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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/308 /2007-309 /2007,329 /2007-332 /2007 - CU[DB] Date **23/05/2011**

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

To :
M/S MITUL ENGG. SERVICES
H.NO. 272, WARD NO. 45, CHHAWANI, KOTA
(RAJASTHAN) 324007

M/S MITUL ENGG. SERVICES Appellant
Vs
C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/187-192 2011 CU|DB|** dated 16.05.11 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.SANJAY GROVER
LAW OFFICES, E-500, GREATER KAILASH-II,
NEW DELHI-110 048.

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. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Customs Appeal Branch)

P.T.O.

M/S RATHORE ENGINEERSING ENTERPRING
M/S RATHORE ENGINEERING ENTERPRISES,
H.NO.574,KUNHADI, KOTA (RAJ)324008

M/S SUNIL ENTERPRISES
KRISHNA NIKUNJ, SAKATPURA ,
KOTA (RAJ)
324008

M/S NAVDEEP ENGG. FABRICATORS
SONI BHAWAN, GULAB BARI,
KOTA (RAJASTHAN)

M/S EROCOM ENTERPRISES
4TH RANGPUR ROAD,
KOTA-304002 (RAJ)

M/S MISHRA ENG. WORKS
M/S NEAR KAUSHAL KISHOR SCHOOL,
(OPP. SELLO SUPARI FACTORY),
SAKATPURA,KOTA RAJ.

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III
Service Tax Appeal No.ST/308-309 of 2007 (DB)
Service Tax Appeal No. 329-332 of 2007 (DB)

[Arising out of the Order-in-Appeal No.58-63(GRM)/ST/JPR-I/2007, dated 16/03/2007 passed by The Commissioner (Appeals), Customs & Central Excise, Jaipur.]

For Approval and signature :
Hon'ble Shri M.V.Ravindran, Member (Judicial)
Hon'ble Shri 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 would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	
3.	Whether their Lordships wish to see the fair copy of the order?	:	Seen
4.	Whether order is to be circulated to the Department Authorities?	:	Yes

(1) M/s Mitul Engineering Services]
(2) M/s Navdeep Engineering Fabricators]
(3) M/s Sunil Enterprises]
(4) M/s Rathore Engineering Enterprises] Appellant
(5) M/s Mishra Engineering Works]
(6) M/s Erocon Enterprises]

Versus

CCE, Jaipur-I Respondent

Appearance
Ms. Sonal Bajaj, Departmental Representative– for the respondent.

Shri A.R.Madhav Rao with Shri Udayanathan, Advocate – for the appellant.

CORAM : **Hon'ble Shri M.V.Ravindran, Member (Judicial)**
Hon'ble Shri M.Veeraiyan, Member (Technical)

DATE OF HEARING : 10/05/2011.

Final Order No. ST/187-192/11 Dated : 16.5.11

Per. M.V.Ravindran :-

All these appeals are filed against Order-In-Appeal No.58-63(GRM)/ST/JPR-I/2007, dated 16/03/2007.

2. Heard both the sides and perused records.

3. Issue involved in these cases is regarding the service tax liability of appellants herein for the period 01.0703 to March, 2005 under the category of maintenance and repairs service. Both the lower authorities, on completion of adjudicating and appellate ~~appellant~~ proceedings, have come to the conclusion that all the appellants herein are liable to pay the service tax under the head "Maintenance or Repairs service" and are liable to pay the interest as well as the consequent penalties arising out of non-discharge of service tax liabilities, for which lower authorities relied upon the contract/agreement of the appellants with Kota Thermal Power Station (KTPS) regarding maintenance or repair service in their plant.

4. Since all these appeals raise a common issue, they are being disposed off by a common order.

5. Ld. advocate appearing on behalf of the appellant would draw our attention to the definition of maintenance or repairs service. It is his submission that all the appellants herein entered into identical contract/agreement with M/s KTPS for routine breakdown repairs. He further submits that the wordings used in the contract indicate that it could be a routine and breakdown maintenance of ash handling plant in KTPS. He would submit though wordings indicate it could be a maintenance contract, he would submit that in fact it is a rate contract. For this submission, he would draw our attention to the annexures/schedule of prices; as is annexed to the said agreement/contract. Explaining each and every item, he would submit that the annexures indicate that as and when any work needs to be done, KTPS would get it done from one of the appellant who would complete their work issued to them and get paid as per scheduled prices. It is his submission that though contract indicates the repairs, the amount as can be seen is not as is in the case of regular maintenance contract. It is his submission that the assessee

understood that the contract entered into by them as a rate contract and no service tax liability arose during the relevant period as such rate contract. It is his submission that the extended period of limitation invoked by revenue is incorrect. He would submit that from 16.06.05, the definition of maintenance or repair service as has undergone a change and that the appellant's herein have started discharging service tax liability. The said definition now indicates that the entire demand is not tenable and the agreement under which repairs are undertaken is also not liable to be taxed.

6. Ld. Departmental Representative on the other hand referring to the very same contract as has been relied upon by the counsel, would submit that the agreement/contract entered with KTPS indicates about the maintenance of ash handling plant. He would submit that the contract talks about the capital/routine and breakdown maintenance, i.e., work allotted to the appellant is of routine nature though they are being paid for the work completed as per schedule.

7. On careful consideration of submissions made by both the sides, we find that the issue involved in this case regarding the service tax liability on the appellants during the

period from 01.07.03 to March, 2005 under the category of maintenance or repair services.

8. The definition during the relevant period for maintenance & repair is as under :-

> "*Maintenance or repair means any service provided by:*
>
> *(a) any person under a maintenance contract or agreement or*
>
> *(b) a manufacturer or any person authorised by him in relation to maintenance or repair or services any goods equipment, excluding motor vehicle.*"

9. It can be seen from the above reproduced definition that the service rendered in maintenance or repair under any contract or agreement is ~~limited~~ covered and is ~~covered~~ liable to be taxed under the Finance Act, 1994.

10. Coming to the submissions made by the Ld. Counsel and on perusal of the agreement entered by the appellant with KTPS, we find that the said agreement does reads as capital, routine and breakdown maintenance of the ash handling plant. The said agreement also clearly indicates that the appellant would be made all payments during the existence of said agreement/contract. On a specific query from the Bench, as to whether the appellant were paid entire amount of contract,

it was brought to our notice that only repair jobs undertaken in the ash handling plant were paid. In the contracts entered by the said M/s Mitul Engineering Services with KTPS it is seen that it was ~~contested~~ contracted to pay Rs.37 lakh, while the Show Cause Notice demands the service tax on an amount received by the said M/s Mitul Engineering Services, i.e., Rs.35.5 lakh during the relevant period and existence of said agreements and the work undertaken by them at KTPS. We are of the considered view that appellant could have entertained a bonafide belief, that the contract entered by them is a rate contract and the payment being based on the work done by them during the existence of agreement, we find there is no malafide intention in the appellant in not discharging service tax liability from 01.07.03. We find that the details of Show Cause Notices was issued to the appellants:

S.No.	Name of Appellant	SCN Date
1.	M/s Mitul Engineering (ST/308/2007)	23.12.05
2.	M/s Navdeep Engineering (ST/309/2007)	22.12.05
3.	M/s Sunil Enterprises (ST/329/2007)	28.06.06
4.	M/s Rathore Engineering Enterprises (ST/330/2007)	23.12.05
5.	M/s Mishra Engineering Works (ST/331/2007)	22.12.05
6.	M/s Erocon Enterprises (ST/332/2007)	13.04.06

It can be seen from the above, that the claim of the Ld. Counsel that part of the demand in respect of some of the assessees is time-barred while in respect of few assesses, the entire demand is time-barred. In our considered view, the introduction of service tax law on maintenance or repairs was in initial stage during the relevant period and the perusal of rate of contract entered by the appellant would indicate that the amount paid for job done and hence can be considered as a rate contract, there could be a legitimate understanding of the appellant that they are not liable to discharge service tax liability under the maintenance or repair services. In view of this, in our considered view, the demand which is confirmed by the adjudicating authority by upholding invokations of larger period is not on sound reasoning and is liable to be set aside and we do so.

11. It is also to be noted that the demand within the limitation period is liable to be confirmed on the appellant,as in our considered opinion, the services rendered by the appellant as per the agreement with KTPS would be covered under the services of maintenance or repair. We find that the

appellant were not charging service tax on the invoices raised by them to KTPS and hence the amount collected by them needs to be considered as cum-duty amount. In view of the fore going, the amount of service tax within the period of limitation needs to be recalculated by the lower authorities, considering the amount received as cum-duty amount and to be recovered ~~by~~ from the appellant with appropriate rate of interest as provided under the law. For this limited purpose, we remit the matter back to the adjudicating authority.

12. We find that there could be a definite legitimate belief of the appellant that they are not liable to discharge the service tax liability as per the agreement entered by them due to which the appellant may not have discharged service tax liability under section 73(1) of Finance Act, 1994. Invoking the provisions of section 80, we hold these being reasonable cause for the appellant to be believe that they need not discharge the service tax liability, the various penalties imposed on the appellants are set aside.

13. In sum, the service tax liability and interest thereof within the period of limitation from the date of Show Cause Notice are upheld and confirmed and service tax liability

beyond the period of limitation is set aside. Penalties imposed on the appellant are also set aside. The appeals are disposed off as indicated herein above.

(Operative portion of order pronounced on completion of Hearing in open court.)

(M.V.Ravindran)
Member (Judicial)

(M. Veeraiyan)
Member (Technical)

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