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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/339 /2008 - CU[DB] Date **19/01/2012**

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

To :
C.C.E BHOPAL

HOSHANGABAD ROAD, 48, ADMINISTRATIVE
AREA, AREA HILLS, BHOPAL (M.P.) 462011

C.C.E BHOPAL Appellant

Vs

M/S BHARAT HEAVY ELECTRICAL LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.**ST/A/43/ **2012 CU[DB]** dated 18.01.2012 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
M/S BHARAT HEAVY ELECTRICAL LTD.
(TRANSMISSION BUSINESS GROUP)
BLOCK VI (IIND FLOOR), CENTRAL
ANNEXE, PIPLANI, BHOPAL

2. Adv. / Consult MR. Z.U. ALVI, ADV.
C/O. M/S. B.H.E.L.
(TRANSMISSION BUSINESS GROUP) BLOCK VI
(IIND FLOOR), CENTRAL ANNEXE, PIPLANI, 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-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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-II

Date of hearing/decision: 11.1.2012

Service Tax Appeal No.339 of 2008

Arising out of the order in appeal No.15/BPL/2008 dated 28.2.2008 passed by the Commissioner of Customs, Central Excise and Service Tax, Bhopal.

C.C.E., Bhopal .. Appellant

Vs.

Bharat Heavy Electrical Ltd. .... Respondent

Appearance:

Shri R.K. Gupta, A.R. for the Revenue
Shri Z.U. Alvi, Advocate for the respondents

Coram: Hon'ble Mr. D.N.Panda, Judicial Member
Hon'ble Mr. Rakesh Kumar, Technical Member

Final Oral Order No. ST/A/43/12-Cus

Per Mr. D.N. Panda:

Revenue is in appeal against the first Appellate order submitting that the contract which comprised various sub-activities and called for taxation under different clauses of taxable entries under Section 65(105) of the Finance Act, 1994, on the misconception that the entire contract being turnkey is not subjected to vivisection allowed appeal of Assessee.

2. Learned Counsel for the respondents submits that vivisection of the contract is permissible in view of the Larger Bench decision in the case of C.C.E., Raipur vs. BSBK Pvt. Ltd. reported in 2010 (253) ELT 522 (Tri.-LB). Learned Commissioner (Appeals) did not commit any error of law allowing the appeal. It was further submitted that not only the first appellate authority allowed the appeal on merit but also on limitation. He invited attention to para 3 (xi) and (xii) at page 6 of the first Appellate authority's order to be

read with para C.2 and B.2.2 of the notes of the argument filed in the course of hearing to submit that the proceeding was time barred and that was properly considered by learned Commissioner (Appeals). He further clarified that activities carried out by the Appellant during the intervening period i.e. 1.7.2003 to 9.9.2004 falls in between two periods from 1.4.2001 to 31.3.2003 and 10.9.2004 to 30.9.2006 which were subject matter of show cause notices dated 8.4.2004 and 19.4.06. When the material facts were known to the Department since BHEL is a giant sector and its activities are scrutinized by Authorities, the facts and circumstances did not give rise to suppression of facts for taxing under Finance Act, 2004. He reiterates that the proceeding was time barred.

3. On the aforesaid factual matrix, when two show cause notices aforesaid are compared with present show cause notice, the sum and substance of the case demonstrates that activities of the appellant was well within the knowledge of the Department. When Revenue intended the respondents to be taxed under the category of 'Consulting Engineer Service', they should have issued notice forthwith. Therefore, the first Appellate order granting relief to respondent on time bar does not appear to be erroneous for which that does not call for interference. Accordingly Revenue appeal is dismissed.

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

scd/