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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 **10/08/2011**

Appeal No. ST/360,377,409-410 /2007 - CU[DB]

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

To :
M/S S.P. CONSTRUCTION
A-LA-6, DABABARI EZTN., KOTA, RAJASTHAN
324009

M/S S.P. CONSTRUCTION Appellant
Vs
Respondent
C.C.E. JAIPUR I

I am directed to transmit herewith a certified copy of **Final order No.ST/344-47 2011 CU[DB]** dated 05.08.2011 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. 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 Registra
(Customs Appeal Bran

P.T.O.

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

Date of Hearing : 4.8.2011

Service Tax Appeal No. 360 of 2007

[Arising out of the Order-in-Appeal No. 43/GRM/ST/JPR-I/2007 dated 13.3.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur]

Coram:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

1.	Whether Press Reporter 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?	No
3.	Whether their 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.

M/s S.P. Construction — Appellant

Vs.

CCE, Jaipur-I — Respondent

Service Tax Appeal No. 377 of 2007

(Arising out of Order-in-Appeal No. 88-90(GRM)/ST/JPR-I/2007 dated 23.4.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur)

M/s N.K. Traders — Appellant

Vs.

CCE, Jaipur-I — Respondent

Service Tax Appeal No. 409 of 2007

Arising out of Order-in-Appeal No. 88-90(GRM)/ST/JPR-I/2007 dated 23.4.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur)

M/s S.S. Electrical Works Appellant

Vs.

CCE, Jaipur-I Respondent

Service Tax Appeal No. 410 of 2007

(Arising out of common Order-in-Appeal No. 88-89(GRM)/ST/JPR-I/2007/1281 dated 23/26.4.07 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur)

M/s Krishna Enterprises Appellant

Vs.

CCE, Jaipur-I Respondent

Appearance:

Appeared for Appellant : Shri B.L. Narasimhan, Advocate
Appeared for Respondent : Shri Sunil Kumar, SDR

CORAM: Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

Final Order No. ST/344-347/11 dated 5.8.11

Per Archana Wadhwa :

All the appeals are being disposed of by a common order as the issue involved is identical.

2. After hearing both sides duly represented by Shri B.L. Narasimhan, ld. Advocate for Appellant and Shri Sunil Kumar, ld. SDR for Revenue, we find that the appellant entered into a contract with M/s Kota Thermal Power Station for maintenance and repair of the plant. The clauses of the contract show that the same was for routine break down repairs and maintenance etc. Revenue by entertaining a view that the said activities undertaken by the appellant amounted to providing of service under the

category of maintenance and repair services, which were liable to tax, initiated proceedings ~~were~~ against the appellant by way of issuance of Show Cause Notices. The said Show Cause Notices stand culminated into impugned orders confirming the demand of duties and imposing penalties upon the appellant. Hence the present appeal.

3. Ld. Advocate Shri B.L. Narasimhan appearing for the appellants have fairly agreed that the issue on merits stands settled against the appellants in the cases of other appellants similarly situated. The Tribunal vide its Order No. ST/187-192/11 dated 16.5.11 passed in the case of **M/s Mittul Engg. Services and others** have examined the various clauses of identical contract entered into by the appellants with M/s Kota Thermal Power Station. He fairly agrees that the contracts in those cases entered by various assesses with M/s KTPS are identical to the contracts entered into by the present appellants. The Tribunal has already held that the said activities amount to providing services under the maintenance and repair category and are liable to service tax.

4. However, he submits that the Tribunal, in the same very order, ~~Tribunal~~ has allowed the appeals on the point of limitation by observing that there was scope for entertaining bonafide belief on the part of the appellants. By drawing our attention to the period involved and the dates of Show Cause Notices in each and every appeal, he submits that

the extended period stands invoked by the Revenue and only a part of the demand would be within the limitation period. The demand in the case of M/s N.K. Traders is totally barred by limitation. He also submits that Tribunal in the above referred judgement of M/s Mittul Engg. Services has also waived penalty by invoking the provisions of Section 80 of the Finance Act. The duty which falls within the limitation period has been extended. The benefit of cum-duty price and the lower authorities have been directed to re-quantify the same accordingly.

5. As such, he submits that in view of the above decision, the demand beyond the period of limitation is required to be set aside along with setting aside of penalty and the matter is required to be remanded for re-quantification of service tax falling within the limitation period and by treating the entire compensation as cum duty amount.

6. Countering the arguments, ld. DR submits that the period of dispute in all the cases is from 1.7.2003 to 12.1.2005 and the appellants having entered into a maintenance contract with M/s KTPS should have been aware of the fact that such maintenance activities are covered by the maintenance or repair services in terms of the provisions of Section 65 (64) of the Finance Act, 1994 and should have discharged service tax liability. No intimation having been given to the Revenue about the said

activities and no registration having been taken by the appellants, extended period stands rightly invoked by the Revenue.

7. After appreciating the submissions made by both the sides, we find that the same issue involving identical contracts of other assesses with M/s KTPS stand considered by the Tribunal in the case of M/s Mittul Engg. Services. The Tribunal has already held against the appellant on merits. As such, we by following the said decision hold that the appellants were liable to pay service tax on the services provided under the said contract.

8. As regards limitation, the Tribunal in the above decision has held as under :-

> "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 1.7.2003. 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 assesses 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 invocations of larger period is not on sound reasoning and is liable to be set aside and we do so."

We have no reasons to take a different view as the one taken by the Tribunal in the above referred decision. We accordingly hold that the demands raised beyond normal period of limitation are barred by limitation. The demand in the case of M/s N.K. Traders is fully time-barred whereas the demands in the other appellant's case are partly within the limitation period. As such we, while allowing the appeal of M/s N.K. Traders in its totality, remand the matter in other appeals to the original adjudicating authority for re-quantification of the demand falling within the limitation period. The said quantification is required to be done by considering the entire amount collected as cum duty amount, as held by the Tribunal in the case of M/s Mittul Engg. Services.

9. As regards the penalty on the appellant, the Tribunal in the above referred judgement has held as under :-

> "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 believed that they need not discharge the service tax liability, the various penalties imposed on the appellant are set aside."

By following the above decision, we set aside the penalty imposed upon all the appellants.

10. In view of our foregoing the Appeal of M/s N.K. Traders is allowed by setting aside the impugned order and appeals of the other three appellants are allowed on limitation and penalty point. The matters are sent for re-quantification of the demand falling within the limitation and after treating the value as cum duty price. All the appeals are disposed of in the above manner.

(Pronounced in open Court)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

RM