IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.1

Service Tax Appeal No.170 of 2009

(Arising out of Order-in-Appeal No.16/ST/B-II/09 dated 25.03.2009 passed by Commissioner(Appeals), Central Excise, Customs & Service Tax, Bhubaneswar.)

M/s. Visakha Engineers
(Near IOB ATM Counter, Patel Complex Madhusudan Marg, Rourkela)
...Appellant

VERSUS

Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-II
.....Respondent
(C.R. Building, Rajaswa Vihar, Bhubaneswar, Orissa.)

APPEARANCE

Shri Debayan Dutta, Advocate for the Appellant (s)

Shri A.Roy, Authorized Representative for the Respondent (s)

CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

FINAL ORDER NO. 75113/2023

DATE OF HEARING : 23 February 2023
DATE OF DECISION : 23 February 2023

ASHOK JINDAL :

The Appellant is in Appeal against the impugned order wherein demand of Service Tax has been confirmed against the Appellant for the period 01.04.2003 to 31.03.2004 under the category of 'Repair and Maintenance Services'.

2. The facts of the case are that the Appellant was awarded work order on annual rate contract for repair and maintenance for Crane Wheels & Stacker Wheels.

Scope of Work for Crane Wheels

1) Skinning of wheels to a minimum thickness of 5mm, before welding will be done by you.
2) Welding with a suitable fluxcored wire of Diffusion will done by you to achieve the required hardness i.e. 30 to 35 HRC.
3) Replacement of GM bushes, if required will be done by you free of cost. However, bushes will be supplied by us.

SCOPE OF WORK FOR STACKER WHEELS

1) Skinning of wheels to a minimum of 5mm before rebuilding of deposition.
2) Re-building with suitable Flux Wire.
3) Machining to achieve require shape.
4) Flame hardening to get desired hardness 30 to 35 HRC.

3. The investigation took place as it was found that Appellant was providing taxable services under the category of 'Repair and Maintenance Services' and not paying Service Tax, therefore, a Show Cause Notice was issued for the impugned period on 07.03.2005 and demand of Service Tax was raised. Both the authorities below confirmed the demand against the Appellant. Aggrieved from the said order, the Appellant is before us.

4. The Ld.Counsel for the Appellant submits that the Appellant is providing Annual Rate Contract for repairs and maintenance. Therefore, sometimes the service recipient does not require service. In that circumstances, demand against the Appellant under the category of 'Repairs and Maintenance' is not sustainable.

5. On the other hand, the Ld.Authorized Representative for the Department reiterated the findings in the impugned order.

6. Heard the parties and considered the submissions.

7. We find that the issue is scope of work assigned to the Appellant. The contract only provides what are the rates for providing services as per the scope of work. The scope of work as stated in the agreement does not involve any material to be supplied by the Appellant. In that

circumstances we hold that the services provided by the Appellant duly qualify under 'Repair and Maintenance Service' during the impugned period. Therefore we do not find any merits in the Appeal filed by the Appellant.

8. Accordingly, the same is dismissed.

(Dictated and pronounced in the open Court.)

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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