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

ST/659/2010-CU[DB]

(Arising out of Order-in-Appeal No.23-CE/GZB/2010 dated 24.02.2010 passed by Commissioner(Appeals), Customs, Central Excise & Service Tax, Meerut-I.)

M/s. C.S. Mechanical Works Pvt.Ltd.

…APPELLANT(S)

VERSUS

Commissioner of Central Excise & Service Tax, Ghaziabad

RESPONDENT (S)

APPEARANCE

Shri Rajesh Chhibber (Advocate) for the Appellant (s)
Shri Mohd. Altaf (Asstt.Commr.) (A.R.) for the Revenue

CORAM:

MRS. ARCHANA WADHWA, HON'BLE MEMBER(JUDICIAL)
SHRI ANIL G. SHAKKARWAR, HON'BLE MEMBER(TECHNICAL)

DATE OF HEARING/DATE OF DECISION : 05.09.2018

FINAL ORDER NO.72145/2018

Per Mrs.Archana Wadhwa :

The present appeal has been filed by the appellant against the order in appeal dated 24.02.2010 passed by the Commissioner(Appeals), Customs & Central Excise, Meerut.

2. The appellant is engaged in the manufacture of excisable goods classifiable under Chapter 84 of the Central Excise Tariff Act, 1985 and registered with the department. The appellant is also registered with the department for payment of service tax on 'Transport of Goods by Road', 'Business Auxiliary Services' and 'Maintenance or Repair' w.e.f.

17.05.2006. The appellant undertook job work with regard to de-shelling and re-shelling of old and worn out sugar mills rollers supplied by various sugar mills. The department issued a show cause notice dated 6.6.07 invoking extended period of limitation alleging that the activities of the appellant are covered under the category for service of 'maintenance or repair' and service tax at the appropriate rate is leviable on the said service. The period of dispute is from July 2003 to March, 2006. The total demand of service tax in the show cause notice is Rs.27,67,875/-. The show cause notice proposed to demand the above service tax under proviso to section 73 along with interest under section 75 of the Finance Act, 1994 in addition to penalty under section 76 of the Finance Act, 1994 read with Rules 4,5,6 and 7 of the Service Tax Rules, 1994. The adjudicating authority vide the impugned order in original confirmed the above demand of service tax along with interest and imposed equal penalty holding that the activities of the appellants are covered under the category of service 'maintenance or repair'.

3. Aggrieved with the order, the appellants have filed the present appeal. The Appellant is contesting the demand on merits as well as on time bar.

4. On merits the Argument of the Appellant is that prior to 16-06-2005, repair done under maintenance contract alone was covered by the entry for maintenance and repair. They also have a case that since matter involved a question of interpretation of law extended period cannot be invoked. In view of the fact that re-conditioning is specifically

included from 16-06-2005 they argue that for the previous period their activity can not be subjected to tax.

5. They rely on the clarification issued by Ministry vide letter F.No.B1/6/2005-TRU dated 27-07-2005. The relevant para is reproduced below:

> "Prior to 16.6.2005, maintenance or repair carried out under a maintenance contract or agreement was covered under service tax. Repair or servicing carried out under a contract other than a maintenance contract or agreement was not covered within the purview of service tax. Maintenance or repair including reconditioning or restoration or servicing of any goods or equipment, except motor vehicle (which is taxable under the category of authorized service station), undertaken as part of any contract or agreement (not necessarily maintenance contract or agreement) is now liable to service tax under this category of taxable service. To attract service tax under this category, the contract or agreement need not necessarily be a maintenance contract/agreement."

6. After hearing the ld.A.R., we find that an identical issue was the subject matter of the decision in the case of M/s.Jagat Machinery Pvt.Ltd. v. Commissioner reported in 2013 (32) S.T.R. 063 (Tri.-Delhi)], wherein it stands held that the activity of re-conditioning of old and worn out shells of Sugar Mills Rollers, shall be liable to service tax only with effect from 16.06.2005. The Tribunal also dealt with the issue of limitation and held that inasmuch as the appellant was reflecting everything in their returns filed with the Revenue, no malafide can be attributed to them. As the issue involved in the case of Jagat Machinery decision's of the Tribunal is identical to the issue involved in the present

case, the ratio of the said decision is fully applicable to the present dispute. The said decision also stands followed by the Tribunal in the case of R.C. Engg. Works Pvt.Ltd.; Final order No.71869-71870/2017 dated 01.12.2017.

7. By following the same, we hold that the activity of re-conditioning of old and worn out sugar mills rollers would not be taxable prior to 16.06.2005. As regards limitations, we note that the appellant is an excisable unit and was filing returns under the Excise Act. In the said returns they have reflected the excisable goods as also non excisable goods. The re-conditioned shells were being shown by them as non excisable items. As such it can be safely concluded that the entire facts were being placed by the appellant before their Jurisdictional Central Excise Authorities, in which case no malafide can be attributed to them so as to invoke the longer period of limitation. In view of the foregoing discussions, we set aside the impugned orders and allow the appeal on merits as also on limitation.

(Operative part of the order was pronounced in the open Court.)

SD/	SD/
(ANIL G. SHAKKARWAR)	**(ARCHANA WADHWA)**
MEMBER(TECHNICAL)	**MEMBER (JUDICIAL)**

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