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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 29/11/2011

Appeal No. ST/661 /2007,690 /2007 - CU[DB]
ST/338-339/2007, ST/CO/33/08

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

To :
M/S BHARAT HEAVY ELECTRICAL LTD
DGM(FINANCE), BLOCK VII ANNEX 2ND FLOOR
TBG, P.O.PIPLANI, BHOPAL
462003

M/S BHARAT HEAVY ELECTRICAL LTD Appellant

Vs

C.C.E BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/610-613/ 2011 CU[DB]** dated 28.11.2011 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,
ADMINISTRATIVE AREA, AREA
HILLS, BHOPAL (M.P.) 462011

2. Adv. / Consult
MR.Z. U. ALVI
D-8,BDA COLONY, ADJACENT GARUDA
TRAVELS. KOH-E-FIZA BHOPAL-01

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 (Harvana)
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)

14. M/S BHARAT HEAVY ELECTRICAL LTD
TRAANSMISSION BUSINESS GROUP, BLOCK-VI,
ANNEX EWSF, PIPLANI, BHOPAL.

15. M/S Bharat Heavy Electrical Ltd
Dy Manager (Finance) Block-VI Annex Sh
2nd floor P.O. Piplani Bhopal.

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.III

ST/Appeal No.690/07, ST/Appeal No.338-339/07, ST/Appeal No.661/07, ST/CO No.33/08

(Arising out of order in appeal No.53/ST/BPL/07-08 dated 24.8.07 No. 3&4/Comm/ST/07 dated 16.3.07passed by the Commissioner of Central Excise (Appeals), Bhopal)

Date of Hearing: 11.8.2011

For Approval and signature:

Hon'ble Ms Archana Wadhwa, Judicial Member
Hon'ble Mr.Mathew John, Technical Member

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1. Whether Press Reporters may be allowed to see The order for publication as per Rule 27 of the CESTAT(Procedure) Rules, 1982?

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?

4. Whether order is to be circulated to the Department Authorities?

M/s Bharat Heavy Electricals Ltd — Appellants

Vs

CCE, Bhopal — Respondent

Appeared for the Appellant: Shri Z.U. Alvi, Advocate
Appeared for the Respondent: Shri Sunil Kumar, DR

Coram: **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Mr. Mathew John, Member (Technical)

Final ORDER No. ST/610-613/11

Per Mathew John:

There are four appeals and one cross objection being decided in this proceeding .All the four appeals involve integrally connected issues and same assesse and hence are heard and decided together.

2. Appeal No ST-338/07 involve a tax demand of Rs.1,78,03,220/- and appeal No. ST-339/07 involve tax demand of Rs. 1,42,24,061/-. These arise out of the same impugned order passed by the Commissioner but involve demands raised by two different Show cause Notices. The first SCN is for the period 10-09-2004 to 30-09-2005. The second SCN was for the period 01-10-2005 to 31-03-2006. These appeals are filed by the assessee. Appeal no. 690/2007 involves refund claim of Rs. 1,15,98,776/- for the period 10-09-04 to 30-09-2005 and is filed by the assessee against the order of Commissioner (Appeal). Appeal No. 661/07 is filed by the department but involves the same impugned order which is contested in appeal No. 690/2007. Cross Objection No. 33/08 filed by the assessee is in respect of Appeal No. 661/07. The point raised in this Cross Objection is the same as point raised in Appeal No.690/07 filed by the assessee and therefore, all the matters are being taken up together for disposal.

3. The appellant-assessee undertook execution of turn-key contracts for supplying machineries needed for setting up sub-stations for electric power and to install and commission the same. They paid excise duty on goods manufactured by them and supplied it. They also supplied some bought out items. Further the turn-key contract involved civil work for preparation of the project site. On the value of such services they paid service tax under the category of Commercial Construction Service after availing abatement of 67% of the gross value of services received. Further the contract involved services of Installation and Commissioning. For the gross value received for such services they paid service tax on the gross value of such service.

4. Revenue was of the view that the component of service in the contract could not have been vivisected into two services and abatement availed for value of one of the services. Show Cause Notices issued on such proposition was adjudicated by the impugned order dated 16-03-2007. The assessee has a counter contention that the turnkey contract for supply of goods and services cannot be vivisected into supply of goods and services and therefore whatever service tax paid by them should be refunded. They rely on the decision of the Tribunal in the case of Daelim Industrial Company Vs. UOI- 2003 (155) ELT 457 (Tri). This refund claim was rejected by the Revenue on merit as well as for the reason that the refund claim was not submitted in proper form to the proper authority in the time frame prescribed under the law. The assesse has filed appeal against that rejection order. Apart from the merits of the case the Appellant-assessee has a contention that this order was passed ex-party by the adjudicating authority without giving personal hearing and hence stands passed in violation of principles of natural justice. The Revenue is aggrieved by the observation of Commissioner (Appeal) in para 9 of the Order-in-Appeal where he observed that the payment made by the assessee under two different heads of services is proper. This observation goes against the adjudication order which is under appeal in the first two appeals.

5. The Counsel appearing for the assessee pleads that Revenue is approbating and re-probating on the issue whether the turn-key contract is divisible or not. He further points out that the decision of the Tribunal in the case of Daelim Industrial Company has been approved by the Apex Court as reported at 2004 (170) ELT A181 and therefore there is no case for demanding any further service tax from the appellant-assessee. He pressed for refund of service tax already paid.

6. The Ld. SDR appearing for Revenue submits that the merits of the case was not examined by Apex Court in the case of Daelim

Industrial Company. Further the whole matter has been re-examined by the Larger Bench of the Tribunal in CCE Vs. BSBK Pvt. Ltd holding that Turnkey projects for supply of goods and services can be vivisected into two and subjected tax separately. He concedes that the adjudicating authority did not have the benefit of considering the decision of the Larger Bench of Tribunal and the matter should be considered afresh.

7. At this stage the Counsel for the Assessee draws attention to paras 8, 10 and 12 of the said decision in the case of BSBK Pvt. Ltd and points out that different elements of service can be considered separately depending on the nature of services. He contests that civil work involved in preparation of a site is of a different character as compared to installation and commissioning.

8. We have considered arguments on both sides. We find that the adjudication orders are passed without the benefit of considering the view of the Larger bench of Tribunal in BSBK Pvt. Ltd. So we consider it proper to remand both the matters to be decided after granting a fresh hearing to the appellant-assessee. Since both the matters of demand and refund are integrally connected it is only proper that both the matters are heard together by the same authority to avoid multiple proceedings. So we set aside the impugned orders and remit the matters to the Commissioner who is to decide the demand notices. The appellant-assessee is at liberty to raise all legal contentions.

9. The four appeals and cross objection are disposed by way of remand.

(Pronounced in open court)

(Archana Wadhwa)
Member(Judicial)

MPS*

(Mathew John)
Member(Technical)