REGISTERED / AD

FAX : 0532-2400149

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

Dated: 25/09/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/71141/2017-CU[DB] dated 19/06/2017

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/50584/2015	MS DEORA ELECTRIC WORKS 6 SARDAR PATEL MARG ALLAHABAD UP
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Allahabad 38...M G MARG...CIVIL LINES, ALLAHABAD, UTTAR PRADESH-211001

Copy To

3Advocate(s) / Consultant(s):

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SH RAJESH CHHIBBER,ADV
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GHAZIABAD

4 Bar Association, CESTAT, Allahabad

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

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
9 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38
12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

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

APPEAL No.ST/50584/2015-CU[DB]

(Arising out of Order-in-Original No. (ST-87)13 of 2014 dated 07/11/2014 passed by Commissioner of Central Excise & Service Tax, Allahabad)

M/s Deora Electric Works **Appellant**

Vs.

Commissioner of Customs, Central Excise &

Service Tax- Allahabad **Respondent**

Appearance:

Shri Rajesh Chhibber (Advocate) &
Shri Nitin Chopra (Advocate) for Appellant
Shri Rajeev Ranjan (Joint Commissioner)AR for Respondent

CORAM:

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

Date of Hearing : 19/06/2017
Date of Decision : 19/06/2017

FINAL ORDER NO - 71141/2017..........

Per: Anil Choudhary

The appellant-assessee, Deora Electric is engaged in providing various services in the nature of Works Contract, Erection Commissioning and Installation service, etc. A show cause notice dated 17 April, 2013 was issued invoking the extended period October, 2007 to March, 2012. It is alleged in the SCN that statement of partner Pawan Kumar Deora was recorded wherein he stated that their turnover was below the threshold limit – SSI exemption and as such they did not take

Service Tax Registration. He also stated that prior to 01 June, 2007 they had done works contract with BSNL, thereafter they had been providing service of Installation and Testing and Commissioning of the DG Sets apart from sale of DG Sets to BSNL. Further enquiry was made from the appellant directed to submit copy of contracts entered with BSNL before 01 June, 2007. In response, the appellant submitted detail of sales of DG Sets. Further, they submitted copy of contracts and was audited balance sheets for 2007 - 08 to 2011 - 12. On examination of the Trading and Profit and Loss Account, it appeared that appellant had received huge payments under the head Contract Receipts, Trading Account and Service and Maintenance and ITC charges. It also appeared that the party have paid on outward/inward freight. As the appellant is a partnership firm, it appeared that freight is taxable to Service Tax. Further, in view of the definition of Works Contract service, Erection, Commissioning and Installation service, Management, Maintenance or Repair service. It appeared that the appellant is liable to tax under all the aforementioned three categories. Further it appeared that under the definition in Section 65(105) (zzg)of the Finance Act as amended taxable service as any service provided or to be provided 'to any person' by a GTA in relation to transport of goods by road in goods carriage. It further appeared that the person who pass order is liable to pay of freight, either himself or through his agent for the transport of goods by road in goods carriage has been made liable to pay Service Tax instead of the service provider, and such person includes a partnership firm under Rule 2(1)(d) STR, 1994. Accordingly, Service Tax payable for the period October, 2007 to 2011 – 12 was worked out at Rs. 1,28,98,913/- under the classifications Works Contract, Management, Maintenance and Repair, Installation, Erection and Commissioning and GTA. It further appeared that the appellant is registered for providing taxable service under the Installation, Erection and Commissioning from 29 August 2008 and filed one Service Tax ST–3 return till date. Accordingly, it appeared that as the appellant have not filed returns regularly they violated the provisions of the Act and the Rules. It further appeared that under Rule 3 of Service Tax Determination of Value Rules, 2006 provides for valuation of taxable services. The said Rule provides that value of consideration would be the gross amount charged inclusive of monetary and non-monetary consideration and where such value should not possible, the gross amount charged would be the monetary consideration equivalent to concession charged and/or chargeable. It further appeared that the appellant have willfully suppressed material facts from the Department by not applying in taking registration within stipulated time and by not filing the statutory return with intent to evade payment of Service Tax amounting to Rs. 1,28,98,913/- including Cess in respect of services rendered under the various heads. Accordingly, the appellant was required to show cause as to why Service Tax amounting to Rs. 1,28,98,913/- be not demanded and further penalty was proposed under Section 70, 76, 77 and 78 of the Act.

2. The appellant contested the SCN by filing reply raising various objections inter-alia – that the show cause notice is vague and full of ambiguity. It was urged that the contract executed by the appellant are not excisable to Service Tax. The specific Sub Clause in the definition of Works Contract have not been specified under which the service provided by the appellant shall be chargeable to Service Tax. It was further urged that Works Contract executed for Railways is not chargeable to Service Tax, as the same is excluded from the definition of Works Contract. It was also urged that the Works Contract executed for construction and repair/renovation new building and civil structure used for non-commercial purpose is not chargeable to Service Tax. As the definition clearly stipulates that the construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, which is primarily for the purposes of commerce or industry is chargeable under the said category of service. Thus, the Works Contract executed for Military Engineering Services (Ministry of Defence) and various airports, stations are not chargeable to Service Tax. The same being not meant for commerce and industry. Further, the construction at Airports stations is specifically excluded from the definition of Works Contract. The appellant have also given the details of

such constructions/Works Contract in their reply. It was further urged that the entire amount shown in the final accounts under the head Contract Receipts in the trading account have been subjected to tax erroneously. It was reiterated that the nature of Works Contract is such that they cannot be classified under Works Contract Services. It was also submitted that the nomenclatures in the final accounts is not important and not the decision factor, rather the exact nature of work executed is the deciding factor for classification and taxation. It was further urged that the Contract Receipts for Financial year 2010 – 11 includes receipts for contracts entered into with BSNL for supply of cable and transformer amounting to Rs. 26,27,505/- It was also urged that Service Tax is only on the service element in so far the sale of goods are concerned i.e. the value of the cable and transformer the same is subjected to VAT under the State Sales Tax Act. It was also urged that the appellant is eligible for small service providers exemption as provided under Notification No. 60/2005 – ST as amended. It was urged that the gross amount of services provided for the Financial years 2007-08 and 2008 – 09 is nil, in the Financial year 2009-10, it is Rs. 6,09,110/-, in the Financial year 2010-11 it is Rs. 8,80,837/- and for Financial year 2011-12 the amount is Rs. 2,48,742/- which amounts are below the limit of threshold exemption of Rs. 10 lakhs per year. Thus, most of the works or services provided by the appellant are exempt and whatever parties taxable is below the threshold exemption limit and accordingly, no service tax is leviable. It was also urged that Service Tax liability during the period in dispute is chargeable on receipt basis and not on billing basis. It is also urged that there is no contumacious conduct or suppression etc. on the part of the appellant whatever the transaction the appellant had done are duly recorded in books of accounts ordinarily managed.

3. The learned Commissioner framed issues being – whether payment received by appellant under the various heads of service are liable to be included in taxable value or not, whether service provided by a appellant to Railway, Military Engineering services and other Government Departments are exempt as claimed, whether the amount of the contract received from BSNL is on account of sales/supply of materials over which Sales Tax have been paid and not excisable to works contract to Service Tax, whether appellant is liable to pay Service Tax on freight charges incurred by them on inward and outward transportation and whether the extended period of limitation is applicable and whether the penalties as proposed are impossible.

4. So far Works Contract service is concern after examining the definition, including definition of ECIS under Section 65(39a), maintenance, management or repair under Section 65 (64) and the definition of GTA under Section

65(50b) we find that no finding have been recorded by the learned Commissioner, save and except repeating the allegations in the show cause notice. It is further seen that in Para 4.2.7 of the order the learned Commissioner after examining the nature of jobs, performed as listed therein observes – it is evident from the nature of work/jobs described in the agreements/contracts and performed by the appellant, namely the definition of different services clearly involved rendering of taxable service under the category of Works Contract services, Maintenance, Repair service and Erection, Commissioning and Installation service, and the amount/payment received against the services so performed are excisable Service Tax, at the rate specified at the material time. The party thus, liable to pay Service Tax on their respective receipt of the taxable value, as segregated and specified under the table mentioned at Para 4.6 of the order. However, in respect of sales/supply to BSNL and others where VAT/Sales Tax have been paid. The appellant are not liable to pay Service Tax against these receipts. On such findings, the learned Commissioner had been pleased to confirm the proposed demand of Service Tax along with equal amount of penalty under Section 78 with further penalty is imposed under Sections 76, 77(2), under Sections 77 and 77(1a) of the act.

5. Being aggrieved the appellant-assessee is before this Tribunal on several grounds. The learned Counsel for the

appellant states that both the show cause notice as well as the impugned order passed by learned Commissioner are vague. The learned Commissioner have not recorded any categorical findings as to why a particular service is taxable or is not taxable in spite of very categorical pleadings made by the appellant as to which are the particular services which are not taxable, stating the reasons. Accordingly, he prays for setting aside the impugned order with consequential relief to the appellant.

6. The learned AR for the Revenue, Mr, Rajeev Ranajan Joint Commissioner has relied on the impugned order.

7. Having considered the rival contentions, we find that the allegations in the show cause notice are vague and do not contain the gist of accusation and/or the basis on which the appellant is required to respond. The amount have been taken from the balance-sheet, trading or profit and loss account of the appellant and tax have been calculated thereon. Further, we find that in spite of categorical averments made by the appellant in their reply to the show cause notice, the same have not been considered nor any findings recorded as to why a particular services is taxable, although claimed exempt by the appellant. We also find from the pleadings as recorded in the impugned order that the appellant had also produced and filed copies of various contract orders and breakup of the turnovers, but the learned Commissioner have failed to consider the same. We are of the

view that the show cause notice is vague and incomprehensible, leaving the appellant-assessee wondering as to what is the exact nature of allegations they are required to meet. Although the show cause notice discusses the various classifications of service but it fails to give the basis of categorization of the services under particular heads. In this view of the matter, we hold that the show cause notice is vague and incomprehensible and accordingly, the same is not sustainable. In this view of the matter, we set aside the impugned Order-in-Original and allow the appeal. The appellant shall be entitled for consequential benefits in accordance with law.

(Dictated and pronounced in Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

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

Ankit

प्रमाणित प्रति/Certified True Copy
25/09/17
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