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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/174 /2007 - CU[DB] Date 27/01/2009
ST/CO/103/2007

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

To :
C.C.E BHOPAL

HOSHANGABAD ROAD, 48, ADMINISTRATIVE
AREA, AREA HILLS, BHOPAL (M.P.) 462011

C.C.E BHOPAL Appellant

Vs

ZENITH SPARES, Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/55 2009 CU[DB]** dated 16.01.09

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

ZENITH SPARES,

PLOT NO. 58, UDYOGDEEP INDUSTRIAL ESTATE, P.O. WAIDHAN, DISTRICT SIDHI (M.P.)

2. Adv. / Consult

MR.PIYUSH KUMAR,ADV

B-25,LAJPAT NAGAR-III,N.DELHI

3 S.D.R
4 J.C.D.R.
5 Bar association. CESTAT. New Delhi
6 M/s. Deeparchi Publications. M-93. Marg. 46. Saket. New Delhi 110017
7 M/s Centax Publictions (P) Ltd., 1512-B. Bhishm Pitamah marg. Opp. ICICI Bank of Defence Colony. New - 3
8 Excise & Customs cases. B-37. Sector -1. NOIDA - 201301 Gautam Budh Nagar. (U.P.)
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 Nidheshak publications. I.P.Estate. new Delhi
11 Taxmann Allied Service Pvt Ltd., 21/35. West Punjabi Bagh. New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033. No.70(Old No. 88). Thyagaraya Road. T. Nagar.Chennai
13 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15 Office Copy
16 Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH NEW DELHI

Service Tax Appeal No.174 of 2007
With CO/103/2007

[Arising out of Order-in-Appeal No.102/ST/BPL/2006 dated 11.01.2007 passed by the Commissioner of Central Excise, Bhopal)

Date of Hearing/ Decision:16.01.2009

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

1.	Whether Press Reporters may be allowed to see 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?	:	NO
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, Bhopal ...Appellant
[Rep. by Shri A.K. Madan, DR]

Vs.

M/s. Zenith Spares ...Respondent
[Rep. by Shri A.K. Mishra, Consultant]

CORAM: **Hon'ble Mr. M. Veeraiyan, Member (Technical)**
Hon'ble Mr. P.K. Das, Member (Judicial)

Final Order No....ST/55/09.../Dated:16.01.2009

Per M. Veeraiyan:

The appeal no.ST/174/2007 is by the Department against the Order-in-Appeal No.102/ST/BPL/2006 dated 11.01.2007 of the Commissioner

(Appeals). The cross objection is connected to this appeal. The party has also filed cross objection, basically in support of the order of the Commissioner (Appeals).

2. Heard both sides.

3. The respondent, on the basis of work order, has undertaken repairs of shaft of drag drum drive end, final drive gear box, housing cover, final drive housing and gear cover, etc., and after completing the repairs, they have also stood guarantee for trouble free service of the repaired parts and components. The Original Authority held that the activities covered by the said work order will come under the category of maintenance and repair services and accordingly, confirmed demand of Rs.8,49,519/- relating to the period from July, 2003 to March, 20904 along with interest and imposed penalties. The Commissioner (Appeals) held that the respondents were only undertaking repair work and cannot be held to be rendering maintenance and repair services prior to amendment of Section 65(64) w.e.f. 16.06.2005.

4. Ld. DR reiterates the findings and reasoning given by the Original Authority and draws our attention to the fact that the respondent stood guarantee for the repaired components.

5. Ld. Counsel for the respondent relies on the decision of the Tribunal in the case of Commissioner of Central Excise, Jaipur-I Vs. Bhiwadi Cylinders Pvt. Ltd. reported in 2008 (11) STR 37 (Tribunal-Delhi) and also the Board's Circular No.81/6/2005-TRU dated 27.07.2005 in support of the order of the Commissioner (Appeals).

6. We have carefully considered the submissions from both sides. Substantially, the same issue has been dealt with in the case of Bhiwadi Cylinders Pvt. Lted. cited supra and the relevant portion of the findings are reproduced below:-

> "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 authorised 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 my 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 contract for maintenance. Further, the Board's circular dated

27.07.2005, which has been relied by the Commissioner (Appeals) clarifies that when only when 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 hold that the respondent's activities during the relevant period, cannot come under the category of maintenance and repair services. The appeal is, therefore, rejected. Cross objection is also disposed of.

Order dictated & pronounced in open court on 16.01.2009.

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

Ckp.