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: 15/09/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71009/2017-SM[BR] dated 08/09/2017

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/70884/2016	**Commissioner of Central Excise and Service Tax-Lucknow** 7-A...ASHOK MARG, LUCKNOW, UTTAR PRADESH 226001
		Name and Address of Respondent
2		Raj Electric Works Plot No. 2, Sultanpur Road,,, RAEBARELI ,UTTA R PRADESH

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
Old Red Building, 38 M.G. Marg, Civil Lines, Allahabad – 211 001

COURT NO. II

DATE OF HEARING : 08/09/2017.
DATE OF DECISION : 08/09/2017.

Service Tax Appeal No. 70884 of 2016 (SM)

[Arising out of the Order-in-Appeal No. 433/ST/APPL-LKO/LKO/2016 dated 29/06/2016 passed by The Commissioner (Appeals), Customs, Central Excise & Service Tax, Lucknow.]

CCE, Lucknow — Appellant

Versus

M/s Raj Electric Works — Respondent

Appearance

Shri Gyanendra Tripathi, Authorized Representative (DR) – for the Appellant.

None – for the Respondents.

CORAM: **Hon'ble Shri Ashok Jindal, Member (Judicial)**

Final Order No. 71009 /2017 Dated : 08/09/2017

Per. Ashok Jindal :-

Revenue is in appeal against the impugned order wherein the learned Commissioner (Appeals) relying on the CBEC Circular No. 123/5/2010-TRU dated 24th May, 2010 dropped the demand against the respondent.

2. The brief facts of the case are that the respondents were engaged by BSNL for the work of laying of optical fibre cables

Ashokjindal

and outdoor upgradation work execution of repair and maintenance thereof. Demand of service tax was raised against the respondent under the category of installation, commissioning and erection service and management maintenance or repair service on the ground that the said activities undertaken by the respondent falls under those categories. The Adjudicating Authority confirmed the demand against the respondent but the learned Commissioner (Appeals) relying on the CBEC Circular dated 24^{th} May, 2010 hold that they are not liable to pay service tax. Aggrieved from the said order, the Revenue is before me.

3. After going through the grounds of appeal, nothing has been stated by the said respondent why the said circular is not applicable to the facts of the present case. Moreover, in the impugned order, learned Commissioner (Appeals) has examined the issue in detail and observed as under:-

> "6. I have gone through the appeal memo and oral as well as written submissions of the appellant. I find that the demand involved in the matter pertains to taxability of laying of cable (OFC) activity under the taxable category of 'Erection, Commissioning and installation service'.
>
> 7. The adjudicating authority has found that the services provided by the activity of laying of Optical Fiber Cable results in installation and commissioning of a electronic device which is further used by BSNL for providing telecommunication services. Having gone through the relevant agreements, the authority has observed that the appellant was primarily engaged for laying of OFC cable, replacing/maintaining/constructing of cable and pair

upgradation work. He further found that the appellant were not merely laying cables alongside road as any ordinary work contractor but they performed as a specialized contractor to undertake work related to said installation/ commissioning of cables. He has confirmed the entire demand of service tax payable on the provision of taxable service of 'Erection, Commissioning or Installation service' to BSNL. The adjudicator has distinguished the work of laying of optical fibre cable undertaken by the appellant from the activity mentioned in Board's circular. From perusal of aforesaid circular of Board, I observe that at point no. 2 of the table appended thereto, the activity of laying of cable under or alongside roads has been held to be non-taxable service under any clause of sub-Section (105) of Section 65 of the Finance Act, 1994. Whereas at point no. 1,3,5 & 6, there is specific mention of wires/ electric cable which means that cable mentioned at point no. 2 covers all type of cables, may it be for propagation of electric or electronic devices (OFC).

8. I have gone through the case laws relied upon in the matter and find that Hon'ble Tribunal in the following case laws have categorically held that in view of Board's circular the activity of laying of cable is not subject to levy of service tax.

* **COMMISSIONER OF C. EX. AND S. TAX, BHOPAL VS. SANJEV KUMAR JAIN – PROPRIETOR [2013 – TIOL – 833 – CESTAT – DEL] = [2014 (33) S.T.R. 312 (Trib. – Del.)**

Service Tax – Laying of cables for BSNL – Not taxable Demand of service tax by classifying it under repair and maintenance service – On perusal of the work order placed on record, it is clear that the service provided by the Respondent to BSNL is in relation to

Arhoyni

laying of the cables, are not repair and maintenance as "OFC route maintenance in Panna SSA", it cannot be concluded that the tender was for inviting quotations for repair and maintenance of the cables as from a perusal of quotations, it is clear that the activity for which the tender had been invited was for laying of the cables and not repair and maintenance – Revenue appeal has no merit.

* **M/s BABA CONSTRUCTION VS. CCE & ST, RANCHI [2010 – TIOL – 440 – CESTAT – KOL]**

Appellant undertaking the Work Order for Optical Fibre Cable Laying as per Contract – demand on Service Tax on the ground that appellant is providing service in relation to site formation – reading of the definition of 'Site formation and clearance, excavation and earthmoving and demolition' Prima facie indicates that the appellants' activity does not get covered – Strong case in favour – pre-deposit waived and stay granted.

* **CHAITANYA ENTERPRISES VS. CCE, HYDERABAD [2013 – TIOL – 1414 – CESTAT – BANG.]**

Service Tax – Laying of optical fiber cables for BSNL and other telecom service providers – The appellant has claimed that this activity does not amount to rendering of any service. CBEC circular dated 24/05/2010 clarifies the issue which is in favour of the assessee. On considering the circular, this Tribunal in the case of Nicco Corporation Ltd. and in the case of Sanjeev Kumar Jain have taken a view which is in favour of the assessee. The appellant has made out a strong prima facie case for waiver of the pre-deposit of the amount involved. Application for waiver of pre-deposit of the amount involved is *allowed and recovery thereof stayed till the disposal of the appeal.*

* **NICCO CORPORATION LTD. VS. CST, KOLKATA [2012 – TIOL – 190 – CESTAT – KOL]**

Liability to pay service tax on laying of cable – Activity of laying of cables not subject to levy of service tax as clarified by Board vide circular dated 24/05/2010 – Prima facie case for waiver of pre-deposit.

In view of the above, I find that the work undertaken by the appellant in respect of laying of cable (OFC) is appropriately covered by the Board's circular dated 24/05/2010 and is not taxable under service tax provisions. The other activities such as excavation of trenches, jointing and splicing of OFC undertaken in terms of agreement/work order are part of complete work of OFC and hence cannot be separately taxed under service tax law. Therefore, I set aside the order of original authority confirming the demand of Rs. 20,20,434/- on the issue of laying of cable.

9. Once the demand of tax does not sustain in the matter, there will be no question of imposition of penalty for non-payment of service tax on this issue or other incidental offences as alleged in the notice. I pass the following order, accordingly".

4. I have gone through the observations made by the learned Commissioner (Appeals) who has relied on the CBEC Circular dated 24th May, 2010 to hold that the said services of laying of optical fibre cable is not to be taxed as per the said circular. The

activity such as excavation of trenches, jointing splicing of OFC are the integral part of the services of laying of cable.

5. In that circumstances, I do not find any infirmity in the impugned order. The same is upheld. The appeal filed by the Revenue is dismissed.

(Dictated and pronounced in open court.)

Sd/-

(Ashok Jindal)

Member(Judicial)

PK

प्रमाणित प्रति/Certified True Copy
27/09/17
सहायक पंजीयक/Asstt. Registrar
सी.शु.उ.शु. एवं सेवा कर अपील अधिकरण/C.E.S.T.A.T.
38, एम.जी.मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001