IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Service Tax Appeal No. ST/577/2012-[DB]
[Arising out of Order-In-Original No. 9/2012(ST)-Commr. dated 03.02.2012 passed by CCE-Jaipur-I]
Service Tax Appeal No. ST/625/2012-[DB]
[Arising out of Order-In- Original No. 12/2012(ST)-Commr. dated 14.02.2012 passed by CCE-Jaipur-I]
Service Tax Appeal No. ST/671/2012-[DB]
[Arising out of Order-In- Original No. 14/2012(ST)-Commr. dated 17.02.2012 passed by CCE-Jaipur-I]
Service Tax Appeal No. ST/675/2012-[DB]
[Arising out of Order-In- Original No. 16/2012(ST)-Commr. dated 22.02.2012 passed by CCE-Jaipur-I]
Service Tax Appeal No. ST/676/2012-[DB]
[Arising out of Order-In- Original No. 15/2012(ST)-Commr. dated 21.02.2012 passed by CCE-Jaipur-I]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. V. Padmanabhan, Member (Technical)

M/s. Gupta Enterprises ...Appellant
Yadav Construction Co.
CCE & ST Jaipur-I
CCE & ST Jaipur-I
CCE & ST Jaipur-I

Vs.

CCE & ST Jaipur-I …Respondent
CCE & ST Jaipur-I
Suresh Jaswal
Tara Chand Choudhary
Chhote Lal Virendra Kumar Jain

Appearance:
Ms. Rinki Arora, (Advocate) for the Appellant
Mr. Sanjay Jain (DR) for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Date of Hearing/ Decision.24.05.2017

Final Order No. 53427-53431 /2017

Per S. K. Mohanty:

The issue involved in all these appeals are identical, accordingly, the same are taken up together and a common order has been passed.

2. Non-payment of service tax under management maintenance or repair service is the subject matter of present dispute. Both sides agree that the issue involved in this case is squarely covered in the case of Ms. Suresh Jaswal vs CCE Jaipur, Final Order No. 51941/2015 dated 11.06.2015 passed in Appeal No. ST/687/2012-Cu [DB].

3. The appellant, a contractor, entered into contracts with Jaipur Development Authority (JDA) and Jaipur Nagar Nigam (JNN) for management and maintenance of parks and road side plantation and maintenance. The adjudicating authority held that in view of the CESTAT judgment in the case of CCE vs ANS Constructions Ltd. – 2010 (17) STR 549 (Tri. Del.) the demand for the period up to 30.04.2006 was not sustainable but demand for the period with effect from 01.05.2006 onwards was upheld on the ground that the service rendered fell under the scope of management, maintenance or repair service (Section 65(64)]/65(105)(zzg) of the Finance Act, 1994). Tribunal in the above case held as follows:

> *"However, we have perused the typical work order which apart from requiring maintenance or repair, involve supply of goods too, like supply of different trees, for which specific rates have been mentioned. On this being pointed out, Revenue conceded that service tax would not be chargeable on supply/ sale of such goods and that the benefit of Notification No. 12/2003-ST would be available to the appellant if the conditions thereof were satisfied*.
>
> *We therefore remand the case to the Commissioner (Appeals) with the direction that the impugned service tax liability may be recomputed after extending the benefit of Notification No. 12/2003-ST in respect of supply of goods (like trees/ shrubs/ climbers etc.) provided the conditions of the said Notification No. 12/2003-ST are satisfied. The appellant may be granted an opportunity of being heard to enable it to establish its eligibility for the benefit of Notification No. 12/2003-ST. Needless to say that the penalties would also have to be recomputed in the light of the recomputed demand. The Commissioner (Appeals) shall issue appropriate orders after such re-computation of impugned demand and penalties. The appeal stands disposed of in the above terms."*

4. Since the issue involved in the present appeals has already been decided by the Tribunal vide Final Order dated 11.06.2015 by remanding the matter for re-computation of the service tax liability after extending the benefit of Notification No. 12/03-ST, we are of the view that these appeals can also be remanded to the original authority for ascertaining the eligibility of the benefits contained in Notification No. 12/2003-ST dated 20.06.2003. If the benefit of said Notification is available, the same should be extended to the assessees. On re-computation of the demand in light with the observations recorded in the order dated 11.06.2016 of this Tribunal, the penalty should accordingly be re-computed by the adjudicating authority. Accordingly, after setting aside the impugned orders, cases are remanded to the original authority for deciding the issue afresh in light with the observations made herein above, and also as contained in the order dated 11.06.2015 of the Tribunal. The appeals are disposed of in above terms.

(Dictated and pronounced in the open court)

(V. Padmanabhan)
Member(Technical)

(S. K. Mohanty)
Member (Judicial)

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