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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/496 /2007 - CU[DB] Date **28/04/2011**

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

To :
M/S RAJ TRANS STAMPINGS (P) LTD.
E-348, ROAD NO. 16, VKI AREA, JAIPUR,

M/S RAJ TRANS STAMPINGS (P) LTD. Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/165/ 2011 CU[DB]** dated 20.04.11 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. JAIPUR I
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult Mr. Bipin Garg, Adv
B-1/1289-A Vasant Kunj
New Delhi

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.
DIVISON BENCH

Service Tax Appeal No.496 of 2007

(Arising out of Order-in-Appeal No.121(GRM) ST/JPR-I/2007 dated 27.06.07 passed by the CCE (A), Jaipur)

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.Raj Trans Stampings (P) Ltd. Appellant

Vs.
CCE, Jaipur Respondent
Present for the Appellant: Shri Mayank Garg, Advocate
Present for the Respondent: Shri Sumit Kumar, SDR

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/165/11

PER: ARCHANA WADHAWA

The service tax demand of Rs.3,44,923/- stands confirmed against the appellant alongwith imposition of penalty on the ground that during the period from1.7.2003 to 31.12.2004, the appellant has provided maintenance and repair service to their clients, which was taxable to service tax.

2. After hearing both sides, we find that the services of repair were being provided by the appellant to their customer M/s.Jaipur Vidyut Vitran Nigam Ltd. under a contract. The said contract was a rate contract for repair of transformers installed at their premises. 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).

3. 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.

4. 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.

5. 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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