

**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.**

COURT No. II

Service Tax Appeal No. 50764 of 2022-SM

[Arising out of Order-in-Appeal No. 257(CRM)ST/JDR/2021 dated 15.09.2021 passed by the Commissioner (Appeals), Central Goods & Service Tax and Central Excise, Jodhpur]

M/s. Northern Engineers

2/E-1, Jawahar Nagar
Sri Ganganagar (Rajasthan)-335001.

Appellant

VERSUS

**Commissioner of Central Excise &
Central Goods & Service Tax,**

G-105, New Industrial Area
Opp. Diesel Shed, Basni, Jodhpur
Rajasthan-302003.

Respondent

APPEARANCE:

Shri Anurag Basu, Advocate for the appellant.

Shri Mahesh Bhardwaj, Authorised Representative for the respondent.

CORAM:

HON'BLE SHRI ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.50695/2022

DATE OF HEARING:27.07.2022

ANIL CHOUDHARY:

Heard both the sides.

2. The dispute in this appeal is whether the demand of interest under Section 75 has been rightly raised and whether the demand of service tax on the amount of Rs.1,05,050/- has been rightly raised on the basis of Form-26AS (under the Income Tax Provisions).

3. Ld. Counsel for the appellant explains that the appellant is involved in rendering the services under the head, "Erection,

Commissioning and Installation Services”, and are mainly doing the work of laying underground telecom cables. As per the terms of the work order/contract, the appellant is entitled to raise the bill only on acceptance/approval of the work by the principal-service receiver. Quite often the work continues even after the period specified in the work order and consequently, the work order is amended and some more work is included, which automatically increases the execution period. Only after the appellant when finds that the work is complete, as certified by his Engineer, the appellant informs the service receiver, who thereafter gets the work inspected and upon being satisfied, they issue ‘handing over certificate’. Upon receiving the handing over certificate from the service receiver, the work is completed, as per the contract and thereafter the appellant raises the bills, within the next few days, and only then the appellant is entitled to receive the payment.

4. Ld. Counsel has drawn attention to the chart and all the invoices for the period under dispute, which have been annexed as Annexures-H and I to the paper book. It is evident from the Chart that after work has been certified and handed over accepted by the service receiver, the appellant has raised bills on the clients within the next few days or within a month. Only thereafter, they have received the payment. The appellant have booked the service in their books of accounts, upon raising the invoices and accordingly, they have also declared the service in tax records and returns, and paid the tax accordingly.

5. However, it appeared to the Department that the work is completed, as per the period mentioned in the work order. It so appeared to the Revenue that in the invoices raised, there is column

which mention, that work order period involved, for example Invoice No. NEGJ/VB/14-15/06 dated 11.12.2014.; the work order period is shown as 16.01.2013 to 30.10.2013. Thus, it appeared to Revenue that the appellant should have booked the services for payment of service tax in the month of October itself, upon apparent completion of the work. Whereas the actual work has been accepted and approved by the principal as per the 'handing over certificate' on 29.10.2014. Thereafter the invoices have been raised within a month on 11.12.2014 and service tax paid accordingly.

6. Similarly, Id. Counsel demonstrates in respect of all the invoices, that the invoices have been raised within 30 days of the approval by the service receiver, which is the date of completion of service as per the contract.

7. In view of the aforementioned observations and findings, I find that there is no delay in payment of service tax and the appellant have rightly paid service tax, upon completion of the work, coinciding with raising of the invoice within 30 days. Accordingly, the demand of interest is set aside.

8. So far the other issues are concerned regarding the demand of service tax on the amount of Rs.1,05,050/- due to mis-match in Form 26 AS and ST-3 Return, for the period April, 2017 to June, 2017, Id. Counsel explains that this amount has already been booked and charged to service tax during the previous financial year 2016-2017 as service tax is payable on accrual basis. Evidently, Form 26 AS reflects the amount on cash basis, and accordingly, the demand on this score has been wrongly raised.

9. Considering the facts and circumstances, I am satisfied that the demand has been wrongly raised on the amount of Rs.1,05,050/- and accordingly, this ground is also allowed in favour of the appellant and the demand is set aside. All penalties are also set aside. The appeal is allowed.

(Dictated and pronounced in open Court).

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

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