

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

Dated: 07/08/2014

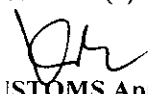
To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/53129/2014-CU[DB] dated 06/08/2014

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/332/2008	M.P.LAGHU UDHYOG NIGAM LTD 4TH FLOOR,PANCHANAN BUILDING,NEW MARKET,MALVIYA NAGAR,BHOPAL(M.P)

2		Name and Address of Respondent C.C.E Bhopal Hoshangabad Road, 48, Administrative Area, Area Hills, Bhopal (M.P.) 462011
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Copy To**3 Advocate(s) / Consultant(s):**

**V.LaxmiKumaran, Adv
5, Jangpura Extension Link Road,
New Delhi-110 014**

- 4 Bar Association, CESTAT, Delhi
5 Director Publications, Customs, Excise, I.P. Estate, Delhi
6 M's Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38
13 C.D.R. 14 Office Copy 15 Guard File


Asstt. Registrar(CUSTOMS Appeal Branch)

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

WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-DB

Date of Hearing: 11.07.2014

Pronounced On: 06-08-2014

Service Tax Appeal No.ST/332/2008 -Cu[DB]

[Arising out of Order-in-Original No. 08/Commr/ST/2008 dated 02.02.2008 passed by the Commissioner (Appeals), Central Excise, Bhopal]

For Approval & Signature :

Hon'ble Mr. Justice G. Raghuram, President

Hon'ble Mr. R.K. Singh, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Department Authorities?	

M/s. M.P. Laghu Udhog Nigam Ltd.

...Appellant

Vs.

CCE, Bhopal

... Respondent

Present for the Appellant : Shri B.L. Narsimhan, Advocate
Present for the Respondent : Shri Govind Dixit, DR

FINAL ORDER NO. 53129/2014

PER: R.K. Singh

The appellants have filed this appeal against Order-in-Original No. 08/Commr/ST/2008 dated 02.02.2008 in terms of which a Service Tax demand of Rs. 68,15,221/- has been confirmed against the appellants



along with interest and penalties including mandatory equal penalty invoking the extended period.

2. The facts, briefly stated, are as under:

It is alleged that during the period 2002-2003 to 2005-2006 the appellants had collected supervision charges amounting to Rs. 7,79,91,577/- relating to construction of Navodaya Vidyalaya building and that the said amount was liable to service tax under the category of "Consulting Engineer Service" which the appellants did not pay by indulging in suppression of facts.

3. The appellants have contended that the amount on which service tax has been demanded was received from Navodaya Vidyalaya Samiti for execution of works based on the architectural drawing, specification etc. given by Navodaya Vidyalaya Samiti or their appointed consultants. They contended that this does not fall in the scope of Consulting Engineer Service. It is further contended that during the relevant period companies were not included in the definition of Consulting Engineer and that there has been no wilful mis-statement or suppression of facts on their part nor is there any basis for that allegation given in the Show Cause Notice.

4. The Ld. AR contended that the appellants engaged contractors and so supervision charges for supervising the work fell under the Consulting Engineer Service and not taking the registration under that category and not filing ST-3 returns clearly meant that the appellants had suppressed the facts with intent to evade duty.

5. We have considered the facts and the submissions of both sides.

6. It is seen that in the Show Cause Notice, there is not even a single line describing as to what is the actual services rendered by the



appellants which are sought to be covered under the Consulting Engineer Service. This itself arguably can be fatal. It is further seen from the agreement between Navodaya Vidyalaya Samiti and the appellants that the appellants were engaged for execution of works based on the architectural drawings, specification etc. given by the Samiti or their consultants. The agreement also states that the appellants would be entitled to supervision charges for supervision of the works done by contractors engaged by the appellants. These supervision charges are sought to be taxed under the Consulting Engineer Service. The definition of Consulting Engineer Service during the relevant period is reproduced below:

"Consulting engineer" means any professionally qualified engineer or an engineering firm who, either directly or indirectly, renders any advice, consultancy or technical assistance in any manner to a client in one or more disciplines of engineering.

As is evident from the foregoing, the appellants can not be said to have rendered any advice, consultancy or technical assistance to the Navodaya Vidyalaya Samiti in as much as, as per the agreement, the appellants were engaged to execute the works (constructing building for Navodaya Vidyalaya) as per the design and specifications given by Navodaya vidyalaya Samiti, which the appellants did by engaging contractors and supervising their (i.e. contractors') work. Thus, the service rendered by the appellants can not be stretched to come within the scope of the above definition.

7. In the impugned Order-in-Original, the extended period is held to be invocable only on the basis of the following:

"Since the assessee has not paid service tax by reason of suppression of fact and contravention of the provision of chapter V of the

said Act, or the rules made there-under, with intent to evade payment of service tax; thus the extended period of five years provided in proviso to sub-section (1) of section 73 of the Act, is applicable.

It is evident that the contents of the above para are totally inadequate to sustain the charge of suppression of facts. Indeed it is repeatedly held in several judgements that mere non registration, non filing of ST-3 return or non payment of service tax (or even all three of these) are by themselves not sufficient for sustaining the allegation of suppression of facts for invocation of extended period. There has to be on the part of appellants some act of omission or commission which at least points towards their intent to evade the tax. The law on this point is too well-settled to need reference to a series of judicial pronouncements on this issue. It is seen that even the Show Cause Notice does not elaborate as to how the appellants are guilty of suppression of facts. Indeed the Show Cause Notice also merely contains the same para (reproduced above) for this purpose which has simply been reproduced in the impugned order also. It is thus evident that the allegation of suppression of facts with intent to evade service tax is far from having been established.

8. As regards the appellants' contention that during the relevant period companies were not included within the scope of the Consulting Engineer, it is seen that there have been several judgments to that effect; some of these judgments are mentioned below:

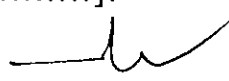
S.No.	Particulars
1.	Commissioner of Service Tax v. Turbotech Precision Engineering Private Limited, 2010 (18) STR 545 (Kar)
2.	Simplex Infrastructure & foundry Works v. Commissioner of Central Excise, 2012 (25) STR 106 (Tri.-Del)
3.	Commissioner of Central Excise v. Consulting Engineer Groups Limited, 2014-TIOL-936-CESTAT-DEL

4.	Commissioner of Central Excise v. Simplex Infrastructure & Foundry Works, 2014 (34) STR 191 (Del)
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In all the aforesaid judgments, including the one passed by the Hon'ble Delhi High Court, it has been categorically held that a company or body corporate was not covered in the scope of "Consulting Engineer" before the amendment to the definition of Consulting Engineer with effect from 01.05.2006. It is seen that the demand period involved in the present appeal is prior to 01.05.2006. Thus, the appellants being a company or body corporate were outside the ambit of Consulting Engineer during the relevant period and consequently the service rendered by them was outside the scope of Consulting Engineer Service.

9. In the light of the foregoing it is evident that the impugned order is not sustainable. We therefore allow the appellants' appeal and set aside the impugned order.

[Pronounced in the open Court on.....^{6.8.2014}].


(Justice G. Raghuram)
President


(R.K. Singh)
Technical Member

Neha