

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD**

REGIONAL BENCH – COURT NO. 03

SERVICE TAX Appeal No. 190 of 2012-DB

[Arising out of Order-in-Original/Appeal No COMMR-A--30-VDR-I-2012 dated 19.01.2012 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-VADODARA-I]

F K Enterprise

...Appellant

5/A, Nilkanth Society,
Karodiya Road, Bajwa,
Vadodara,
Gujarat

VERSUS

C.C.E. & S.T.-Vadodara-i

...Respondent

1st Floor...Central Excise Building,
Race Course Circle,
Vadodara,
Gujarat-390007

APPEARANCE:

Shri Dhaval K Shah, Advocate for the Appellant
Shri. Vijay G. Iyengar, Superintendent (Authorized Representative) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

FINAL ORDER NO.A / 10220 /2023

DATE OF HEARING: 17.01.2023

DATE OF DECISION: 07.02.2023

RAMESH NAIR

The brief facts of the case are that the Appellants are registered with the Service Tax cell under the category of "Works Contract". The Appellants have been providing the service of painting work to various industrial and commercial clients. The nature of service to be provided to the

client as mentioned in some of their Work Orders/ Purchase Orders/ Contract is reproduced below:

a....."Providing & applying two coats of heat resisting painting including scraping and cleaning"

b....."One coat zinc enamel primer & two coats of synthetic enamel paints including scraping & cleaning on pipeline work"

Most of other work orders which contain description of nature of services are of similar nature as mentioned above. The Appellants are providing such services to various commercial and Industrial clients. For industrial clients, they are also undertaking painting work on equipment and pipelines etc.

The case of the Department is that the appellant is carrying out services of Repair or Maintenance and Commercial or Industrial Construction Relating to Painting on Walls, Buildings, and Sheds etc. The contention of the Department is that these activities covered under "Works Contract" service only if it is carried out in respect of construction of new building or construction of new residential. Since, this activities were carried out on the old building, the same is not covered under works contract service in terms of the definition of "works contract" as per clause ii (b)(c) & (d). Therefore, the appellant is liable to pay the deferential duty.

2. Shri Dhaval K Shah, Learned Advocate appearing on behalf of the appellant invited out attention to the definition of "works contract" and submits that the activities of the appellant is covered under clause (d)(ii) of Clause ii of definition of works contract service under Section 65(105) (zzzza) of Finance Act, 1994. As the said activities is not only fall under works contract

in respect of new building, but other civil structure and part thereof also when the same is primarily for the purpose of commerce or industry. There is no dispute that this activity of painting was carried out on the existing plant, building machinery which is for the purpose of commerce and industry. Therefore, the same is covered under works contract and appellant has rightly discharge the service tax. Therefore, the appeal be allowed.

3. Shri Vijay G. Iyengar, Learned Superintendent (Authorized Representative) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the records. We find that the appellant admittedly carried out repairing/painting work in respect of plant, machinery, and building of their client. The service was provided along with the material used for painting work and the appellant also paid the VAT on the works contract. The only ground for denial of the payment of Service Tax under the works contract by the revenue is that the same is not covered under definition of works contract as provided under Section 65 (105)(zzzza) Finance Act, 1994, which reads as under:

"Works contract", for the purpose of section 65(105) (zzzza), means a contract wherein,-

(i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and
(ii) such contract is for the purposes of carrying out,-

(a) Erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air conditioning including related pipe work, duct work and sheet metal work, thermal

- insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or*
- (b) *Construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purpose of commerce or industry; or*
- (c) *Construction of a new residential complex or a part thereof; or*
- (d) *Completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or*
- (e) *Turnkey projects including engineering, procurement and construction or commissioning (EPC) projects;”*

On reading of the above definition of works contract, we find that to cover the appellant's activity under works contract it is not necessary that the said activity should be carried out only in respect of new building. As per clause (b) in addition to construction of a new building there is another category "Civil structure and part thereof" primarily for the purpose of commerce or industry. This category is a very vast category, which covers the plants machinery building. The appellant has carried out the painting work on this plant, machinery, building. As regard this category there is no condition that such as civil structure or part thereof should be new. The clause (d) clearly specifies that any activity which is used for completion and finishing services, repairing, renovation or restoration or similar services in relation to (b) and (c) are covered under works contract service. The painting is clearly covered under term finishing service, repair, renovation or similar service. Since we stated above that a civil construction or a part thereof covers the plant machinery, building on which the appellant has carried out the painting work, the same is specified under clause (b) therefore, the painting work carried out on a civil structure or part thereof and also of a pipe line or conduit and undisputedly it is for the purpose of commerce or industry. The activity of the appellant is squarely covered under the definition of "works contract". Therefore, we are

of the considered view that the appellant have correctly discharged the Service Tax under the head of works contract.

5. Accordingly, the impugned order is not sustainable, hence the same is set aside, appeal is allowed.

(Pronounced in the open Court on 07.02.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Palak