CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI

Appeal No.ST/773/2010

[Arising out of Order-in-Appeal No.76/2010-ST dt. 13.09.2010 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore]

Revathi Equipment Ltd. Appellant

Versus

Commissioner of Central Excise & ST
Coimbatore Respondent

Appearance :

Ms. Radhika Chandrasekar, Advocate
For the Appellant

Shri S.Govindarajan, AC (AR)
For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing / decision : 22.03.2018

FINAL ORDER No. 40921 / 2018

Per Bench

The brief facts of the case are that the appellants are registered with the department under the category of "Management, Maintenance or Repair Service". On investigations, it was observed that the appellants have entered into composite maintenance contract dt. 09.12.2003 and 10.10.2004 for maintenance of Diesel Driven C650 Blast Hole drills with M/s.Hindustan Zinc Ltd. The maintenance contract also included supply of spare parts by appellants. It was noticed that appellants had not paid service tax on 70% of maintenance charges received and had discharged service tax only on balance 30%. The department was of the view that division of contract so that the payment of VAT is made on 70% of the maintenance charges and discharge of service tax only on 30% is incorrect. SCN was issued for demand of service tax along with interest and also proposing to impose penalties. After due process of law, the original authority confirmed the demand, interest and also imposed penalties. Hence this appeal.

2. On behalf of the appellant, the Ld. Counsel Ms. Radhika Chandrasekar submitted that the contract entered by the appellants with M/s.Hindustan Zinc Ltd. is a composite maintenance work which also involves supply of spare parts. The maintenance charges are based on per meter drilling operation of drill rigs. Even as per the agreement the gross amount is bifurcated as 70% towards material portion and 30% towards labour portion. Appellant has discharged VAT on 70% of the material value and has discharged service tax on

the 30% of the labour portion. Since 70% is the actual value of spare parts supplied by the appellants, therefore the deduction claimed by the appellant on the ground of payment of VAT is legal and proper. The department having accepted that in the course of maintenance, spare parts/ materials are also used / supplied, the denial of deduction of 70% for cost of materials is without any basis. The difference between the purchase price and the selling price of the material is a trading profit for the appellant on which VAT has been discharged on such part including the value addition. Once the sales tax has been discharged, the department cannot again levy service tax on the very same amount as both these taxes are mutually exclusive. She relied upon the Hon'ble Supreme Court's judgment in the case of *Safety Retreading Co. (P) Ltd. Vs CCE* 2017 (48) STR 97 (SC). It is also argued by her that extended period is not invokable as the appellant has been regularly filing ST-3 returns and discharging service tax correctly on the labour portion.

3. The Ld. A.R Shri S.Govindarajan reiterated the findings in the impugned order. He submits that as per the contract entered, the appellant received Rs.50/- per meter drilling which includes supply of consumables, cost of spares, oils and lubricants towards annual maintenance charges. The rate is inclusive of service tax and

Rajasthan Sales Tax. The agreement was revised and a new agreement was entered dt. 10.10.2004 by which the charge was revised as Rs.49/- per meter drilling. The contract prices of service part and sales part is subject to levy of service tax. The appellant has artificially bifurcated the service part from the sales part. The indivisible composite contract has been made a divisible contract by the appellant. The value of goods / spare parts consumed during the provision of service to the clients was much less than repair and maintenance charges recovered from their clients. Though there is no dispute about the consumption of materials, the value of gross amount determined arbitrarily @ 70% and 30% towards cost of spares parts and labour respectively is incorrect. Therefore, the demand raised is legal and proper.

4. Heard both sides.

5. The main allegation is that the appellant has artificially bifurcated the value of service part and cost of materials as 70% and 30%. It is not disputed that the appellant has discharged sales tax/VAT on the 70% of the value being the cost of materials. It is also admitted that such supply of spares is necessary for provision of services. When VAT has been discharged by the appellant on 70%, the contract being a composite contract and VAT/Service Tax being

mutually exclusively, the further demand of service tax on the amount for which VAT has been paid by the appellant cannot sustain. The issue is squarely covered by the decision in the case of *Safety Retreading Co. P. Ltd.* (supra). Following the same, we hold that the demand is without any basis.

6. In the result, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.

(operative part of the order pronounced in court)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S)
Member (Judicial)

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