CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH –COURT NO. 4

E-HEARING

Service Tax Appeal No. 52875 of 2018

(Arising out of Order-in-Appeal No. 573(CRM)ST/JDR/2018 dated 13.06.2018 passed by the Commissioner (Appeals), Central Excise & Central Goods & Service Tax, Jodhpur)

M/s Yadav Tractors **Appellant**
F-316, Bhamashah Krishi Upaj Mandi,
Road No. 6, IPIA, Kota-324005

Versus

Commissioner of Central Excise and **Respondent**
Central Goods & Service Tax, Jodhpur
G-105, New Industrial Area, Opp. Diesel Shed,
Basni, Jodhpur

Appearance:

Present for the Appellant: Shri Pradeep Jain, Chartered Accountant

Present for the Respondent: Shri Anand Narayan, Authorized Representative

CORAM:

Hon'ble Dr. Rachna Gupta, Member (Judicial)
Hon'ble Ms. Hemambika R. Priya, Member (Technical)

Date of Hearing/Decision : 15/05/2025

Final Order No. 50774/2025

Dr. Rachna Gupta:

The appellant herein is registered with service tax department for providing maintenance and repair services also supports services of business or commerce. During the detailed scrutiny of the ST-3 returns of the appellant and the other concerned documents the department observed that the appellant has not deposited the service tax for the taxable service being rendered by them during the period from 2011-2012 to 2014-2015. Accordingly, vide Show Cause Notice No. 76/2016 dated 11.10.2016 service tax amounting to Rs. 31,93,269/- was proposed to be recovered along with the interest and the proportionate penalty. The proposal was initially confirmed vide Order-in-Original No. 19/2017 dated 3.2.2017 to the extent that demand of Rs. 16,96,072/- was confirmed and the remaining demand of Rs. 14,97,198/- was dropped. The department filed an appeal before Commissioner (Appeals) against the amount of demand of service tax which was dropped. Commissioner (Appeals) vide Order-in-Appeal No. 573/2018 dated 13.06.2018 has allowed the said appeal. Being aggrieved, the appellant is before this Tribunal.

2. We have heard Shri Pradeep Jain, learned counsel for the appellant and Shri Anand Narayan, learned Authorized Representative for Revenue.

3. Learned counsel for the appellant has mentioned that the amount which has been confirmed by the Commissioner (Appeals) is nothing but the value of spare parts/consumables used by the appellant. Hence, have wrongly been considered as the integral part of the value of taxable services. Learned counsel has mentioned that issue stands already decided. Following decisions have been relied upon:

(i) **Commissioner Vs. Wipro Ge Medical Systems Pvt. Ltd.[1];**

(ii) Commissioner Vs. Jain Brothers[2];

[1] 2012 (28) STR J44 (SC)

(iii) Imagic Creative Pvt. Ltd. Vs. Commissioner of Commercial Taxes[3];

(iv) Union of India Vs. Kamalakshi Finance Corporation Ltd.[4];

(v) Idea Mobile Communication Ltd. Vs. CCE, Cochin[5];

(vi) CIT Vs. Vegetable Products Ltd.[6];

(vii) Samtech Industries Vs. Commissioner of Central Excise[7].

4. With these submissions, appeal is prayed to be allowed by setting aside the impugned order.

5. Learned Departmental Representative, on the other hand, has reiterated the findings arrived at by Commissioner (Appeals) while praying for dismissal of the present appeal.

6. Having heard both the parties and perusing the decisions relied upon by learned counsel for the appellant, we find that the issue is no more res integra as the same stands settled by another order of Division Bench of this Tribunal in the case of **Samtech Industries Vs. Commissioner of Central Excise reported as 2015 (38) S.T.R. 240 (Tri.-Del.),** wherein the assessee was providing the service of repairing transformer and was using consumables like transformer oil and also component parts being coil etc. It was held that:

> *"It is not disputed that in respect of the supply of goods, used for providing of service of repair, Sales Tax/VAT is paid, which fact is evident from the invoice on record. It was also observed that when the value of goods used is shown separately in the invoice and on the same Sales Tax/VAT has been paid, the supply of the goods would have to be treated as sale and the transaction which are sale cannot be a part of the service transaction. Accordingly, Service Tax is*

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2 2012 (28) STR J62 (SC)
3 2008 (9) STR 337 (SC)
4 1991 (55) ELT 433 (SC)
5 2011 (23) STR 433 (SC)
6 (1973) CTR (SC) 177 : (1972) 88 ITR 192 (SC)
7 2015 (38) STR 240 (Tri.-Del.)

> *chargeable only on the services/labour charges and the value of the goods thereunder would not be includible in the assessable value. The Tribunal further observed that Rule 5(1) of Service Tax (Determination of Value) Rules, 2006 has been struck down as ultra vires, by the Hon'ble Delhi High Court in the case of* ***Intercontinental Consultants & Technocrats Pvt. Ltd. Vs. Union of India & Others reported as 2013 (29) S.T.R. 9 (Del.),*** *it is categorically held that the value of goods used for providing the services which have been shown separately in the invoice, on which Sales Tax/VAT has been paid, cannot be included in assessable value and no Service Tax can be charged on the same."*

7. We find no reason to differ from these findings as in the present case also. The demand of service tax is confirmed on spare parts/consumables and the earlier decisions have not been followed by the adjudicating authority below.

8. In view thereof, impugned order-in-original stands set aside. Consequent thereto, the appeal stands allowed.

(Dictated & pronounced in open Court)

(Dr. Rachna Gupta)
Member (Judicial)

(Hemambika R. Priya)
Member (Technical)

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