# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
# NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

## Service Tax Appeal No. 50517 of 2014

(Arising out of Order-in-Appeal No. 149(VC)ST/JPR-I/2013 dated 14.10.2013 passed by the Commissioner of Central Excise, Jaipur)

DATE OF HEARING : 01.08.2018
DATE OF DECISION : 01.08.2018

**M/s Meenakshi Construction Co. ….. Appellants**
(Rep. by Ms. Rinki Arora, Adv.)

VERSUS

**CCE, Jaipur-I ..… Respondent**
(Rep by Sh. K. Poddar, DR)

**CORAM : HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)**
**HON'BLE MR. C.L. Mahar, MEMBER (TECHNICAL)**

## FINAL ORDER No. 53104/2018

## PER ANIL CHOUDHARY :

The present appeal is filed by the assessee-Appellants against the Order-in-Appeal No. 149(VC)ST/JPR-I/2013 dated 14.10.2013 passed by the Commissioner of Central Excise, Jaipur. The period in dispute is 2006-08.

2. The brief facts of the case are that, during the period under consideration, the assessee-Respondents were engaged in

civil and commercial construction work and Management Maintenance or repair services. During the course of audit it was found that they had short paid/not paid Service Tax on income in respect of the services shown in the balance sheet for the period 2005-06 to 2007-08. Accordingly, a show cause notice was issued to demand payment of Service Tax along with interest and penalties under Sections 76,77 and 78 of the Act. The adjudicating authority confirmed the demands by recording that the services of repair work, supply and fixing of cow catchers and electrification work at state warehouse, Anti-termite treatment at the warehouse, construction of the godown, road, drain etc. are covered under the definition of "CICS and MMR services" under Section 65(105)(zzq) and (zzg) of Section 65(64) of the Act. The adjudicating authority further observed that repair maintenance modernization of existing roads is clearly covered under "Management, Maintenance & Repair services". The exemption under Notification No. 24 by 2009 dated 27.07.2009 exempts only construction of new roads. On appeal before the learned Commissioner (Appeals), Service Tax demand to the tune of Rs.8,70,605/- with regard to services of maintenance or repair of roads provided to PWD was dropped, however demand of Rs.4,12,453/- on the services for construction of godown/warehouse for Rajasthan State Warehousing Corporation under the category of CICS was confirmed. Being aggrieved, the assessee-Appellants have filed the present appeal.

3. With this background, we have heard Ms. Rinki Arora, learned counsel for the assessee-Appellants and Shri K. Poddar, learned DR for the Department.

4. After hearing both sides and on perusal of the material available on record, we find that that the work order for repair supply fixing of cow catchers at State warehouse is a composite contract including supply of material and the benefit of composition scheme is to be extended to the assessee-Appellants as they have intimated to the Department about the exercise of the said option. We, therefore, on this short ground alone remand the matter to the original authority for quantification of Service Tax to be paid under composition scheme. The original authority shall take into consideration the Service Tax already paid by the assessee-Appellants under Works Contract Services. The penalties under Sections 76, 77 and 78 are hereby set aside.

5. In the result, the appeal filed by the assessee-Appellants is allowed, in part, by way of remand.

(Dictated & pronounced in the open court)

**(ANIL CHOUDHARY)**
**MEMBER (JUDICIAL)**

**(C.L. MAHAR)**
**MEMBER (TECHNICAL)**

Golay