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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/453 /2007 - CU[DB] Date **13/12/2011**

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

To :
M/S VASTUSHILPI PROJECTS & CONSULTANTS (P)LTD.
8/3, SHRIRAM APARTMENT, MALVIYA NAGAR,
BHOPAL

M/S VASTUSHILPI PROJECTS & CONSULTANTS (P)LTD. Appellant

Vs

C.C.E BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/635/ 2011 CU[DB]** dated 05.12.2011 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. Sandeep Mukherjee, CA
R-52. Zone _ I MP Nagar
Bhopal

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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing:23.8 .2011

Date of decision:7.12.2011

Service Tax Appeal No.453 of 2007

Arising out of the order in appeal No.12/ST/BPL/07 dated 24.4.2007 passed by the Commissioner (Appeals), Central Excise, Bhopal.

For Approval and Signature:

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

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 26 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes.
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?	Yes

Vashushilpi Projects & Consultants (P) Ltd. .. Appellants

Vs.

C.C.E., Bhopal .... Respondent

Appearance:

Shri Sandeep Mukherjee, C.A. for the appellants
Shri R.K. Gupta, D.R. for the respondent

Coram: Hon'ble Mrs. Archana Wadhwa, Judicial Member
Hon'ble Mr. Mathew John, Technical Member

Final Oral Order No. ST/635/11

Per Mrs. Archana Wadhwa:

The brief facts of the case are that the appellant is engaged in providing consultancy to the Government bodies and State Industrial Development Corporation, Government of Madhya Pradesh for their respective Municipal & Industrial water supply projects. The services provided by them were in the form of technical assistance, financial services ~~assistance~~ , liaison and interaction with the aforesaid statutory bodies and services in getting sanctions, clearances and approvals regarding the project and loan if required, preparation of bid documents, assisting implementing agency in deciding the tenders & supervising/monitoring the project for successful completion. All the assignments were divided into various stages for payment of fees of the appellant. Also, the jobs were divided in stages, which were independent, which means that the appellant's services can be terminated after the completion of any stage. The appellant had bifurcated the aforesaid services in various stage as consulting and non-consulting category and service tax was paid only on those ~~whose~~ categories of services which were *suo motu* identified as consulting services by the appellant leaving out the services which were identified as non-consulting service by them such as service provided for liaison with statutory bodies, services provided for obtaining clearances and approvals regarding the project and loan, if required. The appellants were paying duty on the consulting engineer services being provided by them and no service tax was being paid on the non-technical service. Revenue held that the appellant had short paid service tax to the tune of Rs.3,09,596/- during the period 1.10.98 to 31.3.05. Accordingly, a show cause notice dated 3.10.06 was issued demanding service tax short paid during the said period, in respect of non-consulting service. The said show cause notice culminated into the order passed by the original adjudicating authority confirming demand of service tax amount of Rs.3,09,596/- along with interest in terms of the provisions of Section 73 of the Finance Act, 1994. Penalty of identical amount was imposed under Section 76 of the Act and Rs.1000/- under Section 77 of the Act. Further, a penalty of identical amount was imposed under Section 78 of the Finance Act.

2. The appellant challenged the said order before the Commissioner (Appeals), who also rejected the appeal on the ground that the work assigned to the appellant cannot be divided into distinct stages. For the above proposition, he relied upon the decision of the Tribunal in the case of Daelim Industrial Co. Ltd. vs. C.C.E., Vadodara – 2006 (3) STR 124 (Tri-Del.). Hence the present appeal.

3. The appellants have challenged the impugned order on merits as also on limitation. It is not disputed in the impugned order that the assignments given to the appellants are divided in various stages for the payment of fees and the bills raised for the payment of fees are submitted by the appellants in accordance with the agreement drawn with the implementation agency. The appellant performs the work for its clients in the following stages:-

a. Preparation of detailed project report.

b. Obtaining

i. Approvals from the government

ii. Approvals from the financial institutions

iii. Statutory clearances

c. Tender

i. Preparation of tenders documents

ii. Evaluation of bids

iii. Vetting of the bids

iv. Drafting of the concession agreement

d. Supervision of the execution by the concessionaire paid.

4. The services at serial No.b(i)., b(ii)., b(iii) and c(iv) have been considered by the appellants as non-technical work on which service tax liability does not stand discharged by them. The appellant's contention is that each stage of work is an independent work as is clear from the order and the payment for each stage is clearly defined. The

contract can be terminated after the completion of any given stage and the fee paid shall be restricted to the amount paid till that stage.

5. While considering the above submissions of the appellants, the Commissioner (Appeals) has held as under:-

> ***"8. From the above, it is evident that though the work can be divided into distinct stages, they are inter-linked, which means that until and unless the preceding stage is completed, the work can not move on to the next stage e.g. the work the preparation of the tender documents, inviting bids and evaluating them cannot be undertaken until and unless the necessary approvals are obtained from the Government and financial institutions. Each step is like a link in a long chain which ends at the stage of the execution of the project. Though there is no doubt that some of the work items like getting the necessary approvals from the Government nd financial institutions, do not require any great technical expertise, they nevertheless cannot be delinked from the main work i.e. execution of the water supply project, without compromising the outcome. The fee for each stage of work is a percentage of total fee to be paid to the appellant by the client for the entire contract. There is no doubt that the contract entered into with the various clients is in the nature of a service contract. It is a well settled law that the contracts can not be vivisected. In the case of Daelim Industrial Co. Ltd. vs. C.C.E., Vadodara – 2006 (3) STR 124 (Tri-Del.), it has been held thatthe work contracts can not be vivisected and part of it subjected to service tax. Applying the same logic, the service contracts in the instant case can not be vivisected by separating the technical items from the non-technical ones so as to avoid payment of service tax on the so-called non-technical works. Therefore, the appellant has to pay service tax on the entire amount received by him for the water supply projects. Besides, under Explanation 3 to Section 67 of the Finance Act, 1994, the gross amount charged for the taxable service shall include any amount received towards the taxable service, before , during or after provisions of such service. The appellant has not been able to substantiate his argument that the gross amount charged included the service tax payable."***

6. As is seen from above, the main ground for confirmation of tax is that the contract between the appellant and their clients can not be vivisected as held by the Tribunal in the case of Daelim Industrial Co. Ltd. vs. C.C.E., Vadodara – 2006 (3) STR 124 (Tri-Del.). However, we find that the Larger Bench of the Tribunal in the case of C.C.E., Raipur vs. BSBK Pvt. Ltd. – 2010 (253) ELT 522 (Tri-LB) has overruled the said

decision in the case of Daelim Industrial Co. Ltd. vs. C.C.E., Vadodara and has held that composite contract can be vivisected. If that be so, the entire basis of the Revenue's case is ~~are~~ no longer available.

7. Examining from the above angle, we find that admittedly, the appellants were undertaking other jobs also, apart from providing services as consulting engineers. The other jobs like approvals from the Government as also from the financial institution and statutory clearances etc. are admittedly not covered by the definition of 'Consulting Engineers services'. The contract also reveals that the payment for each stage of work is different and the appellant's services can be terminated after completion of any stage. The Hon'ble Gujarat High Court in the case of C.C.E & C., Vadodara II vs. Mascon Multiservices & Consultants P. Ltd. - 2010 (19) STR 484 (Guj.) has held that survey and map-making service, survey for pipeline, detailed reconnaissance survey, detailed engineering survey and detailed route survey would be taxable under the category of Engineering Services only after amendment to Section 65 of the Finance Act when clause (b) was introduced in the Budget of 2005. By following the said decision as also the Larger Bench judgment in the case of BSBK Pvt. Ltd., we hold that the non-technical services provided by the appellants would not be taxable under the category of 'consulting engineer service'.

8. We also note that the demand stands raised by Revenue by invoking extended period of limitation. The appellants were registered with the Service Tax Department with effect from August, 2001. They were filing regular returns with the Department. Our attention has also been drawn to the corresponding exchange between the appellant and the Revenue. Special reference can be made to the appellant's letter dated 15.3.04 wherein all the details including bifurcation of the services into technical and non-technical was intimated to the Revenue. In this scenario, it cannot be held that there was any suppression or

misstatement of facts by the appellants with intention to evade payment of service tax demand. The Commissioner (Appeals) has observed that the said information was in response to the queries raised by Revenue has not come automatically from the appellants. As such, the appellants cannot be held to be a bona fide. We find no merits in the above contention whether the information stands given by the assessee, in response to the query by the Department or *suo motu* the fact remains that the information becomes available to the Department. The show cause notice having been issued on 3.10.2006 for the period 1.10.98 to 31.03.05 is admittedly beyond the normal period of limitation. As such, we hold that the demand is barred by limitation.

8. In view of the foregoing discussions, the appeal is allowed on merits as also on limitation. The impugned order is accordingly set aside, with consequential relief to the appellants.

(Order pronounced in Court on 7/12/.2011)

(Archana Wadhwa)
Judicial Member

(Mathew John)
Technical Member

scd/