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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

Date **27/04/2011**

Appeal No. ST/245 /2008 - CU[DB]

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

To :
M/S BASANT ENTERPRISES,
PLOT NO. 16, UDYOG DEEP,INDUSTRIAL
AREA,WAIDHAN,DISTT. SIDHI (M.P.)

M/S BASANT ENTERPRISES, Appellant

Vs

C.C.E BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/159/ 2011 CU[DB]** dated 21.04.11 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
C.C.E BHOPAL
HOSHANGABAD ROAD, 48,
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HILLS, BHOPAL (M.P.) 462011

2. Adv. / Consult
MR.A.K.MISHRA, CONSULTANT,
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3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise, I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
DIVISION BENCH

Service Tax Appeal No.245 of 2008
(Arising out of Order-in-Revision No.01/Commr/ST/2008 dated 10.01.08 passed by the CCE, Bhopal)

For approval and signature:
Hon'ble Mrs.Archana Wadhawa, Member (Judicial)
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?	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?	No

M/s.Basant Enterprises — Appellant

Vs.

CCE, Bhopal — Respondent

Present for the Appellant: Shri Mayank Garg, Advocate
Present for the Respondent: Shri S,N.Singh, JCDR

Coram:Hon'ble Mrs.Archana Wadhawa, Member(Judicial)
Hon'ble Mr.M.Veeraiyan, Member (Technical)

Date of Hearing/Decision: 19.04.2011

Final **ORDER NO.** ST/159/11

PER: ARCHANA WADHAWA

As per facts on records, the appellant got himself registered wit the Service Tax department for providing the service falling under head "maintenance and repair service". During the period from April, 2004 to December, 2004, the appellant did not file any return and accordingly the proceedings were initiated against them by way of issuance of show cause notice dated 28.9.2004 raising the service tax of Rs.3,77,657/-

alongwith confirmation of interest and proposal to impose penalty upon them.

2. The appellant, in pursuance to the said notice submitted that they had only entered into a rate contract with their customers for the repair of goods. There was no maintenance contract or agreement with their customers. In terms of definition of maintenance and repair activity as contained in section 65 (64) of the Act during the period prior to 16.6.2005, the service tax was leviable on the said activity only when the services are being provided by a person for maintenance contract or agreement. They contended that with effect from 16.6.2005, the words appearing in the said section "any person under a maintenance contract or agreement" were replaced by the words "any person under a contract or agreement". The said change implies that prior to 16.6.2005, the service tax on maintenance and repair was liable to be paid by a person having a maintenance contract and in the absence of such a maintenance contract, no service tax was payable on repair and maintenance job executed.

3. The Assistant Commissioner of Central Excise accepted the above stand of the appellant and held that inasmuch the period is prior to 16.6.2005 and there was no maintenance contract, the appellant was not liable to pay any service tax. However, he confirmed the service tax of Rs.22,157/- alongwith interest for the period from 16.9.2004 to December, 2004 inasmuch as the said period was under a maintenance contract.

4. The above order of the Assistant Commissioner was reviewed by the Commissioner and confirmed the demand of

service tax alongwith interest and penalty imposed. Hence, the present appeal.

5. After hearing both sides, we find that the issue is no more res integra. Admittedly the period relates to repair activity carried out by the appellant under a rate contract for repair of goods and not under maintenance contract.

6. Learned Advocate appearing for the appellant has drawn our attention to the precedent decisions laying down that such contracts for repair service are not covered under the maintenance and repair service for the period prior to 16.6.2005. The said decisions, for arriving at the above finding, have also relied Board's circular No.B1/6/2005-TRU, dated 27.7.2005 clarifying that maintenance and repair under rate contract is not liable to service tax prior to 16.6.2005. Reference is made to the Tribunal's decision in the case of CCE, Jaipur-I vs. Bhiwadi Cylinders Pvt.Ltd.-2008 (11) STR 37 (Tri.-Del.) as also to the decision in the case of CCE, Jaipur-I vs. Maheshwari Transformers Pvt.Ltd. -2008 (10) STR 295 (Tri.-Del) and in the case of CCE, Jaipur-II vs. Dusad Transformer & Switchgears (P) Ltd.-2007 (5) STR 37 (Tri.-Del).

7. Learned DR for the department drawing our attention to the various clauses of the contracts and submits that inasmuch as the same were for maintenance and repair of the transformers, the same would be liable to service tax. He also relied upon the Tribunal's decision in the case of TECHAIDS vs. CCE, Delhi-I -2006 (4) STR 566 (Tri.-Del.) laying down that the activity of receiving of old and used cylinders and filling them with paper/cotton felt/rubber for bringing cylinders in original workable condition.

The process undertaken by the appellants would come under the scope of maintenance and repair service. As such, he submits for upholding of the impugned order.

8. After appreciating the submissions, we find that the issue is no more res integra and stands covered by the precedent decisions of the Tribunal referred supra. Admittedly, the repair in the present appeal is before 16.6.2005 and the services were being provided by the appellant under the rate contract. This fact stands admitted by the original adjudicating authority. The Tribunal in the above decisions has very clearly held such repair activities under a rate contract would not be covered by the definition of 'maintenance and repair service' for the period prior to 16.6.2005, which required said activity to be carried under a maintenance contract. To the same effect is the board's circular, which undoubtedly is binding on the Revenue. We further note that the decision relied upon by the learned DR is not on the same activity and the period covered in the said decision is also not available. As such, the ratio of the same cannot be made applicable to the present case.

9. In view of foregoing discussion, we set aside the impugned order and allow the appeal with consequential relief to the appellant.

(Pronounced in the open court)

(ARCHANA WADHAWA)
MEMBER (JUDICIAL)

(M.VEERAIYAN)
MEMBER (TECHNICAL)

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