FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 29/03/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/70308/2017-SM[BR] dated 20/03/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	ST/1302/2011	C.C.E, KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.
		Name and Address of Respondent
2		KESHAV TRANSFORMERS C-3, RANIA, SITE-I, KANPUR. U.P

Copy To

3 Bar Association, CESTAT, Allahabad

4 Director Publications, Customs, Excise. I.P. Estate, Delhi

5 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

6 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

7 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

8 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

9 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

10 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

11 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

12 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

13 C.D.R.   14 Office Copy   15 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. 1

APPEAL No.ST/1302/2011-ST[SM]

(Arising out of Order-in-Appeal No. 132-ST/APPL/KNP/2011 dated 24/06/2011 passed by Commissioner of Central Excise & Customs (Appeals), Kanpur)

Commissioner of Central Excise, Kanpur **Appellant**

Vs.

M/s Keshav Transformers **Respondent**

Appearance:

Shri D.K. Deb, Assistant Commissioner (AR) for Appellant
None, (Absent on call) for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing : 20/03/2017
Date of Decision : 20/03/2017

FINAL ORDER NO.-70308/2017.........

Per: Anil Choudhary

The present appeal is filed by the Revenue, against Order-in-Appeal No. 132-ST/APPL/KNP/2011 dated 24/06/2011 passed by Commissioner of Central Excise & Customs (Appeals), Kanpur.

2. The issue in this appeal filed by the revenue is whether the Commissioner (Appeals) have rightly allowed the appeal of the

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respondent-assessee and set aside the demand of Service Tax Rs.22,31,227/- along with interest and further equal amount of penalty under Section 78 and also penalty under Section 76 and Section 77.

3. The admitted facts, as per the show cause notice are that the respondent-assessee is engaged in the manufacture of HV/LV Leg Coils, and also engage in repair of old/damaged transformers. The revenue found that the respondent-assessee was paying Service Tax, only on the "Labour Charges" under the category of management, maintenance and repair services and it appeared that they were evading service tax by not paying on entire cost of repair, including the cost of various items replaced during the repair of Transformers, as the repair is being done under a composite agreement. The officers of preventive visited the business premises on 21/12/2009 and examined the records including balance sheet, agreement in original with Purvanchal Vidyut Vitran Nigam Ltd. and other concern bodies like M/s. PVVNL, MPSEB and KESCO. The bill books, Sale Invoices, Tax Invoices, CST Invoices were also examined. Further, the details of payments received by the respondent during the financial year 2005-06 to 2009-10 (up to 18/12/2009) were obtained. In the statement recorded of the authorised signatory, it was stated that they are registered under Central Excise registration as well as Service Tax. They provide repair and maintenance of old Transformers under agreement with the electricity boards and others. They received Transformers for repairing under the cover of gate pass and after repairing the Transformers, they clear it under the cover of Central

Excise. They pay Central Excise duty on the value of HV/LV Leg Coils, (manufactured items) and Service Tax on the labour charges only. On further enquiry, he also produced a copy of bank statements and stated that job charges includes the amount of component of HV/LV leg Coils, transformer oil and supply items used during the repairing of Transformers of different capacity. He further stated that sale invoices are issued to the parties who do not have Tin number, tax invoices issued to the parties who have Tin number and want to claim VAT or input credit and for interstate sales they issue CST invoice. Further, on examining the excerpts of the contract between the respondent-assessee and PVVNL, Varanasi, it was noticed that they are provided for repair and testing of Aluminum wound damaged distribution transformer--providing core and tank only against tender specification. Order is placed for repair and testing of Aluminum Wound Damaged Distribution Transformers of 160 to 1000 KVA capacity, providing core and tank only, as per complete repair package cost per transformer is given. The repair package rates are inclusive of Excise Duty and Sales Tax/Trade Tax. The contract further provides – for the purpose of calculation of price variation of HV/LV Leg Coil, Transformer Oil and Excise duty, Sales tax/Trade tax, the breakup of the repair package rates. SCN dated 23/04/2010 was issued for the extended period 2005-06 to 2009-10 demanding Service Tax of Rs.22,31,227/- with interest and further penalty was proposed. The SCN was adjudicated on contest and the proposed demand confirmed along with penalty, as stated hereinabove.

4. Being aggrieved, the appellant preferred appeal before learned Commissioner (Appeals) who vide the impugned order had held that the nature of work done by the respondent-assessee is in the nature of works contract, as admittedly they have used and supplied material in the repair of the Transformers for the clients. The repair package rates are inclusive of Excise Duty, Sales Tax/Trade tax. Further, in the contract, while arriving at the price of a transformer. The breakup has been given in the form of labour charges, price of HV/LV leg coil, transformer oil and supply items etc. The learned Commissioner further held that under the facts and circumstances that it is case of composite contract, where the respondent have utilised materials in the repair and maintenance and have paid Sales Tax on the material portion, no service tax can be demanded.

5. The respondent-assessee is absent on call. Heard learned A.R. for the revenue and perused the records.

6. I find that there is no error in the order & findings of the Commissioner (Appeals). In his findings, it is stated that it is a matter of composite contract wherein the appellant have supplied materials in the repair of Transformers. I find that the appellant have suo-moto paid service tax on the labour component, have paid Excise duty on the manufacture of LV/HV coils, and further have paid Sales Tax on the material component used in the repair of the Transformers. In this view of the matter, I find that the show cause notice is not tenable.

7. Accordingly, I agree with the findings of the learned Commissioner (Appeals). The appeal filed by revenue is hereby

dismissed. The respondent-assessee will be entitled for consequential benefits, if any.

(Dictated in Court)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

akp

प्रमाणित प्रति / Certified True Copy
03/04/2017
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001