

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

Service Tax Appeal No. 50014 of 2016

[Arising out of the Order-in-Appeal No. 05-07/2015-16 dated 01.09.2015, passed by Commissioner of Service Tax , Delhi III]

CST, Delhi III

Appellants

Vs.

M/s. S K & Company

Respondent

Appearance:

Shri G R Singh AR for the Appellant Revenue

Shri M S Bhatia, Advocate for the Respondent-assessee

CORAM:

Hon'ble Mr. Justice Dilip Gupta, Member (Judicial)

Hon'ble Mr. C L Mahar, Member (Technical)

Date of Hearing/ Decision: 31.12.2018

FINAL ORDER NO. 53527 / 2018

Per: C L Mahar:

This is an appeal filed by the department against the order of the learned Commissioner dated 31.8.2015 wherein the demand against the respondent-assessee has been adjudicated and dropped by the learned Commissioner.

2. Brief facts of the matter are that after detailed investigation a show cause notice dated 24.10.2011 and thereafter for the subsequent period two more show cause notices dated 12.10.2012 and 22.05.2014 were issued to the respondent-assessee. It has been the contention of the department that the respondent-assessee have been providing “site preparation services” which is covered under the Site Formation and Clearances, Excavation and Earth moving and Demolition services as defined under section 65 (105) and 65(97a) of the Finance Act, 1994. The learned Commissioner vide his impugned order-in-original has held that respondent assessee have been supplying the machines like excavators and other earth moving equipments to their various clients on rental basis and that the clients hiring such equipments have managed and operated these machines themselves and this activity i.e. supply of earth moving equipments was not covered under taxable service of Site Formation and Clearances, Excavation and Earth moving and Demolition services. It is after detailed verification and examination of the agreements and invoices which the respondent assessee entered into with their various clients that the learned Commissioner reached the conclusion that they have been supplying the excavators and other earth moving equipments, dumpers etc. on rental basis and the manpower to handle / operate these earth moving and excavator machines was arranged by the clients themselves

and, therefore, effective control over these machines was also always remained with the clients.

3. Thus the adjudicating authority after detailed verification have dropped the major part of the service tax demand which was demanded under the taxable category of site formation and clearances, excavation and earth moving and demolition services and small amount of Rs.1,98,476/- has been confirmed against the respondent-assessee.

4. We have heard both the sides.

5. We find that the adjudicating authority has reached to the conclusion that the respondent-assessee have not been engaged in the activity of Site Formation and Clearances, Excavation and Earth moving service as alleged in the impugned show cause notice, rather they have been only supplying earth moving machines like excavators etc. on rental basis and the physical control and possession of these machines have always remained with the clients who have actually hired such machines. We find that the department in their appeal has not adduced any evidence to controvert the finding of the learned adjudicating authority. We also find that the learned Commissioner has also examined the activity of respondent-assessee whether same can be classified as supply of tangible goods and has held that since the possession of the machines and effective control of same have remained with the persons who have hired these machines and thus,

same can also not be classified as supply of tangible goods. We find that in all the three show cause notices, the demand has been made under the category of Site Formation and Clearances, Excavation and Earth moving and Demolition services and after detailed examination of agreements and invoices etc., the learned adjudicating authority has held that the amount received by the respondent assessee are not for the services of site formation, as stated in preceding para, the department has not adduced any evidence to substantiate their claims in this regard. Thus, we are in full agreement with the finding of the adjudicating authority with regard to the determination of classification of activity undertaken by the respondent-assessee which has been determined by him on the basis of detailed examination of agreement, invoices and other documents.

6. Thus, we find no merit in the present appeal of the department. Hence, we uphold the Order-in-Original and dismiss the appeal.

(operative part of the order pronounced in the open Court)

(Justice Dilip Gupta)
President

(C L Mahar)
Member (Technical)

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