CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No. 52754 of 2018 (SM)

(Arising out of Order-in-Appeal No. BHO-EXCUS-002-APP-067-18-19 dated 19.04.2018 passed by the Commissioner of Customs (Appeals), Central Excise & Service Tax, Raipur.)

M/s Paras Jain **Appellant**
Proprietor Jain Hiring Co
231 Malviya Nagar
Durg, C.G-491001

VERSUS

Commissioner of Central Excise and Service Tax, Raipur **Respondent**
Central Excise Building,
Dhamtari Road,
Tikapara, Raipur,
Chhatisgarh-492001

APPEARANCE:

None for the Appellant
Ms. Tamanna Alam, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 50351 / 2022

Date of Hearing: 11.04.2022
Date of Decision: 11.04.2022

ANIL CHOUDHARY:

The Appellant Mr. Paras Jain has filed this Appeal against impugned order-in-original whereby the demand of Service Tax under supply of tangible goods service has been confirmed.

2. The Appellant/assessee is absent on call and has been absent on the last several days. This matter was taken up earlier for *ex parte* hearing and the same was adjourned as part heard on 06/09/2021, thereafter again on 11/10/2021 and again on 23/11/2021.

3. Heard the learned DR and perused the records.

4. From perusal of the show cause notice, I find that the allegation for demanding service tax under SOTG is as follows:-

> 3.2 Shri Paras Jain also submitted a copy of letter dated 18-08-2008 of M/s Raipur Power & Steel Ltd., Borsi, Dist.- Durg, regarding work order for hiring of 40 ton Tyre mounted crane. On perusal of the aforesaid work order, it was noticed that the said work order is silent about the transferring right of possession & effective control of the said 40 ton Tyre mounted crane. It means that the aforesaid goods were supplied by the Noticee to M/ Raipur Power & Steel Ltd. Borsi, Dist. Durg, without transferring the right of possession & effective control; hence the Noticee is liable to pay the Service Tax or aforesaid transaction.

5. Learned DR has drawn my attention to clarification issued by the service receiver dated 21/06/2011 with respect to the aforementioned work order/communication dated 18/08/2008. It has been *inter alia* clarified as follows:-

> 1) That we would enjoy the right of complete possession over Crane supplied for our work,
> 2) That effective control of the same would be exercised only under our complete supervision,
> 3) That you would not be allowed to take the crane outside the factory premises, unless called for any repair/maintenance.
> 4) That the crane would be used exclusively for projects at our site under our complete control and supervision and you cannot force any of your recommendations on us.

6. On going through the aforementioned clarification by Raipur Power & Steel Ltd., it is evident that effective possession and control of the capital goods-crane was with the service receiver. Such transactions where effective possession and control has been delivered, amounts to being sale under the provisions of sales tax/VAT r/w Article 366 (29A) of the Constitution of India. Accordingly, I hold that the show cause notice is mis-conceived.

7. In view of my findings, I allow this Appeal and set aside the impugned order, the Appellant shall be entitled to consequential benefits in accordance with law.

(Order dictated in the open Court)

(ANIL CHOUDHARY)
Member (Judicial)

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