CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 55394 of 2023 [SM]

[Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-88-2022-23 dated21.02.2023 passed by the Commissioner of CGST, Customs & Central Excise (Appeals), Indore]

M/s. Kores (India) Ltd. **...Appellant**
(Engineering Division)
Plot No.6, Industrial Area,
Sector-1, Pithampur, M.P

VERSUS

Commissioner of CGST, Customs
& Central Excise, Indore **...Respondent**
Manik Bagh Palace,
Indore-452014

APPEARANCE:
Ms. Tuhina Sinha,Advocate for the Appellant
Shri Rohit Issar, Authorized Representative for the Respondent

CORAM:HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING: 08.04.2024
DATE OF DECISION: **02.08.2024**

FINAL ORDER No. 56221/2024

DR. RACHNA GUPTA

The present appeal is filed to assail the Order-in-Appeal No. 88-2022-23 dated 21.02.2023. The facts relevant for the purpose, in brief, are as follows:

1.1 The appellants were engaged in manufacturing of Wax Crayan, Core Drilling, MS Scrap, Dustless Chalk, Stencil Papper etc. They were availing the facility of Cenvat credit under Cenvat Credit Rules, 2004. The appellants were also holding service tax registration for providing Legal Consultancy Services along with few other taxable services including the services for Survey and exploration of mineral. During the course of audit of appellants record for the period 2014-15 to 2017-18 and the comparison of financial records i.e. balance sheet of the appellant with ST-3 returns filed by them,the department observed that for the Financial year 2016-17, the difference in the assessable income as perST-3 returns and comparison thereof with the value from balance sheet is of Rs.13,37,596/-. Accordingly, service tax of Rs.2,00,639/- on the said amount for the year 2016-17 was alleged to be short paid. The same was proposed to be recovered vide Show Cause Notice No. 1571/2019-20 dated 09.01.2020. The proposal was initially confirmed vide Order-in-Original No. 06/ST dated 30.03.2021. The appeal against the said order has been dismissed vide the Order-in-Appeal/order under challenge.

2. We have heard Ms. Tuhina Sinha, learned Advocate for the appellant and Shri Rohit Issar, Authorized Representative for the department.

3. Learned counsel for the appellant has mentioned that the appellants are also providing Works Contract Services namely, Repair and Maintenance Service to M/s. Mineral Exploration Corporation Ltd. (herein after referred as M/s. MECL). For the Financial Year 2016-17, the Works Contract Service for an amount of Rs.2,56,51,619/- had been rendered and the service tax has been paid on 70% of the said amount according to Rule 2A of Service Tax (Determination of Value) Rules, 2006. Hence the service tax has correctly been paid on the Works Contract Service provide to M/s. MECL. The demand of Rs.2,00,639/- noticing the differential value of Rs.13,37,596/- is thereof apparently wrong on

the face of record. The same is liable to set aside. Question of imposition of penalty also does not at all arise for the same reason.

3.1 Learned counsel further submitted that the requisite documents were provided along with the reply to the show cause notice. Even the contract for annual maintenance as was entered into with the M/s. MECL was also provided to Commissioner (Appeals) along with the work order as well as the sample invoices. Commissioner (Appeals) has clearly cited respective work orders in the impugned order, however has failed to take into consideration the agreement as well as the invoices which are specifically showing that the value in the invoices is inclusive of some portion of goods. The documents clarify that the liability of service tax towards Works Contract Act/VAT has been discharged with respect to each of the invoices. The findings of the Commissioner (Appeals) in Para 10 and therefore factually wrong. There is no basis of any noticed difference. The order of confirming demand of service tax on the said differential duty is therefore liable to be set aside. Appeal is accordingly prayed to be allowed.

4. While rebutting those submissions, learned Departmental Representative has mentioned that the plea as has been taken by the appellants in their reply to the show cause notice was never got supported by way of documents. Opportunity was repeatedly given by the original adjudicating authority but no document was provided. In fact none appeared at the time of personal hearing except once when it was submitted on behalf of the appellant that their reply dated 23.03.2021 may be treated as their final reply and that they have no other documentary evidence in support of the

said reply. Learned Departmental Representative further brought to the notice the findings of Commissioner (Appeals) in the impugned order where it was only the copy of supply orders which were provided to the Commissioner (Appeals). In the absence of any evidence to support their contention that the appellants were rendering Works Contract Services and thus were eligible for abatement on quantum of service tax, in terms of Rule 2A of Valuation Rules stands unproved. Hence, there remains no infirmity in the finds. Accordingly, appeal is prayed to be dismissed.

5. Having heard both the parties and perusing the records, I observe that the appellants had filed their reply to the show cause notice on 23.03.2021 taking the plea that in the Financial year 2016-17, the appellant had rendered Works Contract Service amounting to Rs.2,56,51,619/- to M/s. MECL and has paid the service tax on 70% of the amount received from the said recipient. Thus, there is no short payment as is alleged in the impugned order. Learned counsel had also mentioned that all the requisite documents including the comprehensive annual maintaining contracts between the appellant and M/s. MECL were provided to the authorities below. The supply order and the sample invoices were also provided to the Commissioner (Appeals).

5.1 The invoices are placed on record of present appeal as well. Perusal thereof in light of the agreement on record it is clear that M/s. MECL had obtained the Repair Maintenance Service from the appellant with the clear understanding that the supply of spares required in the maintenance (excluding diesel) shall be provided by the appellants. The comprehensive agreement for annual maintenance, clause 6 of terms and conditions therein reads as follows:

> *6. CAMC shall include both skilled and trained manpower for maintenance and supply of spares for Drilling rig, Tyres, batter and lubricants free of cost (excluding Diesel) for preventive, predictive as well as breakdown maintenance.*

5.2 In invoices the value of the includes the goods as were required for the said maintenance along with proportionate quantum of Service Tax involved in providing said service is mentioned clearly since transfer of goods is also involved in rendering impugned service. The service rendered by appellant is held to be in nature of works contact service. Perusal of the agreement reveals that it talks about that it is a reference to the supply order no. 0254/MECL/MM/FIL/PUR/PDC/82 dated 10.12.2014. The said supply order is specifically mentioned by Commissioner (Appeals) in Para 9 of the order under challenge. We further observed that the findings in Para 9 and 10 of the order are as follows:

> *9. I find that the facts undisputed are that during the period 2016-17, the appellant has shown Rs.2,56,51,619/- under the head of Sale of Services in Balance Sheet. However, the appellant has shown only Rs.2,43,14,023/- in their ST-3 returns under the Business Auxiliary Services head during the corresponding period. Therefore, the difference of Rs.13,37,596/- was found between the amount shown under Business Auxiliary Services head in Balance sheet and declared in the ST-3 returns, to which the appellant have contended that they provided work contract services namely "repair and maintenance" services to M/s. Mineral Exploration Corporation Limited along with supply of Machinery Items, hence as per Rule 2A of the Sevice Tax (Determination of value) Rule, 2006, the Appellant was liablt to pay service tax on*

> *70% amount of the total amount charged for the works contract. In support of their claim, the appellant also provided copy of supply orders namely 0453/MECL/MM/FIL/PUR/PDC/82-A dated 21.09.2015 and 0254/MECL/MM/PUR/PDC/82 dated 10.12.2014 & sample invoices issued to M/s. Mineral Exploration Corp. Ltd.*
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> *10. While going through these orders, I find in these orders that M/s. Mineral Exploration Corporation Limited allotted tenders for supplying various Goods i.e. Crawler Mounted Hydrostatic Core Drill, Truck Mounted Hydrostatic Core Drill etc. and not for any Services. Further I also find that the work contract order numbers mentioned in their invoices were not provided by the Appellant. I also find on perusal of the comprehensive annual maintenance charges charged by the Appellant that no VAT had been paid, since no VAT element is included while charging for annual maintenance, therefore, it is purely a service and hence not eligible for abatement. In view of the above, I find that the appellant failed to establish the impugned services as work contract under repair and Maintenance services. Thus, I find that the contention of the appellant is not supported by any documentary evidence therefore, no credential value.*

5.3 The said findings are apparently false in the light of above noticed fact and evidence on record. The VAT stands duly discharged with as is apparent from the invoices. The supply orders for the supply of spare parts/amount is very much the part of maintenance agreement. There are specific clause for appellant as service provider for maintenance to be responsible to profit for the spare parts also. Resultantly, I do not see any reason for Rule 2A of Valuation Rules giving 70% abatement to the appellant, to not to be applicable for the impugned amount. The findings are therefore held not sustainable. Agreement itself is sufficient to show that the activity rendered by the appellants was a Works Contract Service. Rule 2A of Valuation Rules, 2006 reads as follows:

Determination of value of service portion in the execution of a works contract:- Subject to the provisions of Section 67, the value of service portion in the execution of a works contract, referred to in clause (h) of Section 66E of the Act, shall be determined in the following manner namely: (i) Value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods transferred in the execution of the said works contract. Explanation- For the purposes of this clause,-

B. in case of works contract entered into for maintenance or repair or reconditioning or restoration or servicing of any goods, service tax shall be payable on seventy percent of the total amount charged for the works contract:

5.4 The bare perusal sufficiently clarifies that for the activity of maintenance/repair by way of rendering it as a Works Contract Service, the service tax is payable on 70% of the total amount charged for Works contract. The outcome of these documents and the observations above sufficiently prove that the appellant is eligible for 70% abatement in terms of Rule 2A of Valuation Rules for providing Works Contract Service (annual maintenance services along with spare parts). The eligibility has been absolutely ignored by the adjudicating authority below.

5.5 I also observe that prior filing reply dated 23.03.2021, the appellant had also filed reply to the letter summoning response from the appellant. Vide his letter dated 27.10.2019 it was duly brought to the notice to the department that the appellant has two service tax registration numbers. One is for Business Auxiliary Service and various other services and another is for Survey and Exploration of Mineral Services. The amount in question is towards rendering Repair and Maintenance Services under the registration meant for Survey and Exploration of Mineral Services. I observe that in the show cause notice, the amount in question is alleged to have been short paid amount towards rendering Business Auxiliary Services. The balance sheet of the appellant are also on record. Perusal thereof shows that the amount in question is towards sale of services to M/s. MECL. The contention of the appellants since beginning is that they had rendered Works Contract Services to said M/s. MECL which is already found duly supported by the documents on record.

6. It becomes clear that the services of maintenance to be provided were inclusive of supply of spare parts/machine parts i.e. the sale of goods. In the light of entire above discussion, the order under challenge is hereby set aside. Consequent thereto, appeal stands allowed.

[Order pronounced in the open court on **02.08.2024**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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