IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

ST/MISC/70017/2018

1-3) ST/691/2010-CU[DB], ST/692/2010-CU[DB], ST/51572/2015-CU[DB]

Sl.No.1,2) (Arising out of Order-in-Original No.66/COMMR/ST/GZB/09 dated 24.12.2009 passed by Commissioner, Customs & Central Excise, Ghaziabad.)

Sl.No.3) (Arising out of Order-in-Original No.09/COMMR/ST/GZB/2014 dated 28.01.2015 passed by Commissioner, Central Excise & Service Tax, Ghaziabad.)

1) M/s. Rockwell Automation India (P) Ltd.
2) Shri M.S. Sheshadri
3) M/s.Rockwell Automation India (P) Ltd.

…APPELLANT(S)

VERSUS

1-2) Commissioner of Central Excise, Ghaziabad
3) Commissioner of Central Excise & Service Tax, Ghaziabad

RESPONDENT (S)

<u>APPEARANCE</u>
Shri Atul Gupta (Advocate) for the Appellant (s)
Shri Mohd.Altaf (Asstt.Commr.) (A.R.) for the Revenue

CORAM:

SHRI ANIL G. SHAKKARWAR, HON'BLE MEMBER(TECHNICAL)
SHRI AJAY SHARMA, HON'BLE MEMBER(JUDICIAL)

<u>DATE OF HEARING/DATE OF DECISION</u> : 25.03.2019

MISC. ORDER NO.70091/2019

FINAL ORDER NO.70660-70662/2019

Per ANIL G. SHAKKARWAR :

The Miscellaneous Application is for seeking early hearing and the same is filed by Revenue. Another Appeal arising out of same impugned order-in-original is listed for regular hearing. Therefore Miscellaneous Application is allowed and with the consent of both sides the matter is heard for final disposal.

2. Above stated three appeals are arising out of two impugned order-in-original and having a common issue involved for different period for the same Service Tax assessee and therefore they are taken together for decision.

3. Brief facts of the case are that the appellant are engaged in the manufacture of automation machineries including programmable logic controller. The appellant entered into contracts with their customers where the spares are supplied by the appellant and kept under the custody and control of the customer in the customers' premises for being used immediately when needed for repair and maintenance of machinery in the premises of the customers. In addition to manufacture, the appellant is also providing service under 'management, maintenance or repair service' and to facilitate the said service such inventory of spares is maintained by appellant in the premises of the customer. On scrutiny of transactions it appeared to Revenue that appellant was not paying Service Tax involved in the transactions where the invoices raised by the appellant mentioned "hire charges (right to use)". It appeared to Revenue that said hiring charges were consideration for providing 'repair and maintenance service'. Therefore proceedings were initiated through issue of show cause notice dated 29.07.2008 demanding Service Tax amounting to around

Rs.60.00 Lakhs with proposals for penalties and a proposal for personal penalty on Shri M.S.Sheshadri, Director of the company. On contest the show cause notice was adjudicated through impugned order-in-original dated 24.12.2009 wherein the Service Tax demand along with interest and penalty was confirmed and the Director was imposed with personal penalty. Against the said order, the appellant preferred two appeals which were filed in the year 2010. The period involved in the said two appeals is from 2003 to 2008. For the subsequent period, covering 2008-09 to September 2012 another show cause notice was issued on 22.10.2013 raising the demand of around Rs.1.32 Crores on the same premises. On contest the said show cause notice was adjudicated through Order-in-Original dated 28.01.2015 through which the demand was confirmed and penalties were imposed. Aggrieved by the said order appellant is before this Tribunal through the third appeal.

4. Heard Shri Atul Gupta, learned Advocate for the appellant. He has submitted that though the invoices are mentioning the transactions as hiring charges, however, on the entire transactions covered by invoices for hiring charges, sales tax is paid and the transaction is in respect of sale and the same is not in respect of service. He further submitted that though the said sale is in respect of service, on service component Service Tax is already paid and there is no dispute on that. He further submitted that they are treating the said sale as deemed sale and paying sales tax and therefore as held by various judicial pronouncements the transaction attracting sales tax will not attract

Service Tax. He has also demonstrated that the entire transaction is treated as consideration for payment of sales tax through few invoices which were already placed on record.

5. Heard Shri Mohd. Altaf, learned Asstt.Commissioner (A.R.) on behalf of the Revenue, who has reiterated the findings of original authority.

6. Having considered the submissions from both the sides and on perusal of record we note that it was submitted before the original authority that the said consideration on which Service Tax was demanded was subjected to sales tax and original authority has not relied upon any evidence to establish that the said contention was unfounded. Further we have also perused the invoices which were available on record which clearly indicated that the entire transactions in such invoices was subjected to sales tax. We therefore are of the opinion that the impugned orders are not sustainable. We therefore set aside the impugned orders and allow all the three appeals. Miscellaneous Application also stands disposed of.

(Dictated and pronounced in the open Court.)

SD/
(AJAY SHARMA)
MEMBER (JUDICIAL)

SD/
(ANIL G. SHAKKARWAR)
MEMBER(TECHNICAL)

sm