CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 23.11.2017

S.T. Appeal No. 1599 of 2011
(Arising out of order in appeal No. 26(ST)/RPR-I/2011 dated 02.08.2011 passed by the Commissioner (Appeals-I), Customs & Central Excise, Raipur).

M/s Jindal Steel & Power Limited Appellant

Vs.

CCE, Raipur Respondent

Appearance:

Ms. Shreya Dahiya, Advocate for the appellant
Sh. R. Khanna, AR for the Respondent

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No. 58403/2017

Per: **Justice (Dr.) Satish Chandra**:

The present appeal order in appeal No. 26(ST)/RPR-I/2011 dated 02.08.2011 passed by the Commissioner (Appeals-I), Customs & Central Excise, Raipur. The period of dispute 01.06.2007 to 31.12.2009.

2. Brief facts of the case are that the appellant took on lease land from the Chhattisgarh State Government for developing an industrial estate. The land was given on sub-lease and in addition to the lease rent, the appellant also collected the amount towards the maintenance and security charges on account of maintenance of road, drainage and electricity. The appellant paid service tax only on lease rent. The department demanded service tax on maintenance

charges too apart from renting of immovable property services. Being aggrieved, the present appeal is filed by the appellant.

3. With this background, we heard Ms. Shreya Dahia, ld. Advocate for the appellant and Sh. R. Khanna, ld. AR for the revenue and perused the record.

4. During the course of argument, ld. Counsel for the appellant has drawn our attention to the ratio laid down in the case of ***Phoenix Mills Limited vs. CST-I, Mumbai – 2017-TIOL-2085-CESTAT-MUM*** where it was observed that-

> "8. *Turning to the issue of alleged short-payment of tax under the head of 'maintenance or repair service', it appears from the impugned order that figures drawn from the final accounts of the appellant are the basis of the allegation and the findings. We are not very certain whether these have been interpreted correctly in the show cause notice as well as in the impugned order. Though both do assert that the appellant has discharged a major portion of the tax liability on the consideration received as maintenance charges, at no stage has the appellant made a reference to this concession in its defence. It would, therefore, appear that the tax authorities have dealt with an aspect that has nothing to do with recoveries form lessees as 'maintenance charges'. Indeed, the appellant draws attention to the discharge of tax liability with effect from 1st June 2007 as such receipts, too, as consideration for rendering of 'renting of immovable property service'. Form a description of the purpose of collection of these charges, it would appear that these have no link with maintenance and repairs but, on the contrary, appeared to be additional charges for common space that would be utilised by the lessees or their customers. It cannot, therefore, be anything but rental income*".

5. Thus, from the above, it is clear that the amendment came into existence w.e.f. 01.06.2007. After the amendment the appellant will have to pay the service tax on rental and also maintenance charges. The appellant has claimed that they have already paid the service tax on both the services w.e.f. 01.06.2007. Prior to it no service tax is leviable.

6. By considering the rival submissions, we are of the view that the amendment came into existence w.e.f. 01.06.2007, then prior to it no service tax is leviable on maintenance or repair services. However, w.e.f. 01.06.2007 the appellant will have to pay service tax as per law on both the services, if the tax is not paid, the same is payable as per law.

7. With the above observation, the appeal is disposed of.

(Dictated and pronounced in the open Court).

(V. Padmanabhan)	(Justice (Dr.) Satish Chandra)
Member (Technical)	President

Pant