

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
SOUTH REGIONAL BENCH AT HYDERABAD  
BENCH - DB  
COURT - I**

Appeal(s) Involved:

**ST/1929/2011-DB, ST/1977/2011-DB**

(Arising out of Order-in-Appeal No. 05-2011 dated  
05/07/2011 passed by , )

(Arising out of Order-in-Appeal No. 21-2011 dated  
28/03/2011 passed by Commissioner of Central Excise and  
Service Tax, VISAKHAPATNAM-I )

**Commissioner of Central Excise,  
Customs and Service Tax  
VISAKHAPATNAM-I**

Appellant(s)

**VJAYAKRANT CONSTRUCTIONS**

Appellant(s)

**Versus**

**VIJAYKRANT CONSTRUCTIONS**

Respondent(s)

**Commissioner of Central Excise,  
Customs and Service Tax  
VISAKHAPATNAM-I**

Respondent(s)

**Appearance:**

**Mr K Parameshwaran & Mr A. Sarveswar Rao, ADV** for the  
Appellant.

**Mr B. Sathyanarayana, A.R.** for the Respondent.

**CORAM:**

**HON'BLE Mr. M.V.Ravindran, MEMBER (JUDICIAL)**

**HON'BLE Mr. P. Venkata Subba Rao, MEMBER (TECHNICAL)**

Date of Hearing: 27/12/2018

Date of Decision: 27/12/2018

**Final Order No. A/ 31638-31639 / 2018**

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

These two appeals are directed against order-in-original No. 21/2011 (MP) Dt 28.03.2011.

2. The relevant facts that arise for consideration in these appeals are during the verification of records of the appellant, it was observed that they are sub-contractors to Bridge & Roof Co (I) Ltd (B&R) and were receiving some consideration towards services rendered of erection commissioning or installation services and supply of temporary manpower services . After considering the response of appellant to the various letters of the Range Officers, and verification of the balance-sheet and the contracts executed by them with B&R, lower authorities came to a conclusion that appellant is liable to discharge service tax liability as a sub-contractor for the period April 2004 to March 2008 under the category of erection, commissioning or installation services and Rs 1,41,589/- short paid under the category of manpower recruitment or supply agency services. The said show-cause notice besides demanding the tax with interest also proposed to impose penalties. Appellant contested the show-cause notice on the ground that they being sub-contractor of B&R and B&R having discharged the service tax liability in its entirety, they are not liable to pay any tax and that as a small scale

service provider the benefit of exemption should be extended to them. They also contested the show-cause notice on limitation. The adjudicating authority did not agree with the contentions raised and confirmed the demands with interest and imposed penalties.

3. Learned counsel appearing for the appellant submits that it is undisputed that they are sub-contractor to M/s Bridge and Roof (India) Ltd (A Govt of India Enterprise) who are the principal contractors and during the period in question, up to September 2007, the said B&R discharged the entire service tax liability including the sub-contracted items, services undertaken by them and have submitted 100% proof thereof in the form of various challans, certificates etc. from B&R. It is his submission that all these documents were produced before the adjudicating authority. He would submit that subsequently on issuance of a Circular by CBEC, on 23.08.2007, appellant discharged the tax liability from October 2007 on being instructed by M/s B&R. It is his submission that the decision of the Tribunal in the case of Power Mech Projects Ltd Vs CC (2017(48)STR 165 (Tri-Hyd)) is directly on the point and in respect of the very same period involved. It is the further submission that the demand of Rs 65,67,046/- under the category is covered by the decision and as regards demand of Rs 1,41,589/- appellant is eligible for benefit of small-scale service provider exemption as a total turnover during the period involved was less than Rs 10,00,000/-.

4. Revenue is in appeal against the said impugned order for dropping of demand of Rs 71,18,383/- as this amount is in respect of fabrication and erection of structural and architectural work for power house grading support or for fabrication and would not fall under the category of erection commissioning or installation service.

5. Learned counsel also submits that the demand is hit by limitation as the appellant had already produced all the documents which were sought from them and hence, the demand raised by show-cause notice dated 20.10.2009 for the period April 2004 to March 2008 is to be set aside on the ground of limitation also.

6. Learned A.R. on the other hand draws our attention to the findings of the adjudicating authority in the impugned order. Drawing our attention to the fact that appellant is not disputing that they are sub-contractors of B&R and are liable to pay tax which is very much obvious from the fact that they have started making the payment of tax from October 2007. He would submit that the adjudicating authority has correctly confirmed the demands raised on them as they being sub-contractors and they have provided the services to B&R which is taxable. It is his further submission that the demand has been confirmed by invoking extended period is to be upheld as despite having knowledge that the services rendered by them are taxable, did not take the registration and discharge the tax liability. As regards the department's

appeal, it is his submission that the adjudicating authority has shown that the appellant had fabricated various items as per the works order issued by B&R and consider the same as fabrication work and drops the demand which is incorrect as the fabrication which has been undertaken by the appellants are towards the services rendered by them to M/s B&R hence it is his submission that the demands which are confirmed by the adjudicating authority be upheld and demands dropped by him be confirmed.

7. After considering the submissions made by both sides, we find that the issue is correctly put forth by both sides. The issue is regarding the demand of service tax liability of the amounts received by appellant from M/s B&R for being their sub-contractors engaged in executing the said sub contractor work. We find from the records that the demand raised on the appellant under this category of being taxable as a sub-contractor for the period April 2004 to September 2007 seems to be incorrect as identical issue cropped up before this Bench in the case of Power Mech Projects Ltd (supra) wherein the Bench in Paragraph No 5 held as under:

5. We are convinced and satisfied with the arguments put forward by the counsel appearing for the appellants to conclude that the demand of service tax for ECIS services is not sustainable as the main contractor has discharged the service tax liability. So also as the appellant had paid service tax in regard to MMR services before issuing the show cause notice, no penalty can be imposed in this regard. Cumulatively, all penalties imposed in the impugned order are unsustainable and liable to be set aside, which we hereby do. The demand and interest of service tax on ECIS is set aside for the reason that the main contractor has discharged the liability.

From the records which are produced before us, in the case in hand, we do find strong force in the contentions raised by the appellant that M/s B&R had discharged the entire service tax liability on the contracts which have been executed by them and partly sub-contracted to appellant. The documents which are perused by us are the TR-6 challans and the certificate issued by M/s B&R. In our view, the ratio of the judgement in the case of Power Mec Projects Ltd will squarely apply to the case in hand and it has to be held that the demands raised under the Head erection, commissioning or installation services for the period April 2004 to March 2007 is unsustainable and liable to be set aside. The assessee's appeal to that extent is allowed and demand, interest and penalties on this count are set aside. Since the assessee's appeal on this point is allowed, the appeal filed by the Revenue on the same point for which the adjudicating authority has dropped the proceedings would be of no consequence and accordingly, the Revenue's appeal also stands rejected.

8. As regards the demand of Rs 1,41,589/- under the category of manpower recruitment or supply agency services, we find that this demand is sustainable on the appellant. It is undisputed that appellant had during the period in question had supplied temporary manpower to B&R for executing various works on M/s B&R. This would fall under the category of manpower recruitment or supply agency services. The point which has been urged by the learned counsel that appellant would be eligible for small scale service providers exemption will not carry their

case any further as in order to claim exemption, appellant's turn over has to be within a specified limit as per the Notification. In the case in hand we find that appellant's taxability on the services rendered as a sub-contractor is not in dispute but the liability has been discharged by the main contractor. Hence no tax liability arises on the appellant is the finding of this Bench. If that be so, the said turn-over of sub-contracted value would definitely be included in to aggregate value which is prescribed for extending the benefit of small scale service providers exemption. In view of this, we do not find any merits in the arguments put forth by the learned counsel and the appeal to that extent stands rejected and we uphold that the demand of Rs 1,41,069/- along with interest. On the question of penalty on this amount we find that appellant may have misunderstood the provisions. Hence the penalty imposed for violation of this amount is set aside by invoking the provisions of Section 80 of the Finance Act 1994.

9. In sum, the appellant's appeal is partly allowed and partly rejected as indicated hereinabove and Revenue's appeal stands rejected and penalties set aside.

(Operative portion of the order pronounced  
in open court on conclusion of the hearing)

**P. Venkata Subba Rao**  
**MEMBER (TECHNICAL)**

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

Neela Reddy