Power Tech Vs. Ultra Dimensions and Another

Power Tech Vs. Ultra Dimensions and Another

SooperKanoon Citation : sooperkanoon.com/1149401

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Apr-10-2014

Judge : The Honourable Mr. B.S.V. Murthy, Technical Member &Amp; the Honourable Mr. S.K. Mohanty, Judicial Member

Appeal No. : Final Order Nos.20834-20836 of 2014 ST/Stay/835 of 2011, ST/Stay/873 of 2011, ST/Stay/1187 of 2012 in ST/1362 of 2011, ST/1414 of 2011, ST/1674 of 2012-DB ST/1362 of 2011, ST/1414 of 2011, ST/1674 of 2012-DB [Arising Out of Order-in-Original No. 04/2011 dated 31/01/2011 passed by the Commissioner of Central Excise & Customs & Service Tax, Visakhapatnam] [Arising Out of Order-in-Original No.06 of 2011 dated 23/02/2011 passed by the Commissioner of Central Excise, Customs & Service Tax, Visakhapat

Appellant : Power Tech

Respondent : Ultra Dimensions and Another

Judgement :

B.S.V. Murthy, J.

1. Even though different orders are under challenge, the issues are somewhat similar in all the three cases. The appellants are rendering services to Ship Building Centre, Naval Dockyard at Visakhapatnam. All the services rendered by them are for the submarine being built by SBC. The types of activity undertaken based on the quantification to show-cause notice and based on the statements

can be briefly explained as under:

Fabrication of pipe spools/trunkings, SS and TI pipe welding and general activities like fabrication, welding, bending etc. Revenue has taken a view that the appellants have rendered Erection, Commissioning and Installation services to the SBC while undertaking these activities. The demands have been raised invoking extended period and penalties have been imposed. The amounts involved in the 3 appeals are as under:

Sl. No. Appeal No.	Amount involved (Rs.)
1.	ST/1362/2011 Service Tax Rs. 4,80,20,640/- and Rs. 11,03,130/- u/s 73(2) of the Finance Act 1994 Interest u/s 75 Penalty Rs. 4,91,23,770/-

2.	ST/1414/2011 Service Tax Rs. 59,20,043/-, Rs. 33,64,576/- and Rs. 20,93,449/- u/s 73 (2) Interest u/s 75 Penalty Rs. 200/- per day or 2% per month, whichever is higher u/s 76
3.	ST/1674/2012 Service Tax Rs. 7,54,56,985/- and Rs. 56,72,005/- u/s 73(2) Interest u/s 75 Penalty Rs. 8,11,28,990/- u/s 78

2. Heard both the sides. The appellant initially entered into works contract with SBC for undertaking the activities discussed above. In addition to the above, supply of certain machinery and equipments are also undertaken for SBC as well as Naval Dock Yard. The appellants also undertook certain activities of Maintenance and Repair Services. As regards the activity of fabrication and supply of machinery and equipment and maintenance and repair, the appellants have discharged the service tax liability attributable to these activities. The main dispute is with regard to the services which have been classified under Erection, Commissioning and Installation Service. It was submitted that the activities

undertaken by the appellants cannot be classified under Erection, Commissioning and Installation Services at all. After going through the show-cause notice and the impugned orders and the work orders and also hearing in considerable detail the proceedings of both the sides, what we find is that wherever the work orders are clear and the services can be said to be classified under Erection, Commissioning or Installation services or any other service, the appellants have discharged their liability. The only problem has arisen in the case of works contract where it has been merely stated that appellants have undertaken fabrication/welding/bending without indicating as to what exactly was fabricated or what was bent or what was welded and what happened to it. As rightly submitted by the learned counsel the Boards letter dated 16.09.2010 issued in this regard vide Circular No. 123/5/2010-TRU dated 24.05.2010, it was clarified as under:

Under Erection, Commissioning or Installation Services the activities relevant to the instant issue are

(a) the erection, commissioning and installation of plant, machinery, equipment or structures; and

(b) the installation of electrical and electronic devices, including wiring or fitting there for. Thus, if an activity does not result in emergence of an erected, installed and commissioned plant, machinery, equipment or structure or does not result in installation of an electrical or electronic device (i.e. a machine or equipment that uses electricity to perform some other function) the same is outside the purview of this taxable service.

Therefore to make it an offence case against the appellant, the department is required to show that the appellant has rendered a taxable service. For this purpose when we see the definition and when we consider the Boards clarification issued, it becomes quite clear that as to what exactly has been erected or installed or commissioned in respect of the work undertaken by the appellants has not been brought out at all. It is not available in the annexure to the show-cause notice and details have not been discussed in the order also. It was the request of the learned counsel that since appellants have already deposited substantial amount in all the 3 cases. As far as the liabilities determined in the orders under challenge, the matter may be remanded to the original adjudicating authority with a direction to clearly consider the submissions and indicate how exactly the taxable service has been rendered. The learned counsel also undertakes to submit a statement work order wise as to the exact nature of the work undertaken and their stand thereon. We find this is a very fair and reasonable offer. Therefore instead of considering the amount required to be deposited and considering the stay applications, we consider that it would be appropriate to enable the appellants to get a clear order and they should have the benefit of the exact nature of taxable services rendered and their liability and for this purpose it would be necessary to remand the matter at this stage itself. Accordingly considering the amounts already deposited as sufficient, we set aside the impugned orders and remand the matters to the original adjudicating authority for fresh adjudication of the issues involved. As assured by the learned counsel, the appellants shall produce the necessary details to the Commissioner within a period of 6 months from today and after the details are submitted, the learned Commissioner is requested to adjudicate the matter ensuring that the principles of natural justice are observed and further ensuring that all the submissions that may be made by the appellants are considered and the issues are clearly discussed and logical conclusions with supporting reasons are arrived at.