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

Appeal No. ST/329 /2006 Date 26/03/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
THE COMMISSIONER CENTRAL EXCISE, JAIPUR I
NCRB, STATUE CIRCLE, C-SCHEME, JAIPUR

THE COMMISSIONER CENTRAL EXCISE, JAIPUR I Appellant
Vs
M/S BHIWADI CYLINDERS PVT LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/48/08 **Customs** dated 18.02.08

passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
   M/S BHIWADI CYLINDERS PVT LTD
   E-925, 1200 & 1201, RIICO INDUSTRIAL AREA,
   BHIWADI (RAJASTHAN)
2. Adv. / Consult Sh. Atul Gupta, CS
   B-1/1289-A, Vasant Kunj, New Delhi- 70
3. S.D.R.
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publictions (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH NEW DELHI, COURT NO. I

Service Tax Appeal No. 329 of 2006
[Arising out of order in Appeal No. 38 (MPM) ST/JPR-I/2006 dated 28.04.2006 passed by the Commissioner (Appeals-I), Customs & Central Excise, Jaipur]

Date of Hearing/ Decision: 18.02.2008

For approval and signature:

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	: No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	: yes
3. Whether Their Lordships wish to see the fair copy of the Order?	: Seen
4. Whether Order is to be circulated to the Departmental authorities?	: yes

CCE, Jaipur-I — Appellant
[Rep. by Mr. B.K. Singh, DR]

Vs.

M/s Bhiwadi Cylinders Pvt. Limited — Respondent
[Rep. by Mr. Atul Gupta, Co. Secy.]

CORAM: Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final **ORDER** No ST/48/08

Per M. Veeraiyan:

This is an appeal filed by the department against the order of Commissioner (Appeals) No. 38 (MPM)ST/JPR-I/2006 dated 28.4.2006.

2. Heard both sides.

3. The relevant facts, in brief, are as follows:-

(a) The respondent is a manufacturer of LPG Cylinders. They also undertake heat treatment / repair of old LPG cylinder under rate contract for oil companies like IOCL, BPCL and HPCL.

(b) Maintenance and repair services were brought under the service tax net w.e.f. 1.7.20033.

(c) The respondent during the period from 01.07.2003 to 31.03.2004 received a sum of Rs. 55,87,546/- towards such repair.

(d) On the insistence of the department, they paid tax on the said repair services treating it as falling under the "Repair and Maintenance" services and paid a sum of Rs. 1,12,112/- . The tax was paid claiming the benefit of Notification No. 12/2003-ST dated 20.6.2003 on an amount which was the gross amount minus the cost of material used in repairs.

(e) The Original Authority held that the respondent was not eligible for the benefit of Notification No. 12/2003-ST as they had not shown the value of such goods used for repair separately and distinctly in the bills and consequently confirmed a demand of Rs. 3,34,891/- along with interest and imposed penalties under different Sections of the Finance Act, 1994.

(f) The Commissioner (Appeals) held that the repair services rendered by the respondent could not be considered to be under a maintenance contract or agreement. He relied on the Board's Circular No. B-1/6/2005-TRU dated 27.7.2005, which clarified that if only repair work was undertaken without a maintenance contract no service tax was leviable prior to 16.6.2005.

4. Learned DR submitted that the repairing of the old gas cylinder of various LPG companies was done under rate contract; the assessee did not mention separately the cost of materials used in repairing the gas cylinders and, therefore, gross amount charged by them become taxable. Therefore, he wants the order of Commissioner (Appeals) to be set-aside.

5. We have carefully considered the submissions made by both sides.

The Section 65 (64) of the Finance Act, 1994 which defines the service of "Maintenance and Repair" is reproduced below:-

"Maintenance or Repair" means any service provided by-

(i) any person under a contract or an agreement; or

(ii) a manufacturer or any person authorized by him, in relation to,-

(a) Maintenance or repair including reconditioning or restoration, or servicing of any goods or equipment, excluding motor vehicle; or

(b) Maintenance or management of immovable property;]

6. In the present case, the respondent is only undertaking repair of the old cylinders. Contract for maintenance is distinct from a contract for repair. Maintenance involves periodical checkups and services to prevent failure of the machinery. Repair arises after the machine fails or gives problem. Maintenance may or may not involve repair. There may be cases where no

repair need be undertaken of the machinery during the entire period of maintenance contract. Maintenance is in the nature of preventive action. Admittedly, the respondent was only repairing old gas cylinders and for taking such repair, they have entered into a rate contract. This contract for repair cannot be treated as a contract for maintenance. Further, the Board's circular dated 27.7.2005, which has been relied by the Commissioner (Appeals) clarifies that when only repair work was undertaken without a maintenance contract then service tax was not attracted for the period prior to 16.06.2005.

7. In view of the above, we do not find any infirmity with the order of the Commissioner (Appeals). Therefore, we hold that there is no merit in the appeal filed by the department.

8. The appeal is, therefore, rejected.

(Operative part of the order pronounced in the open Court on 18.2.2008)

[Justice S.N. Jha]
President

[M. Veeraiyan]
Member (Technical)

[Pant]