

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA**

Appeal Nos.1)ST/148/2010, 2)ST/149/2010

(Arising out of Order-in-Appeal No.15-16/Service Tax/BBSR-II/2010 dated 22.03.2010 passed by the Commissioner (Appeals) of Central Excise, Customs & Service Tax, Bhubaneswar)

1) M/s Patel Construction
2) M/s. K.C.Enterprises ...APPELLANT(S)

VERSUS

Commissioner of Central Excise & Service Tax, Bhubaneswar-II

...RESPONDENT (S)

APPEARANCE

None for the Appellants
Shri A.Roy, Suptd.(AR) for the Revenue

CORAM:

HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER
Hon'ble SHRI V.Padmanabhan, Member (Technical)

Date of Hearing/Decision : 11.12.2018

ORDER NO.FO/A/77092-77093/2018

Per Bench :

In respect of the two appeals, the dispute is common and hence these are taken up together for a common decision. The appellants are in the business of providing 'Repair and Maintenance Service' and have been paying service tax at the prescribed rates. With effect from 18.04.2006, the rate of service tax payable on the service was increased from 10% to 12%. For the services rendered by the three appellants, during the period prior to 18.04.2006, some bills were raised and payments received on or after 18.04.2006. The dispute pertains to the rate of service tax chargeable in those cases where services were rendered prior to 18.04.2006, but the payments for such services were received after 18.04.2006. The Original Authority took the view that enhanced rate of service tax will be applicable

only in those cases where the service was rendered by the appellants on or after 18.04.2006. But the Jurisdictional Commissioner of Service Tax reviewed such orders in terms of the Power of Revision available to him at the relevant time under provision of Section 84 of the Finance Act, 1994 and appeals have been filed before this Tribunal. The view expressed by the Id. Commissioner is that the enhanced rate of service tax will be payable in respect of all payments received by the appellants on or after 18.04.2006 inspite of when the service was actually rendered. Against such order passed by the Commissioner. In Revision, the present appeals have been filed.

2. None is represented for the appellants and Shri A.Roy, Suptd.(AR) is represented for the Revenue.

3. The appellants in their grounds of appeal stated that the issue regarding the applicability of enhanced rate of service tax has been decided by the Hon'ble Delhi High Court in the case of Vistar Construction (P) Ltd. vs. Union of India [2013(31) STR 129 (Del.)]. The Hon'ble Delhi High Court has held that the rate of service tax applicable will be the one prevalent at the time of rendering the service. In this connection the Hon'ble Delhi High Court held as invalid the instructions issued by the Department of Revenue vide their Circular dated 28.04.2008. Accordingly, they prayed that the impugned orders may be set aside.

4. Ld. DR reiterates the impugned orders.

5. We have carefully considered the decision of the Hon'ble Delhi High Court (supra) on the issue in question. The observations are as under:

"8. *Therefore, the taxable event, in so far as service tax is concerned, is the rendition of the service. That being the position, the taxable events in the present writ petition had admittedly occurred prior to 1-3-2008. At that point of time the rate of service tax applicable in respect of the services in question was 2% and not 4%,*

which came into effect only on or after 1-3-2008. In both the writ petitions the date of receipt of payments was subsequent to 1-3-2008 but that would not make any difference because it is not receipt of payment which is the taxable event but the rendition of service. In WP (C) 5636/2010 the relevant period is March, 2008 and in WP (C) 3632/2012 the relevant period is April, May and July, 2008.

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10. *Therefore, the rate of tax applicable on the date on which the services were rendered would be the one that would be relevant and not the rate of tax on the date on which payments were received. The instruction dated 28-4-2008 which is contrary to the law declared by the Supreme Court is clearly invalid. In Commissioner of Central Excise, Bolpur v. Ratan Meltins & Wire Industries - [2008 \(12\) S.T.R. 416](#) (S.C.) = [2008 \(231\) E.L.T. 22](#) (S.C.), a constitution bench of the Supreme Court observed as under :*

"Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the Court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the Court to declare what the particular provision of statute says and it is not for the Executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law."

11. *It is obvious that the said instruction being contrary to the law as declared by the Supreme Court can have no existence in the eye of the law. As a result we declare the instruction dated 28-4-2008 to be invalid. Consequently, the show cause notices and all the demands raised against the petitioner which are impugned in these writ petitions are also invalid."*

6. In light of the above decision of the Hon'ble Delhi High Court, we are of the view that the rate of service tax payable will be that which was prevalent at the time of providing the service. There is no basis for charging service tax

at the rate prevalent at the time of receipt of payment when the service itself has already been rendered when the service tax rate was lesser.

7. In the result, we set aside the impugned orders. Accordingly appeals are allowed.

(Ordered portion have already been pronounced in the open court.)

S/d.

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

S/d.

(V. Padmanabhan)
MEMBER (TECHNICAL)