CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI

PRINCIPAL BENCH, COURT NO. 3

SERVICE TAX APPEAL NO. 50119 of 2019

[Arising out of Order-in-Appeal No.231(DKV)ST/JPR-I/2010 dated 14.06.2010 passed by the Commissioner (Appeals), Central Excise & Customs, Jaipur-I]

M/s. Vishnu Electrical Works,
5-E-13, Mahaveer Nagar –III, **....Appellant**
Kota-324 009. (Rajasthan).

Versus

Commissioner of Central Goods and Service Tax, **.....Respondent**
142-B, Sector-11, Hiran Magri,
Udaipur-313 001. (Rajasthan).

Appearance:
Present for the Appellant : Shri Vijai Kumar, Advocate
Present for the Respondent: Shri Rajeev Kapoor, Authorised Representative

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER NO.50766 /2025

DATE OF HEARING:30.04.2025
DATE OF DECISION:26.05.2025

BINU TAMTA:

1. M/s. Vishnu Electrical Works [1] had entered into contracts with M/s. Kota Thermal Power Station [2] for providing maintenance and repair service. The terms of the contract reveals that the same was for routine break-down repairs and maintenance, etc. On an enquiry from KTPS, it was

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[1] -Appellant
[2] KTPS

brought to notice that the activities undertaken by the appellant amounted to providing of service under the category of "Maintenance and Repair Services", which are liable to be taxed. Show cause notice dated 18.10.2007 was issued proposing demand of Rs.3,21,235/- during the period 01.17.2003 to 31.03.2007, invoking the extended period of limitation. On adjudication, the show cause notice was confirmed by the order-in-original dated 2.6.2009. The appeal filed against the said order was dismissed by the impugned order [3], however, reducing the demand to Rs.2,89,749/- and accordingly, the penalties imposed under Section 76 and 78 were also reduced. Hence the present appeal has been filed before this Tribunal.

2. Heard Shri Vijai Kumar, learned counsel for the appellant and Shri Rajeev Kapoor, Authorised Representative for the Revenue and perused the records of the case.

3. The issue on merit relates to non-payment of service tax on 'Management, Maintenance and Repair Service' as per Section 65(64) of the Finance Act, 1994. Both sides agree that the issue is settled against the appellant and in favour of the Revenue vide order in **Mitul Engineering Services Vs. Commissioner of Central Excise, Jaipur-I [4].** The said order has been subsequently followed by the Principal Bench in **M/s. S.P. Construction Vs. Commissioner of Central Excise, Jaipur-I [5].** In both the cases, the Bench was considering similar contracts/agreement with M/s. KTPS for routine break-down repairs. In

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[3] Order-in-Appeal No.231(DKV)ST/JPR-I/2010 dated 14.06.2010
[4] 2011 (24) STR 323 (Tri.-Delhi)
[5] Final Order Nos.ST/344-347 of 2011 in Appeal Nos.ST/360,377, 409 & 410 of 2007 dated of hearing:05.08.2011

view of the definition of "Maintenance and Repair" during the relevant period, it was held that the services rendered by the appellant as per the agreement with M/s. KTPS would be covered under the services of "maintenance or repair", however, the demand was restricted to the normal period on the plea that the appellant could have entered a bona fide belief that the contract entered by them is a routine contract and the payment being based on the work done by them during the existence of the agreement and, therefore, there is no *mala fide* intention on the part of the appellant for not discharging the service tax liability w.e.f. 1.7.2003. The Bench also granted relief to the appellant that the amount received has to be considered as cum-duty amount as the appellant has not charged service tax on the invoices raised by them to KTPS. In fact invoking the provisions of Section 80, it was held that there being reasonable cause for the appellant to believe that they need not discharge the service tax liability, the penalties imposed on the appellant was set aside.

4. The contract entered by the appellant with M/s.KTPS is on identical terms and following the said two decisions, we hold that the activities performed by the appellant herein amounts to providing services under the maintenance and repair category and are exigible to service tax. Also on the point of limitation, we hold that the demand is to be confirmed only for the normal period as the extended period is not invokable since the appellant has been held to be under *bonafide* belief. The appellant is also entitle to the benefit of cum-duty.

5. The present appeal is allowed by setting aside the impugned order on the point of limitation and penalty. The matter is being remanded for re-quantification of the demand falling within the limitation period and after treating the value as cum-duty price. The penalties imposed on the appellant are also set aside. The appeal is disposed of as indicated above.

[Order pronounced on 26th May, 2025.]

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Ckp.