

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH**

Dated: 09/03/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/50531-50532/2015-CU[DB] dated 20/02/2015

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(CUSTOMS Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	ST/666/2009	JAI BHARAT MARUTI LTD. PLOT NO. 5, MARUTI JOINT VENTURE COMPLEX, GURGAON, (HARYANA)
2	ST/667/2009	HAMAMATSU PIPE CO. LTD. C/O M/S JAY BHARAT MARUTI LTD. PLOT NO. 5, MARUTI JOINT VENTURE COMPLEX, GURGAON-122015, (HARYANA)
		Name and Address of Respondent
3		-C.S.T. DELHI 17-B, I.P. Estate, IAEA House, New Delhi.
4		-C.S.T. DELHI 17-B, I.P. Estate, IAEA House, New Delhi.

Other Appellants and Respondents as per Annexure

Copy To

5 Advocate(s) / Consultant(s):

S. K. Pahwa
Marwah & Pahwa, 45,
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New Delhi-110066

6 Additional Party's Name & Address :

7 Bar Association, CESTAT, Delhi

8 Director Publications, Customs, Excise. I.P. Estate, Delhi

9 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

10 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

11 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

12 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

13 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

14 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

15 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38

16 C.D.R. 17 Office Copy 18 Guard File


Asstt. Registrar(CUSTOMS Appeal Branch)

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.**

**DIVISION BENCH
Court-I**

ST/666-667/2009

Date of Hearing: 20/02/2015

M/s Jai Bharat Maruti Ltd.
M/s Hammatsu Pipe Co. Ltd.

Appellant

Vs.

C.S.T., New Delhi

Respondent

Appearance:

Present for the Appellant: Shri S.K. Pahwa, Advocate
Present for the Respondent: Shri B.B. Sharma, DR

**Coram: Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr.R.K.Singh, Member (Technical)**

Final **ORDER NO. 50531-50532/2015**

PER: R.K.SINGH

The appellants M/s Jai Bharat Maruti Ltd. and M/s Hammatsu Pipe Co. Ltd. Japan have filed these appeals against Order-in-Appeal No. 33-34/ST/DLH/2009 dated 28/5/2009 which upheld the Order-in-Original dated 4.10.2007 in terms of which a service tax demand of Rs.10,23,859/- for the period 1998-99 to 2002-03 under the taxable category of "Consulting Engineers" service had been confirmed on both the appellants jointly ^{or} ~~of~~ severally alongwith interest and penalties. The appellants have contended that HPCL is not an engineering firm and therefore the service rendered by them would not be classifiable under the category of 'Consulting Engineering Service' and that an order confirming the service tax



demand on both the companies jointly or severally is not sustainable because the adjudicating authority has failed to uniquely identify as to who is liable to pay the impugned demand. HPCL also contended that they had transferred technical know how which is not classifiable under Consulting Engineering service and that they being a foreign based company cannot be held liable to pay service tax. M/s JBML argued that reverse charge mechanism is applicable only from 18.4.2006.

2. The Id. DR, merely restated the contentions contained in the Order-in-Original and the Order-in-Appeal.

3. We have considered the contentions of both sides. Perusal of the impugned order reveals that the Commissioner (Appeals) in the impugned order notes as under:

"Regarding the submission of the appellants that reliance placed by adjudicating authority on Rule 2(1) (d) (iv) of the Service Tax Rules for making them as recipients of service liable to pay Service Tax, I find that same is without any legal basis. I find that M/s Jai Bharat Maruti Ltd. were responsible to meet all taxes and charges which have clearly been discussed in para 12 of the impugned order and rely on the recent judgement in the case of Kerla State Electricity Board Vs. CCE, Triruvanthapuram-2008(9)STR 3 (SC) wherein the Hon'ble Apex Court has held that the liability of Service Tax lies on the recipients as per the agreement between the appellant and the foreign company wherein the appellants had been authorized by the foreign company as per proviso to Rule 6 of the Service Tax Rules, 1994 from 28.2.1999 and the amendment to Rule 6(1) from 16.8.2002 was not relevant as responsibility for payment of tax taken by appellants as per agreement. I further find that Service Tax Rules have been framed under powers conferred by Sub Section (1) read with Sub-Section (2) of the Section 94 of the Finance Act, 1994 by the Central Government, therefore it can not be construed that there were no provisions in the Sections for making the recipients liable to pay Service Tax as per

Rule 2(1) (d) (iv) of the Service Tax Rules. This ground therefore does not hold ground in view of the principle laid down by the Hon'ble Apex Court in the above cited judgment and is liable to be rejected."

It is thus evident that the Commissioner (Appeals) has clearly conceded that M/s Hammatsu Pipe Co. Ltd. are not liable to pay the impugned service tax as the service tax liability lies on the recipients of the service under Rule 2 (1) (d) (iv) of the Service Tax Rules. Consequently the demand against M/s HPCL is not sustainable.

4. As is evident from the paragraph from the impugned order ~~above~~ quoted in Para 3 above, the demand on the appellants M/s Jai Bharat Maruti Ltd. has been confirmed in terms of the reverse charge mechanism under Rule 2 (1) (d) (iv) of the Service Tax Rules. It is no longer res-integra that the levy of Service Tax on the recipient of Service under reverse charge mechanism was not legally sustainable prior to 18.4.2006 when Section 66A was introduced in the Finance Act 1994 as has been held, for example, in the case of Commissioner of Central Excise Vs. Bayers Diagnostics 2013 (31) STR 543 (Gujrat) by Gujrat High Court. It is seen that the period involved in this case is 1998-1999 to 2002-03 and therefore the appellant M/s Jai Bharat Maruti Ltd. can not be required to pay the impugned service tax under the reverse charge mechanism even if the service received by them is held to be classifiable under Consulting Engineering Service.

5. In the light of the foregoing the impugned demand is clearly unsustainable and consequently the appeals are allowed.



(Justice G. Raghuram)
President



(R.K. Singh)
Member (Technical)

K. Gupta