ravindran, Judicial Member** - This appeal is filed by the Revenue against Order-in-Original No. 31/ST-II/WLH/2011 dated 23.12.2011 passed by the Commissioner of Service Tax, Mumbai-II.

2. Heard both sides and perused the records.

3. On perusal of records, it transpires the issue that falls for consideration is whether the respondent herein has provided the services of maintenance or repair for the period prior to 01.05.2006 and for the subsequent period under 'Management, Maintenance or Repairs' services during the period 2005-06 to 2009-10.

4. The respondent herein had entered into a contract with M/s ONGC for operation of cooling water system, operation of raw water plant at Hazira Plant, operation of MP boilers & operation of IG plant & compressed Air system. It is the case of Revenue that respondent had provided services under 'Management, Maintenance or Repairs' services, hence the same has to be taxed.

5. The findings of the adjudicating authority while dropping the proceeding initiated by show-cause notice are very relevant, which are reproduced.

"3.1 A perusal of all the four contracts executed by assessee for providing service to M/s ONGC who have hired the services of the noticee for operation of Cooling Water System, Operation of

Raw Water Treatment at Hazira Plant, Operation of MP Boilers & Operation of IG plant & Compressed Air System reveals that as per terms of said contracts, M/s ONGC had agreed to pay fixed amount per month to the Noticee for operating the said plants as per terms and conditions contained in the said contracts. All the four contracts have been executed more or less on similar terms and conditions except the monetary consideration which varies from plant to plant. On perusal of scope of work as defined in the said contracts and as discussed in detail vide para 1.6 above, it is observed that the principal job entrusted to the Noticee is in connection with smooth Operation of Plant without any breakdown. For obtaining desired results, M/s ONGC have laid down certain conditions as per para 2 of the contract (Scope of Work). The contracts clearly indicate that the fees or service charges fixed were only in relation to operation of plant. The contracts do not contain any clause that may suggest that the noticee was required to provide any service relating to Management, Maintenance or Repair to M/s ONGC. The contracts also do not contain any clause regarding payment of any fees/charges/consideration to be paid to the notice towards Management, Maintenance or Repair. As per the scope of said contracts the Noticee is not required to provide any other service to ONGC except Operation of Plant.

3.1.1 The principal obligation cast upon the Noticee under the said contracts is to operate the plant/system including attending to all the incidental contingencies arising in day to day administration. The Noticee is under contractual obligation to employ required personnel including Engineers/Technicians/Coordinators required for smooth operation of plant. The personnel employed by the Noticee for operating the plant of ONGC were not required to provide any, service directly to ONGC. The terms of contract entered into between the Noticee and M/s ONGC clearly indicate that the main function of the Noticee is to operate the plant. The contracts do not contain any clause under which the Noticee is assigned the work relating to Management, Maintenance or Repair. The running maintenance of mechanical equipments during operation of plant is only an ancillary activity to the main activity of Operation of Plant. As per contractual obligations, the Noticee is neither required nor expected to provide any service to M/s ONGC in respect of Management, Maintenance or Repair of any other equipment except the equipment which is used for Operation of Plant. The contracts involve some other minor functions/activities as under—

- (i) Monitoring of lube oil level in rotary equipment,
- (ii) Running maintenance of mechanical equipments in work areas,
- (iii) Dechoking, depressurizing, air blowing and inertisation of pipelines and tanks as and when required, fixing connection of hoses, cleaning of pipes/drainage under plant premises of the area, attending leakages on flanges including tightening of bolts, plugs etc.
- (iv) Operation of battery limit valves of the work area, dosing of chemicals/special chemicals, preparing documents for Cooling Water Systems in given formats, providing calculation devise to shift operational staff for computation and process

control and keeping/disposing off scrap material/cotton waste/mechanical parts etc.

The above functions are performed by the Noticee as part of their main function of Operation of Plant. None of the above functions are performed in isolation and as such are classifiable as part of the main function i.e. Operation of Plant. The above functions are not performed independently and hence cannot be classified independently.

3.3.2 The Board's **Circular F. No. 334/4/2006 TRU, dated 28/02/2006** and **334/1/2008/TRU, dated 29.02.2008** presented by the noticee have been seen. It is found that the Board has taken a consistent view that a composite service, even if it consists of more than one service, should be treated as a single service based on the main principal service and accordingly classified. The guiding principal in deciding on question of facts and law is to identify the essential features of the transactions. Classification of a composite service is based on that component of the service which gives essential character. In case of a transaction containing major and ancillary elements, classification is to be determined based on the essential features or dominant elements of the transaction. In view of the Board's guidelines, the dominant nature of service provided by Noticee is that of Operation of Plant of ONGC and the scope of other work contained in the contracts are the functions which are in the nature of ancillary elements to operate the plant. It is thus established that the main or principal service provided by Noticee is 'Operation of Plant' of M/s ONGC and merits classification under Business Support Service as per enlarged scope of Business Support Service with effect from 01.05.2011. The above conclusion is duly supported by various case laws cited by the Noticee.

3.3.3 Once it is established that the service provided by Noticee is covered under Business Support Service, the said service cannot be classified under the category of 'Management, Maintenance or Repair Service'. The scope of Business Support Service was enlarged vide Finance Act, 2011 with effect from 01-05-2011 so as to include 'Operational or Administrative assistance in any manner'. The activity of Operation of Plant is covered under the enlarged scope of Business Support Service which came into effect from 1-05-2011, and hence classifying the said activity/service under any other category of service prior to 1-05-2011 would not be correct & legal. Observation made by the Hon'ble High Court Bombay in the case of *Indian National Ship Owner Association v. Union of India*[2009 (14) STR 289 BOM] that introduction of new entry and inclusion of certain services in that entry, would presuppose that there was no earlier entry covering the said services is squarely applicable in this case. Ratio of other judgments relied upon by the Noticee also are found to be applicable in the instant case."

It is seen that as against above reproduced factual finding, the appeal filed by the Revenue is not contradicting the factual matrix. The grounds of appeal is basically persisting on the argument that the action of the respondent is management of immovable property. We find that the finding recorded by the adjudicating authority are correct as nothing is brought to or notice which indicates that the respondent were engaged for and doing 'Management Maintenance or Repairs' services.

**6.** In view of the foregoing, we hold that the impugned order is correct and legal and does not suffer from any infirmity. The appeal is rejected.