IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL WEST ZONAL BENCH AT MUMBAI

Appeal No. ST/87830/2014

(Arising out Order-in-Appeal No. 04/ST-R/2014-15 dated 17.06.2014 passed by the Committee of Chief Commissioners, Pune)

For approval and signature:
Hon'ble Mr C J Mathew, Member (Technical)
Hon'ble Ajay Sharma, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	Yes

Commissioner of Customs, Central Excise & Service Tax, Goa — Appellant

Vs.

M/s. On & Offshore Hi Tech Engineers Pvt Ltd — Respondent

Appearance:

Shri Dilip Shinde, AC(AR) for the appellant
None for the respondent

CORAM:
Hon'ble Mr C J Mathew, Member (Technical)
Hon'ble Ajay Sharma, Member (Judicial)

Date of hearing : 18-02-2019
Date of decision : 18-02-2019

O R D E R No: **A/85333 / 2019**

Per: C J Mathew

Based on intelligence, proceedings were initiated against M/s On & Offshore Hi Tech Engineers Pvt Ltd by show cause notice dated 27th March 2012 for having provided 'dredging services' taxable under section 65(105) (zzzb) of Finance Act, 1994 to various contractors and seeking to recover service tax of ₹68,50,145/- for the period from 1st April 2007 to 30th June 2011. Though some of the documents relied upon did refer to recipients of the service, the value of services provided to each of the different recipients, admittedly, does not find a place in the notice. The noticee denied the leviability of tax on the services rendered by them and, *vide* order in original no. GOA-EXCUS-000-COM-009-13-14 dated 27th September 2013, Commissioner of Customs, Central Excise & Service Tax, Goa dropped the proceedings after examining with the nature of the work undertaken for M/s Hindustan Construction Company at the Kundankulam Power Project between March 2005 and March 2009. Aggrieved by this order, the competent Committee of Chief Commissioners constituted under of section 86 (1A) of Finance Act, 1994, directed the jurisdictional Commissioner of Customs, Central Excise & Service Tax to file the present appeal.

2. It is pointed out by Learned Authorised Representative that though services rendered to various recipients were covered by the show cause notice, the adjudicating authority had, despite dealing with only one of them, chosen to drop the entire demand in consequence. Submitting that the demand against the services rendered to M/s Hindustan Construction Company is not in dispute and nor that of the services rendered to M/s ABG Shipyard, he contends that the claim of exclusion in relation to services rendered to M/s Sri Pathy Assoceates is not acceptable and, had that been considered by the Commissioner, tax liability thereon would have been confirmed.

3. None appeared for the respondent and, on perusal of the records, we find that there has been no representation on various dates on which the matter was listed. Accordingly, we proceed to dispose off the appeal.

4. From the records, we find that the show cause notice is bereft of the details of the various recipients to whom service was rendered but claimed to be excluded from the tax liability. Undoubtedly, the service rendered to M/s Hindustan Construction Company has, after detailed examination of the facts, been found to be inconsistent with the definition, and the intended object of taxation, of ‘dredging services.’ Likewise, the service rendered to M/s ABG Shipyard is

also not in question. It would, therefore, appear that the breakup of the dues in the present appeal is a discovery attributable to the response to the show cause notice in which the details of contracts entered into appear to have been offered up as justification for non-payment of the taxes.

5. As far as the service rendered to M/s Sri Pathy Assoceates is concerned, the facts are clear enough. The work was undertaken as part of the 'tsunami emergency' funded by Asian Development Bank and executed on 'work orders' issued by Tamil Nadu Maritime Board. The claim of the notice, and the respondent herein, is that the final recipient of the service, Asian Development Bank, is a privileged person excluded from the burden of tax under various international treaties as well as specific legislation of Parliament.

6. We are unable to ascertain whether the exclusion claimed by the respondent during the adjudication proceedings is their entitlement. However, it was the bounden obligation of the adjudicating authority to consider the submission and give a finding thereof. This, he has patently failed to do.

7. To enable that to be done, we set aside the impugned order to the extent that the proceedings were dropped against the respondent in relation to the services rendered to M/s Sri Pathy Assoceates and

remand the matter back to the original authority for fresh decision after hearing submissions made by the respondent.

8. Appeal is thus allowed by way of remand to this extent.

(Operative part pronounced in Court)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

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