CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH –COURT NO. 4
E-HEARING

Service Tax Appeal No. 53648 of 2015

(Arising out of Order-in-Original No. JOD-EXCUS-000-COM-0013-15-16 dated 29.07.2015 passed by the Principal Commissioner, Central Excise, Jodhpur)

M/s S.B. Construction Company **Appellant**
Near ADB Branch, Court Road,
Suratgarh – 335804
Distt ; Sriganganagar (Raj.)

Versus

Principal Commissioner, Central Excise, **Respondent**
Jodhpur
NCRB, Statue Circle, Jaipur-302005
(Rajasthan)

Appearance:

Present for the Appellant: Shri M.B. Maheshwari, Chartered Accountant

Present for the Respondent: Shri Shashank Yadav, Authorized Representative

With
Service Tax Appeal No. 54327 of 2015

(Arising out of Order-in-Original No. JOD-EXCUS-000-COM-0013-15-16 dated 29.07.2015 passed by the Principal Commissioner, Central Excise, Jodhpur)

Commissioner of Central Excise, **Appellant**
Jodhpur
New Central Revenue Building,
Statue Circle, C-Scheme, Jaipur

Versus

S.B. Construction Company **Respondent**
Near ADB Branch, Court Road,
Suratgarh, Distt. Sriganganagar (Rajasthan)

Appearance:

Present for the Appellant: Shri Shashank Yadav, Authorized Representative

Present for the Respondent: Shri M.B. Maheshwari, Chartered Accountant

And
Service Tax Appeal No. 52000 of 2016

(Arising out of Order-in-Original No. JOD-EXCUS-000-COM-0045-15-16 dated 28.03.2016 passed by the Commissioner, Central Excise, Jodhpur)

M/s S.B. Construction Company **Appellant**
Near ADB Branch, Court Road,
Suratgarh – 335804
Distt ; Sriganganagar (Raj.)

Versus

Principal Commissioner, Central Excise, Jodhpur **Respondent**
NCRB, Statue Circle, Jaipur-302005
(Rajasthan)

Appearance:

Present for the Appellant: Shri M.B. Maheshwari, Chartered Accountant

Present for the Respondent: Shri Shashank Yadav, Authorized Representative

CORAM:
Hon'ble Dr. Rachna Gupta, Member (Judicial)
Hon'ble Ms. Hemambika R. Priya, Member (Technical)

Date of Hearing/Decision : 17/04/2025

Final Order Nos. 50569-50571/2025

Dr. Rachna Gupta:

The appellant, M/s S.B. Construction Company, is the holder of Service Tax Registration. During scrutiny of ST-3 returns, the department vide letter dated 23.12.2014 asked for the copy of final accounts for the FY 2012-13 & 2013-14 along with copy of work orders in respect of work executed during the period 01.01.2013 to 30.09.2014 and month-wise as well as work order-wise details of payments received for the period 01.01.2013 to 30.09.2014 with copy of running bills, work completion certificates and copy of bills of material supplied in respect of execution of work and VAT returns for the period 01.01.2013 to 30.09.2014, from appellant.

2. On examination of the aforesaid documents / information, it was observed that the appellant is engaged in rendering of the following services: -

(i) Unloading of coal through wagon tipper and shifting stones to dump yard to the U.P. Rajya Vidyut Utpadan Nigam Ltd., Parichha, Jhansi and unloading of coal and coal cleaning work of coal handling system & emptying & cleaning of Raw Coal Bunkers to Suratgarh Thermal Power Station (STPS).

Department alleged that these activities relate to cargo handling service tax and thus are leviable on provision of these services under Section 66B of the Act.

(ii) Annual Maintenance of Boiler and its auxiliaries units-I & II at Nayveli Lignite Corporation Limited, Barsingsar, Bikaner as without any work contract service in their letters documentary evidence with regard to transfer of property in goods in the execution of the contract.

Department alleged that the aforesaid services do not qualify under work contract service and these activities relate to Management, Maintenance or Repair which are covered under section 65B (44) of the Act to mean any activity done by a person for another for a consideration. Therefore, service tax on provision of these services is leviable under Section 66B of the Act.

(iii) Routine/Break down/Capital maintenance work of Raw water pumps, Intake water pumps and upkeep surrounding area of 6 x 250MW and providing assistance in operation of the CHP system equipments, skilled labour to be provided in each shift round the clock as per requirement of Engineer in charge based on system requirement & work of HP Welding work in Boiler & Turbine.

The aforesaid activities are also alleged to be Management, Maintenance or Repair Services. Therefore, service, tax on provision of these services is leviable.

(iv) Man Power Supply to Bharat Heavy Electricals Limited and Rajasthan State Ganganagar Sugar Mills are the activities relating to Manpower Recruitment and Supply Service. In terms of Notification No. 30/2012-ST, dated 20.06.2012, the service provider i.e. the assessee is liable for payment of 25% of service tax and the remaining liability of 75% is to be discharged by the service receiver.

3. From the scrutiny of the documents, it was also observed that the appellant had received taxable value of Rs. 69548091/- during the period July 2012 to September 2014 but has not paid service tax amounting to Rs. 85,96,147/-. With these observations a show cause notice no. 48/2015 dated 10.03.2015 was served upon the appellant purposing recovery of said amount of service tax (8596147) along with the proportionate interest and the appropriate penalties. The proposal has been confirmed vide order in original bearing no. 45-15-16- dated 28.03.2016 being aggrieved the present appeal has been filed.

4. We have heard Sh. M.B. Maheshwawri, Chartered Accountant for the appellant and Sh. Shashank Yadav, Authorized

Representative for the department. It is submitted that the impugned show cause notice dated 10.03.2015 has wrongly been issued covering the service tax liability for the period from July 2012 to Sept 2014. The said show cause notice is issued in continuation in earlier show cause notice dated 19.12.2014, which has already covered the period up to December 2012. For this reason, itself the show cause notice is not sustainable and the demand is liable to be set aside, at least for the period July 2012 to December 2012. It is further mentioned that the demand is confirmed by wrongly observing that the appellant / partnership firm is having two service tax registration. It is submitted that both the registration numbers pertain to one and the same assessee i.e. the appellant as is apparent from the number itself as below: -

1. AAEFS2040**C**ST001
2. AAEFS2040**L**ST001

The issuance of two number is because of clerical mistake on part of the department. Based on this the department cannot have the unfair advantage. It is submitted that the appellant has shown its work done during the relevant period in the registration number AAEFS2040**L**ST001 hence in registration number AAEFS2040**C**ST001 nil returns have been filed. The demand in question has been raised based upon nil return filed for registration number AAEFS2040**C**ST001. The demand is otherwise based on Form 26AS as was filed by the appellant before the income tax department, it being the one assesse only in respective of two registration numbers.

5. Learned Counsel further submitted that the payment of amount of service tax of Rs. 38,08,691/- has totally being ignored by the department and the adjudicating authority as well. The revenue cannot be allowed to enrich itself unjustifiably. The decision of the tribunal in the case of **Ms. Sahara India TV Network vs CCE&ST, Noida**[1] and the decision in case of **CCE & ST, Bhopal Vs K.K. Kedia**[2] .

5.1 Learned Counsel impressed upon that there has occurred a gross calculation error with respect to service tax liability of the appellant for the relevant period due to the aforesaid reason and the ignorance of the authority for the same. Otherwise also the demand in question, calculation thereof in the show cause notice as well as in the order in original do not match with the amount appearing in form 26AS. Without reflecting on the merits with respect to the classification of the impugned services, ld. counsel has requested for remanding the matter back to original adjudicating authority with the directions that all the above submissions be taken into consideration and a fresh order be arrived. Appeal is prayed to be disposed of accordingly in the said term.

6. Learned Departmental Representative appearing for the department has submitted that there is no infirmity in the findings of the order under challenge with respect to the merits and the alleged liability of the appellant. However, Learned Departmental

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1 2016 (41) STR 145 (CESTAT - Del).
2 2014 (35) STR 383 (Tri.- Del)

Representative has endorsed no objection for the appeal to be remanded back.

7. Having heard both the parties, perusing the grounds of the appeal and the decisions relied upon by the appellant we observe that the appellant vide reply to the show cause notice dated 08.05.2015 and with two additional submissions along with documentary evidences given at the time of personal hearing dated 13.08.2015 and 16.02.2016 has brought the fact of two service tax registration to have been issued in his favour It also brought to the notice that the service tax liability stands discharged under one of such registration number (AAEFS2040**L**ST001) and the nil returns have been filed for registration number AAEFS2040**C**ST001.

8. With respect to classification of the service also the service is denied to be classified under Management Maintenance and repair service (MMR). Most of the activities were mentioned to be covered under works contact and manpower supply for which the service tax is payable under reverse charge in the ratio of 50/50 for Works Contract Service (WCS) and in ratio of 75/25 for MMR. We observe that the none of these submissions have been dealt with by the original adjudicating authority.

9. We observe from the decision in the case of **Ms. Sahara India TV Network** (supra) that therein it was held that the legal person under two tax registrations, if is the same person, issue is not so much of law but of rectification of mistake inadvertently committed and mistake committed in remittance of service tax under different codes. Such situation should have been sought out

by the Original adjudicating authority. We also observe that original adjudicating authority is silent about these grounds raised in defense by the appellant which are duly supported by the documentary evidence. Hence, we consider the present appeal to be the fit case for being remanded back to the original adjudicating authority. Accordingly, we do the same with the following directions to the original adjudicating authority: -

1. The Original Adjudicating Authority shall decide the impugned Show Cause Notice afresh

2. It shall verify above two separate registrations whether pertain to appellant only/ one single assessee

3. Whether the appropriate service tax liability stands fully discharged by the appellant under one of those registration numbers.

4. Whether the service rendered by the appellant are of such nature for which the tax has to be paid under reverse charge mechanism in the ratio of 50/50 with respect to rendering WCS and in ratio of 75/25 with respect to rendering MMRS.

10. The adjudicating authority shall decide the matter within three months of receiving the present order after affording the sufficient opportunity of representation to the appellant.

11. With these directions, three of the appeals as mentioned above stand allowed by way of remand.

(Pronounced in open Court)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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