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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/893,894,895,897, 898 /2011 - CU[DB] WITH ST/S/1899,1900,1901,1903,1904/2011 — Date **28/02/2012**

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

To :
SHRI SUNIL KUMAR SINGH
MAIN ROAD BIRSINGPUR PALI NAVROZABAD,
DISTT- UMARIYA(MP)

SHRI SUNIL KUMAR SINGH — Appellant

Vs

C.C.E BHOPAL — **STAY ORDER NO.ST/S/143-147/2012** — Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/118-122 2012 CU[DB]** dated 16.02.2012 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
MRS.ASMITA A.NAYK,ADV
D/619, IST FLOOR, C R PARK,
NEAR MARKET NO 2, NEW DELHI – 110 019.

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)

(*) Please see rest of the addresses at back.

SHRI G. SASI KUMAR,
VINDHYA COLONY, NAVROZABAD,
DIST. UMARIYA, M.P.

SHRI DHANANJAY SHARMA,
VINDHYA COLONY, PINORA,
NAVROZABAD, DIST. UMARIYA, M.P.

SHRI MANOJ KUMAR,
KRISHNA COLONY, NAVROZABAD,
DIST. UMARIYA, M.P.

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

COURT NO. II

DATE OF HEARING : 07/02/12.

Service Tax Stay Application No. 1899 of 2011 in Appeal No. 893 of 2011

Shri Sunil Kumar Singh — Appellant

Versus

CCE, Bhopal — Respondent

Service Tax Stay Application No. 1900 of 2011 in Appeal No. 894 of 2011

Shri G. Sasi Kumar — Appellant

Versus

CCE, Bhopal — Respondent

Service Tax Stay Application No. 1901 & 1903 of 2011 in Appeal No. 895 & 897 of 2011

Shri Dhananjay Sharma — Appellant

Versus

CCE, Bhopal — Respondent

Service Tax Stay Application No. 1904 of 2011 in Appeal No. 898 of 2011

Shri Manoj Kumar — Appellant

Versus

CCE, Bhopal — Respondent

Appearance

Ms. Asmita A. Nayak, Advocate – for the appellants.

Shri B.L. Soni, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri D.N. Panda, Judicial Member**
Hon'ble Shri Rakesh Kumar, Technical Member

Stay order No. ST/S/143-147/12-Cus.

Final Order No. ST/A/118-122/12-Cus. Dated : ________

ORDER

Per. D.N. Panda :-

Learned counsel mentions that all the five appeals have similar facts and if appeal record of case No. 893 of 2011 is taken up for reading of scope of work in question appearing at page No. 87 to 91 of that file, the same demonstrates that the services provided were of construction in nature without being repair and maintenance. Once the activity is classified as industrial and construction service, law shall apply on its own field. There was no repair and maintenance at all done which is appreciable from page No. 88 of appeal folder.

2. To the aforesaid submission, Revenue states that the activity carried out was repair and maintenance.

3. Heard both the sides and perused the records.

4. All the five matters although were listed for stay hearing today, looking to the magnitude of demand which is from Rs. 36,298/- to Rs. 4,29,272/- and also looking to the nature of dispute, we do not propose to keep these appeals pending in

Tribunal. Therefore dispensing requirement of pre-deposit in all five cases we remit the matter back to the learned Adjudicating Authority to re-adjudicate the matter afresh taking following aspects into consideration :-

(i) the work order which is subject matter of controversy is to be threadbare analysed to come to conclusion about the nature of activity carried out ;

(ii) it should be categorically made clear whether the nature of the activity is of repair and maintenance of an existing asset or resulted in creating a new asset or structure since law applies differently in different circumstance depending on the finding ;

(iii) Wherever there is any concession permissible under law that should not be hesitated to be granted.

5. We make it clear to the Adjudicating Authority that in the meantime Tribunal has already delivered its judgment on the liveability of service tax on works contract in cases like **Alstom Projects India Ltd. vs. CST, Delhi** reported in **2011 (23) S.T.R. 489 (Tri. – Del.)** and in **Instrumentation Ltd. vs. CCE, Jaipur – I** reported in **2011 (23) S.T.R. 221 (Tri. – Del.)**. Therefore the authority shall taking into consideration all the averments of the appellant with evidence before him pass a reasoned and speaking order bringing out clearly the levy if any under law.

6. The appellant is directed to appear before the Adjudicating Authority within a month of receipt of this order and make application for fixation of date hearing.

7. In the result, the stay application and appeal get disposed in the manner indicated above.

(Dictated and pronounced in open court)

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

PK