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

Dated: 28/12/2017

To

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

Final Order No. ST/A/71978/2017-CU[DB] dated 14/12/2017

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/MISC/70312/2017	ST/819/2012	**Melecon Engg P Ltd** C-73, B S Indl Area, Ghaziabad.
			Name and Address of Respondent
2			C.C.E. & S.T.-Ghaziabad 202...WING A C.G.O. COMPLEX-II,KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH-201002

Copy To
3Advocate(s) / Consultant(s):

Rajesh Chhibber, CAS
ASSOCIATES
A-403, 414-415 SOMDUTT
FA-9,KAVI NAGAR
GHAZIABAD
UTTARPRADESH
201002

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, Opp ICICI Bank of Defence Colony 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 Second Folder Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I
APPEAL No. ST/819/2012-CU[DB] With
MISC Application No. ST/MISC/70312/2017

(Arising out of Order-in-Appeal No. 70-ST/GZB/2012 dated 30/03/2012 passed by Commissioner of Central Excise & Customs (Appeals), Ghaziabad)

M/s Melecon Engg. P. Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Ghaziabad **Respondent**

Appearance:

Shri Rajesh Chhibber, Advocate, for Appellant
Shri 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 & Date of Decision : 14/12/2017
FINAL ORDER NO..71278/2017..........

Per: Anil Choudhary

The appellant/assessee had entered into contract with various thermal power stations for repair and maintenance of electric motors, etc. The appellant/assessee was duly registered and was discharging its Service Tax liability under the service head 'Management, Maintenance and Repair'. The liability on account of Service Tax was discharged in respect of the maintenance charges recovered by the appellant/assessee. The case of the Revenue was that the contract with the appellant/assessee is a composite contract under which the appellant/assessee was to provide the service of repairing motors. Hence, according to the Revenue, the appellant/assessee was required to pay the Service Tax on the total contracted value, including consumables and items used in the repair of the motors.

2. In the present case, the Department was of the view that the appellant/assessee had entered into a contract for a complete repair package and the break-up of individual items was only for the purpose of computing the price variation. The allegation in that regard in the SCN reads as follows:

> *"Party is engaged in providing the maintenance or repair service to their customers and raised bill for that, but they charged Service Tax on 20% of the bill amount and paid the same on account of labour charges. Party also failed to convince the audit party, that on what basis they paid such Service Tax, at the time of conducting audit. As such the party is required to pay Service Tax on remaining billed amount (i.e. 80%) charged by them from their customers along with interest."*

3. The Original Authority confirmed the demand of Service Tax and imposed penalty. The Appellate Authority upheld order of Original Authority.

4. Hence, the appellant is before us. In appeal, the appellant has contended that there was no dispute about the following factual aspects:

(i) The contract showed the cost of each and every item separately;

(ii) The appellant paid Service Tax on service portion and VAT on value of goods as per order placed by respective parties.

5. In this background, the appellant submitted that merely because the segregation of various items was shown in the contract for the purpose of price variation, the contract would not be regarded as one for providing services inclusive of the value of the goods which were used especially when VAT was paid on value of goods shown in invoices. The appellant relied upon Notification 12/2003-S.T., dated 20 June 2003, under which the value of goods and materials sold (or deemed transfer) by the service provider to the recipient of services stands exempted from the Service Tax leviable thereon subject to the condition that there should be documentary proof specifically indicating the value of the goods and materials.

6. In the present case, it has been found as a matter of fact that the value of the goods and materials utilized for repair of the motor is separately disclosed in the agreement and is separately mentioned in the invoices of the appellant/assessee. The appellant/assessee has paid value added tax on goods used in the repairing process. The mere fact that the cost of the various items was shown for the purpose of price variation will not make any difference to the legal position.

7. The appellant also challenge the order of Lower Authority on limitation.

8. The appellant has relied upon the decision of this Tribunal in the case of J. P. Transformers *Versus*

Av

Commissioner of Central Excise & Service Tax, Kanpur reported at 2014 (36) S.T.R. 471 (Tri. – Delhi), which has been upheld by Hon'ble Allahabad High Court reported at 2014 (36) S.T.R. 961 (Allahabad).

9. Heard the ld. A. R. for Revenue, who supported the findings given in impugned order.

10. Having considered the rival contentions, following the verdict in the case of J. P. Transformers (supra), we allow the appeal with consequential relief to the appellant. The impugned order is set aside. Miscellaneous Applications also stand disposed of.

11. Since the appeal is being allowed on merits, we are not giving any finding on limitation.

(Dictated & Pronounced in Court)

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

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

Ansari

प्रमाणित प्रतिलिपि/Certified True Copy
30/01/18