CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH, COURT NO. IV

Service Tax Appeal No. 114 of 2012

[Arising out of the Order-in-Appeal No. IND/CEX/000/APP/390/11 dated 29/09/2011 passed by The Commissioner (Appeals), Customs, Central Excise & Service Tax, Indore (M.P.).]

M/s Pradeep (Prop. Pradeep Varma) **Appellant**
16, Kasera Bazar,
Shajapur (M.P.)

Versus

The Commissioner of Central Excise and Service Tax, **Respondent**
Manik Bagh Palace, Post Box No. 10,
Indore – 452 001 (M.P.).

APPEARANCE

Shri Brijesh Tiwari, Advocate – for the appellant

Shri R.K. Mishra, Authorized Representative (DR) – for the Respondent.

CORAM: **HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)**
HON'BLE SHRI C.L. MAHAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 51845/2019

DATE OF HEARING : 25/04/2019.
DATE OF DECISION : 25/04/2019.

ASHOK JINDAL :-

The appellant is in appeal against the impugned order contesting demand of service tax confirmed against them.

2. The facts of the case are that the appellant is a proprietorship firm and engaged in activity of repairs and maintenance, such as, work attended by him personally with the help of some labourers. Further, the work of transferring of material from one place to another place is also attended by the appellant. During the year 2004-2005 to 2008-2009, the appellant provided service of maintenance and repairs of power

plant under Telecom District Shajapur and shifting of material from one place to another, loading and unloading and stock dumping of materials. A demand of Rs. 1,12,581/- was confirmed and for the period 2004-2005 from 16/06/2005 the maintenance and repair service covered any goods or equipments excluding motor vehicles, as from 16/06/2005 service relating to maintenance or management of immovable of immovable property have also been covered under the purview of service tax but prior to 16/06/2005 maintenance or repairs carried out under maintenance contract of immovable property was not liable to be taxed but a demand of service tax was confirmed under the category of maintenance and repairs for the period 01/04/2004 to 31/03/2009 and a demand also confirmed under the category of cargo handling service for shifting of material from one place to another by the appellant in BSNL office itself. Aggrieved from the said demands, the appellant is before us.

2. The learned Counsel for the appellant submitted that prior to 16/06/2005 the maintenance and repairs of immovable structures was exempt from service tax provided by an individual therefore for the period prior to 16/06/2005 is not liable to pay service tax under the category of maintenance and repair services.

3. With regard to cargo handling service, it is submitted that where transportation of goods was not covered under the category of cargo handling service, therefore, they are not liable to pay service tax.

4. On the other hand, learned Authorized Representative supported the impugned orders.

5. Heard the parties and considered the submissions.

6. The repair and maintenance service admittedly the appellant was working as an individual. For the period prior to 16/06/2005, the appellant is carried out repairs and maintenance of immovable equipments and from 16/06/2005 such requisite of

repairs of such equipments became taxable, therefore, we hold that the appellant is not liable to pay service tax under the category of maintenance and repair services prior to 16/06/2005, but post 16/06/2005 the appellant is liable to pay service tax. If same is not paid, the appellant is liable to pay serviced tax and interest thereon also. But, no penalty is imposable as the appellant is aggitating that it is an issue of interpretation.

<u>With regards to demand for Cargo Handling Service</u> we find that mere transportation of goods is not covered under the category of cargo handling services. Moreover, where the cargo handling service the activity of loading and unloading of cargo is not liable to service tax, the said view was taken by Tribunal in the case of **Dalveer Singh versus Commissioner of Central Excise, Jaipur** reported in **2008 (9) S.T.R. 491 (Tri. – Del.)**, therefore, we hold that appellant is not liable to pay service tax under the cargo handling service.

7. In view of the above discussion, following order impugned passed :-

(a) The appellant is liable to pay service tax under the category of maintenance and repair service post 16/06/2005 (if same is not paid, same is to be paid alongwith interest), no penalty is leviable. Under the category of cargo handling services, the service tax demand is set aside.

8. In these terms, the appeal is disposed of.

(Operative part of the order pronounced in the open court.)

(Ashok Jindal)
Member (Judicial)

(C.L. Mahar)
Member (Technical)

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