

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
REGIONAL BENCH AT HYDERABAD**

Division Bench  
Court – I

**Appeal No. ST/2442/2011**

(Arising out of Order-in-Original No. 24/2011 (MP) dated 26.04.2011  
passed by Commissioner of Customs, Central Excise and Service Tax,  
Visakhapatnam)

**M/s Docking & Engineering Co.  
(Visakhapatnam) Pvt. Ltd.,**

**.....Appellant(s)**

**Vs.**

**Commissioner of Customs, Central Excise  
& Service Tax, Visakhapatnam – I**

**.....Respondent(s)**

**Appeal No. ST/1974/2011**

(Arising out of Order-in-Original No. 24/2011 (MP) dated 26.04.2011  
passed by Commissioner of Customs, Central Excise and Service Tax,  
Visakhapatnam)

**Commissioner of Customs, Central Excise  
& Service Tax, Visakhapatnam – I**

**.....Appellant(s)**

**Vs.**

**M/s Docking & Engineering Co.  
(Visakhapatnam) Pvt. Ltd.,**

**.....Respondent(s)**

**Appearance**

Shri Suresh Sastri Dorbala, Chartered Accountant for the Appellant(s).  
Shri P.S. Reddy, Assistant Commissioner (AR) for the Respondent(s).

**Coram:**

**Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)**

**Hon'ble Mr. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)**

**Date of Hearing: 26/12/2018**

**Date of Decision: 26/12/2018**

**FINAL ORDER No. A/31624-31625/2018**

**[Order per: M.V. Ravindran]**

These two appeals are directed against Order-in-Original No. 24/2011 (MP) dated 26.04.2011, one by Revenue and another by assessee since both the appeals are directed against the same impugned order and they are being disposed of by a common order.

2. Heard both sides and perused the records.

3. It is noticed from the records, that the appellant herein was rendering Maintenance or Repair of ships to various clients like M/s Shipping Corporation of India Ltd., M/s Varun Shipping, M/s Garware Offshore etc., from their Visakhapatnam and Kakinada premises; they were registered with the authorities under the category of Maintenance or Repair Services; it was noticed by the lower authorities that the appellant had suppressed the value of services and not paid the service tax correctly by improperly availing abatement of 70% or 75% on the value of Maintenance or Repair services provided by them to various clients. Appellants were issued show cause notice which was contested, Adjudicating Authority after following due process of law, confirmed the demands raised along with interest and also imposed penalties. The Adjudicating Authority in the impugned order has come to a conclusion that there was an improper availment of notional abatement available to these services in respect of some amount and that the show cause notice as also wrongly demanded

some amount. Coming to such a conclusion, he dropped the proceedings of part of the demand of the tax and confirmed the part of the demand.

4. On careful consideration of the submissions made by both sides and on perusal of records, we find that one of the point that required to be considered is whether appellant was rendering services to the clients was in nature of works contract services or otherwise. The period involved is from 16.06.2005 to 31.12.2009 and broad explanation given by the appellant's counsel is that they were awarded various services for undertaking the activity of repairs or maintenance of ships in the ports. The Bench enquired with the Learned Chartered Accountant as to agreement or work orders is enclosed, he submits that they have not enclosed any agreements. In our view, the argument as to whether the services rendered by the appellant would fall under the category of works contract services or otherwise is a question that needs to be addressed by the lower authorities in light of the judgment of the Apex Court in the case of *Larsen & Toubro Ltd.*, [2015 (39) STR 913 (SC)] by looking at the agreement or orders etc. We find that this specific point also not elaborated in the manner by the appellant's counsel before the Adjudicating Authority.

5. Without expressing any opinion on the merits of the case, keeping all the issues open, the impugned order is set aside and both the appeals are remitted to Adjudicating Authority to reconsider the issue afresh after following principles of natural justice.

6. Since the issue is of 2011, the Adjudicating Authority should try and dispose of the matter within three months from the date of the receipt of the copy of the Tribunals order.

(Operative part of this order was pronounced in open court  
on conclusion of hearing)

**P. VENKATA SUBBA RAO**  
**MEMBER (TECHNICAL)**

**M.V. RAVINDRAN**  
**MEMBER (JUDICIAL)**

Lakshmi....