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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/630 /2008 - CU[DB] Date **17/05/2012**

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

To :
M/S JAIN & CO.
KUNDANA ROAD, SHAMLI, DISTT.
MUZAFFARNAGAR (UP)

M/S JAIN & CO. Appellant

Vs

C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/383/ 2012 CU|DB|** dated 16.05.2011 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. MEERUT I
EXCISE CHOWK, UNIVERSITY
ROAD, MANGAL PANDEY
NAGAR, MEERUT - 250005.

2. Adv. / Consult
MR.K.B.ASTHANA,CONSULTANT
BH-119, PALLAVPURAM,PHASE-1, MEERUT(UP)

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-3
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)

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

Date of Hearing : 19.4.2012
Date of Pronouncement : 18-05-12

Service Tax Appeal No. 630 of 2008

[Arising out of Order-in-Appeal No. 63/CE/MRT-I/2008 dated 26.3.2008 passed by the Commissioner (Appeals), Central Excise, Meerut]

For Approval & signature:

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 Jain & Co. Appellants

Vs.

CCE, Meerut Respondent

Appearance:

Appeared for Appellant : None
Appeared for Respondent : Shri K.K. Jaiswal, A.R.

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

Final Order No. ST/A/383/12-Cus dated............

Per **Mathew John :**

The Appellants were engaged in the activity of repairing damaged electric motors. Such work was done against rates agreed for each work against rates contracts. The Appellant had no contract with any person for maintaining or repairing any goods.

They were only executing specific orders received by them. The Appellants were not paying any service tax on such activity. The period involved in this dispute is Jul 03 to Dec 03.

2. Revenue issued a Show Cause Notice dated 24-09-04 demanding service tax amount of Rs. 54,544/- for value of such services received during the said period. The adjudicating authority confirmed demand only for the value of service rendered from 01-07-2003 when the activity was brought under tax net. Such liability was calculated as Rs. 13,804/-. Interest was demanded and penalties under section 76 and 75A were also imposed. On appeal the Commissioner (Appeal) reduced the penalty under section 76 and section Sec 75A. Aggrieved by the order of the Commissioner (Appeal), the appellants have filed this appeal.

3. The Contention of the Appellants is that during the relevant period only activities carried out under a contract for maintenance was covered by the taxing entry and not repair work done on rate contract basis. During the relevant time the taxable activity was defined under new entry inserted by Finance Act 2003 in Finance Act 1994 by Section 65 (64) reading as under:

"(64) "maintenance or repair" means any service provided by -

(i) any person under a maintenance contract or agreement; or

(ii) a manufacturer or any person authorised by him, in relation to maintenance or repair or servicing of any goods or equipment, excluding motor vehicle."

4. The contention of the Appellants is that it can be seen from clause (i) that only activity done under a maintenance contract or agreement was taxable during the relevant period. The appellant had not entered into any agreement for maintenance of the motors in question. Repairing activity has been made taxable under clause (ii) and this clause was applicable only to a manufacturer of the

equipment or a person authorized by the manufacturer. The appellants do not fall under this category. So there was no case for bringing them under clause (ii) either.

5. The A.R. for Revenue submits that when the motor is entrusted to the appellant for repair against a specific consideration under a rate contract it is an agreement and contract and therefore the activity was covered under the taxable entry as defined in section 65 (64).

6. We have considered arguments on both sides. As per entry at section 65(64) as it stood at the relevant time and reproduced above only activities carried out under a maintenance contract was covered in clause (i). The appellants had no maintenance contract with their customers. Clause (ii) was applicable only to a manufacturer of the goods or persons authorized by him. The appellants were not the manufacturer of the goods or a person authorized by such manufacturer. So the activity was not covered by the definition at section 65 (64) at the relevant time. So the demand is not maintainable. Consequently interest and penalties also does not arise.

7. Therefore the impugned orders of the lower authorities are set aside and the appeal is allowed.

(Pronounced on 16/5/12)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

RM