

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 1172 of 2010(Arising out of Order-in-Original No. 5/2010 dated 08/03/2010 passed
by the Commissioner of Central Excise and Service Tax, Bangalore)**Essae Teraoka Limited**Plot No.4B, Bommasandra Industrial Area,
Bangalore – 560 094.

Appellant(s)

*VERSUS***Commissioner of Central Excise
And Service Tax Bangalore-III
Commissionerate**PBNo.5400, Queens Road,
Central Revenues Building,
Bangalore - 560 001
Karnataka

Respondent(s)

AND**Service Tax Appeal No. 2187 of 2012**(Arising out of Order-in-Original No.60/2012 dated 26/04/2012 passed
by the Commissioner of Service Tax, Bangalore)**Essae Teraoka Limited**Plot No.4B, Bommasandra Industrial Area,
Bangalore – 560 034.**Appellant(s)***VERSUS***Commissioner of Central Excise
And Service Tax Bangalore-III**PB No.5400, Queens Road,
Central Revenues Building,
Bangalore - 560 001
Karnataka**Respondent(s)****APPEARANCE:**

Shri N. Anand, Advocate for the appellant.

Smt. D.S. Sangeetha, Addl. Commissioner(AR) for the Respondent.

CORAM:**HON'BLE MR. S.K. MOHANTY, JUDICIAL MEMBER****HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER****Final Order No. 20221-20222 / 2022**

Date of Hearing: 03/05/2022

Date of Decision: 03/05/2022

Per : S.K. MOHANTY

The appellant herein M/s. Essae-Teraoka Ltd is engaged *inter alia*, in the manufacture of weighing scales/machines of various capacities, classifiable under Chapter 84 of the Schedule to the Central Excise Tariff Act, 1985. The final product manufactured by the appellant is liable for payment of Central Excise duty and the appellant got itself registered with the jurisdictional Central Excise authorities as a "manufacturer" and also discharged the Central Excise duty liability. In addition, the appellant is also registered as person liable for payment of service tax. The final products manufactured and sold by the appellant is in the nature of "plug and play" machines such as television or washing machine etc. The appellant sells final product based on the purchase orders placed on them by the customers. Sometimes, while placing purchase orders the customers pay advance amount and the balance is payable after installation of weighing machines at the customer's site. Further, in some cases, the purchase orders of customers state that the price is inclusive of installation of machines. Considering the contents in the purchase orders, the department entertained a view that the activity of installation of weighing scales/machines at the customers premises should be considered as a taxable service, defined under Section 65 (39) of the Finance Act, 1994. Accordingly, the department issued the first show cause notice to the appellant on 15.10.2008, alleging that as per the purchase orders issued by the customers, the price of weighing machines is included installation and commissioning and that final payment was made only on successful installation or commissioning of machines and thus, the appellant was liable to pay service tax on the activity of installation or commissioning. Since there

was no break-up in the price towards installation, the department took the view that 33% of the price/ value should be treated as value of taxable service towards installation or commissioning. The said SCN issued by the department has invoked the extended period of limitation on the allegation that the appellant had suppressed the fact regarding provision of the taxable service. Further, the department has also issued the second periodical SCN dated 25.04.2011 for the subsequent period, alleging suppression of facts on the part of the appellant. Both the SCNs issued by the department were adjudicated by the department, wherein the following demands were confirmed on the appellant:

Appeal No.	OIO dated	Period involved	Service Tax demanded	Penalty
ST/1172/2010	11/03/2010	August 2003 to September 2005	Rs.1,07,69,813/-	u/s 76 (not quantified) Rs.1000/- u/s 77 Rs.1,07,69,813/- u/s 78
ST/2187/2012	27/04/2012	October 2005 to February 2011	Rs.18,64,23,080/-	U/s 76 (not quantified) Rs.5000/- u/s 77 Rs.18,64,23,080/- u/s 78

1.1. Feeling aggrieved, with the impugned orders dated 11.03.2010 and 27.04.2012 passed by the learned Commissioner of Central Excise, Bangalore, the appellant has filed these appeals before the Tribunal.

2. Shri N. Anand, Learned Advocate, appearing for the appellant submitted that the appellant has not performed any installation or commissioning services at the customer site and not charged any separate sum/amount towards such installation or commissioning. Thus, he submitted that since there was no separate charges/consideration receipt by the appellant for rendering alleged installation or commissioning service, the demand for service tax would also failed in absence of any consideration being received from the customers. Learned Advocate further submitted that since on the

entire value of manufacture of the machines, the Central Excise duty liability has been duly discharged by the appellant, the activities undertaken by them should appropriately be considered as manufacture, defined under Section 2(f) of the Central Excise Act, 1944 and cannot be termed as a provision of taxable service for the purpose of levy of service tax thereon. To strengthen the case of the appellant that the adjudged demands cannot be confirmed, Ld. Advocate has relied upon the following judgements delivered by the judicial forum:

- i. Wagad Infra Projects Pvt. Ltd. Vs. CCE [2022(59) GSTL 95 (Tri. Ahmd.)]*
- ii. Alidhara Texspin Engineers Vs. CCE [2010(20) STR 315 (Tri. Ahmd)]*
- iii. Allengers Medical Systems Ltd. Vs. CCE [2009(14) STR 235 (Tri. Del.)]*
- iv. CCE Vs. Sharma and Associates Firetech Pvt. Ltd. [2017(51) STR 289 (Tri. Del.)]*
- v. Blue Star Ltd. Vs. CCE [2007(5) STR 353 (Tri. Bang.)]*
- vi. CCE Vs. AlidharaTextool Engineers Pvt. Ltd. [2009(14) STR 305 (Tri. Ahmd.)]*
- vii. NeoStructo Construction Ltd. Vs. CCE [2010(19) STR 361 (Tri. Ahmd.)].*

3. On the other hand, Ms. C.V. Savitha, Learned Authorised Representative, appearing for the Revenue, reiterated the findings recorded in the impugned order in support of confirmation of the adjudged demands on the appellant.

4. Heard both sides and examined the case records.

5. On perusal of the case records, we find that the appellant had not separately charged, billed or received any amount from the customers towards installation charges for installing the weighing machine at the customer site. Since on the entire value of excisable goods, the appellant had discharged the Central Excise duty liability in terms of Section 4 of the Central Excise Act, 1944 and had not claimed any deduction, exclusion, abatement towards installation charges, they cannot be taxed under the provisions of Section 65 (39) *ibid*, considering the appellant as a service provider. It is an admitted fact on record that on the entire value including installation of the machine, the Central Excise duty had been paid by the appellant and retained by the Government under such heads of account, the appellant cannot be burdened

with the service tax liability, upon consideration of the fact that they had provided the taxable service of installation and commissioning to their customers. Further, it is not the case of department that over and above the transaction value determined by the appellant, any other amount towards installation or commissioning had been charged by the appellant. Thus, there was no consideration the provision of any service and hence, no service tax liability can be fastened on the appellant.

6. In the case of *Alidhara Texspin Engineers (supra)*, the Tribunal has held that when the assessee was primarily and mainly engaged in the manufacture of textile machinery and the contract was entered by them with the customers for a lumpsum amount and the price was inclusive of installation and commissioning charges and when the assessee had paid central excise duty on the complete value and not claimed any deduction on account of installation/commissioning charges, the question of demanding service tax on ad hoc value of installation/commissioning charges was untenable in law. It was also held that the assessee was a manufacturer of excisable goods and was not an agency engaged in providing service of installation/commissioning. Further in the case of *Allengers Medical Systems Ltd.(supra)*, it has been held by the Tribunal that where the assessee is paying Central Excise duty on manufacture and sale of goods on the total value recovered by them from customers, simply providing the service of erection/commissioning, which is a part of excisable goods, cannot be termed as provision of service and accordingly, levy of service on such activities cannot be sustained. In an identical case, in the matter of *AlidharaTextool Engineers Pvt Ltd. (supra)*, it has also been held by the Tribunal that the process of erection and commissioning at the byers premises is incidental to the manufacture of the machine and therefore, the erection and commissioning services provided can also be said to be in relation to the manufacture and not a service, in order to fall within the purview of service tax net.

7. In view of the foregoing discussions and analysis and more specifically, the judgements relied upon by the Learned Advocate for the appellant, we are of the view that the issue arising out of the present dispute is no more

open for any debate. Therefore, the impugned order cannot be sustained for judicial scrutiny. Accordingly, the impugned orders are set aside and appeals are allowed in favour of the appellants.

(Order pronounced in the open court on **03/05/2022**)

(S.K. MOHANTY)
JUDICIAL MEMBER

(P. ANJANI KUMAR)
TECHNICAL MEMBER

S.R. Mokal