CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

SERVICE TAX APPEAL NO. 51277 of 2017

(Arising out of Order-in-Original No. JOD-EXCUS-000-COM-0004-17-18 dated 27.04.2017 passed by Ld. Commissioner, Jodhpur)

M/s Kiran Enterprises ....**Appellant**
14 jayanti market, M.I. Road,
Jaipur (Raj.)

VERSUS

Commissioner of Central Excise and Service Tax ....**Respondent**
NCR Building, Statue Circle, C-Scheme,
Jaipur

APPEARANCE:

Shri Bipin Garg and Ms. Kainaat, Advocates for the Appellant
Shri Rajeev Kapoor, Authorized Representative of the Department

CORAM : HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MRS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER NO. 55939/2024

Date of Hearing/Decision : 24.06.2024

JUSTICE DILIP GUPTA :

The order dated 27.04.2017 passed by the Commissioner confirming the demand of service tax amounting to Rs. 28,76,210/- and imposing penalties under section 78 and 77(1)(a) of the Finance Act, 1994[1] has been assailed in this appeal that has been filed by M/s Kiran Enterprises[2].

2. It transpires that out of the aforesaid amount of Rs. 28,76,210/-, an amount of Rs. 8,94,162/- has been confirmed against

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1. the Finance Act
2 the appellant

'Works Contract Service', while an amount of Rs. 16,79,762/- has been confirmed against 'Operation, Maintenance and Repair Service'.

3. The appellant has provided a summary of the demand in a tabular form which is reproduced below :

S. No.	Service Category	ST Demand as per dept.	ST Demand Dropped	ST Demand Confirmed	Deptt. In appeal	Appellant In Appeal	Remarks
a.	Works Contract service of Erection Commissioning & Installation (From 2005 to 31.05.200)	7,31,307	7,31,307		7,31,307		
b.	Works Contract service of ECI (From 01.06.2007 to 31.03.201)	29,37,147	20,42, 985	8,94,162	20,42, 985	**8,94,162**	Disputing on Time bar
1.	Sub total	36,68,454	27,74,292	8,94,162	27,74,292	8,94,162	
2.	Operation & Maintenance and Repair	16,79,762		16,79,762		**16,79,762**	Disputing on merits & Time bar
3.	Annual Maintenance or repair service	3,02,287		3,02,287		**3,02,287**	Disputing on Time bar
	Grand Total (1+2+3)	56,50,503.00	27,74,292.00	28,76,211.00	27,74,292.00	28,76,211.00	

4 The appellant has also stated that out of the total demand, an amount of Rs. 27,74,292/- was dropped by the Commissioner and the appeal filed by the department to assail this part of the order was dismissed as withdrawn due to monetary limits.

5 The show cause notice dated 22.10.2010 was issued to the appellant covering the period of dispute from 01.04.2005 to 31.03.2010. The demand for the period 22.10.2009 to 31.03.2010 would, therefore, be within the normal period of limitation and the demand for the period prior to 22.10.2009 would be under the extended period of limitation contemplated under the proviso to section 73 (1) of the Finance Act.

6 The appellant has also provided the demand confirmed for the normal period and the demand confirmed for the extended period. It is as follows :

(A) <u>Demand in normal period:</u>

(i)	Maintenance or Repair Service:	Rs. 4,09,077
(ii)	Works Contract Service:	Rs. 3,29,086
	Total =	**Rs. 7,38,163**

(B) <u>Demand for extended period:</u>

(i)	Maintenance or Repair Service :	Rs. 15,72,972
(ii)	Works Contract Service:	Rs. 5,65, 079
	Total =	**Rs. 21,38,051**

7. Shri Bipin Garg, learned counsel for the appellant assisted by Ms. Kainaat submitted that the Commissioner committed an error in confirming the demand of Rs. 16,79,762/- as the service that was provided by the appellant, as would appear from the work order, was only for operation of the air conditioners and the maintenance and repair part was only incidental.

8. It is not possible to accept this contention advanced by the learned counsel for the appellant. A perusal of the work order at page 172 of the appeal memo, on which reliance has been placed, would indicate that the tender was for annual maintenance and operation of air conditioning and installation. This is the position with regard to other work orders. It is, therefore, clear that the work that was required to be performed by the appellant was both for annual maintenance and operation. Such being the position, the Commissioner was justified in confirming the demand under the 'Operation, Maintenance and Repair Service'.

9. The learned counsel for the appellant also submitted that the Commissioner was not justified in invoking the extended period of limitation under the proviso to section 73(1) of the Finance Act. In

this connection, the learned counsel pointed out that the appellant bonafide believed that it was not liable to pay service tax either under the 'Operation, Maintenance and Repair Service' or 'Works Contract'.

10. It is also not possible to accept this contention also of the learned counsel for the appellant. There is no reason as to why the appellant believed that it was not liable to pay service tax on 'Works Contract' from 01.06.2007 onwards. For the period prior to 01.06.2007, the Commissioner has dropped the demand. Even with regard to 'Operation, Maintenance and Repair Service', it is difficult to accept that any confusion could have arisen as the work order specifically relates to both annual maintenance and operation of the air conditioning system. The appellant, therefore, clearly with an intent to evade payment of service tax did not disclose this amount in the service tax return.

11. The Commissioner, therefore, was justified in confirming the demand by invoking the extended period of limitation.

12. There is, therefore, no merit in this appeal. It is, accordingly, dismissed.

(Dictated & pronounced in the open court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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