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M/S. Samtech Industries and Others Vs. C.C.E. Kanpur and and Others

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Principal Bench New Delhi

Decided On : Jan-29-2014

Judge : G. Raghuram, President Mr. Rakesh Kumar, Member (Technical)

Appeal No. : Appeal No. ST/1711 of 2011 [Arising Out of Order-in-appeal No.17/Comm./ST of 2011, dt.16.08.2011, passed by Commissioner, Central Excise Service Kanpur], Appeal No. ST/411 of 2011 [Arising Out of Order-in-Original No.01/Comm./Noida/2011, dt.11.02.11, passed by Commissioner, Central Excise Kanpur], Appeal No. ST/3279 of 2012 [Arising Out of Order-in-Original No.16/Comm./Noida/2012-2013, dt.27.07.2012, passed by Commissioner, Central Excise Noida], Appeal No. ST/286/2012 along with Mis. Applicatio

Appellant : M/S. Samtech Industries and Others

Respondent : C.C.E. Kanpur and and Others

Judgement :

Rakesh Kumar, J.

The appellants in these appeals are engaged in the business of manufacture as well as repair of transformers. In course of repair of transformers they very often replace certain components like HV/LV coils etc. and also the used transformer oil for filling. They are liable to pay service tax in respect of the service of repair of old transformer provided by them to their clients and for which they have service tax

registration. In the invoices issued by them to their customers they show the service charges and the value of the transformers oil and other consumables and of the components parts replaced, separately. While Service Tax/VAT is paid on the amount charged for the transfer oil/ consumables and the components used for repair, service tax was being paid by them only on the service/ Labour charges. The Department was of the view that the service tax is chargeable on the gross amount charged for repair of the transformers including value of consumables like transformer oil and the component parts like HV/LV coil etc. used. On this basis after issue of Show Cause Notices, service tax demands of various amounts were confirmed against them by six separate orders passed by the Commissioners, the details of which are given below:-

S.No.

Partys Name Order-in-Original No. and Date Service Tax and Demand conformed Penalty,

If any imposed 1. M/s.Samtech Ind. 17/ST/Comm./2011,dt.16.8.11passed by CCE, Kanpur Rs.1,84,92,181 along with interest u/s 75 of Finance Act, 1994 Rs.1,84,92,181 u/s 78 and Rs. 5000/- u/s 77 and Rs.200/- per day u/s 76.

2. M/s.Paramax Electronics Pvt. Ltd. 16/Comm./Noida/2012-13, dt. 27.7.12, passed by CCE, Noida 1,32,62,762/- along with interest u/s 75 of Finance Act, 1994 1,32,62,762/ u/s 78 ibid.

3. M/s. Mahendra Engineering Ltd. 23/Comm./LKO/ST/2011-12,dt. 28.11.11, passed by CCE, Lucknow 2,21,12,729/-along with interest u/s 75 of Finance Act, 1994 2,21,12,729/ u/s 78 ibid and Rs.10,000/- u/s 77 ibid

4. M/s. Surya Transformers 16/Comm./Noida/2012-13, dt. 27.7.12, passed by CCE, Noida Rs.62,84,767/- along with interest u/s 75 of Finance Act, 1994 Rs.62,84,767/- u/s 78 and Rs. 5000/- u/s 77 ibid

5. M/s. S.J. Transformers 04/Comm./2011-12,dt. 18.10.11 passed by CCE Meerut Rs.3,37,45,549 along with interest u/s 75 of Finance Act, 1994 Rs.3,37,45,549 u/s78,Rs.200/- per day, u/s/ 76 and Rs. 5000/- u/s 77 ibid

6. M/s. ABC Transformers 13-14/Comm./Noida/2012-13, dt. 24.07.12, passed by CCE Noida Rs.2,88,01,574 along with interest u/s 75 of Finance Act, 1994 Rs.2,88,01,574 u/s 76,77 and 78 of the Finance Act, 1994 Against the above orders these appeals have been filed.

2. Heard both the sides.

3. Sh. Parveen Sharma, Advocate representing M/s. ABC Transformers, M/s. Paramax Electronics Pvt. Ltd. and Sh. Vineet Singh, Advocate, representing M/s. Samtech Industries, M/s. S. J. Transformers M/s. Mahendra Engineering Ltd. and M/s. Surya Transformers Appeal No. ST/411/2011, pleaded that value of the goods used for repair of the transformers is not includible in the assessable value of the service, as the appellant in their invoices are charging separate amount for Service Tax/Labour Charges and for the goods used for repairs, on which Sales Tax/Vat is being paid and therefore the supply for goods used for repair activity has to be treated as sale, that the value of the goods used for repair cannot be part of the value of service, that these are not the cases where a consolidated amount is charged by the appellants for repair of the transformers which cannot be split into the value of the goods used and the value of the service, that the manner of billing adopted by appellant shows that their contracts with their clients are split contracts for providing service and the supply of goods required for service, that Honble High Court in case of Balaji Tirupati Enterprises Vs. C.C.E. reported in 2013 (32) S.T.R. 530 (All.) has held that the goods used during repair are deemed to have been sold in execution of work contract and their value would not be part of the value of the service, that in any case, during the period of dispute, the Exemption Notification No. 12/2003-ST dt. 20.06.2003 was in force and since there is a sale of goods involved in the transactions of the appellants with their clients and the condition of the Notification of not availing Cenvat Credit in respect of the goods used for providing service are satisfied, this exemption would be available and the value of the goods used would not be part of the assessable value of the service and as such no service tax can be charged on the value of the goods used and that, therefore, the impugned orders are not sustainable.

4. Sh. Davinder Singh, learned Jt. CDR, defended the impugned orders by reiterating the findings of Commissioners and citing the judgment of Larger Bench of Tribunal in case of Aggarwal Colour Advance Photo System Vs. CCE, Bhopal reported in 2011(23) - STR-608 pleaded that the contracts of the appellant with their customers were for repair of transformers, that when repair and maintenance service is taxable and in term of section 67 of the Finance Act, 1994, service tax is chargeable on the gross amount charged, value of the goods used for providing service would have to be included in the assessable value of the service, that in terms of the provisions of Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006, any expenditure or cost incurred by the service provider in course of providing the taxable service is includible in the assessable value of the service, except when such expenses/costs have been incurred by the service provider as pure agent, as defined in Sub-Rule(2) of Rule 5 ibid, that the appellants do not fall in the category of Pure Agents and that in view of the factual matrix of these cases for the purpose of charging service tax, value of the components and consumables like transformer oil used would have to be included in the assessable value of the service. He, therefore, pleaded that there is no infirmity in the impugned orders.

5. We have considered the submissions from both the sides and perused the records. The appellants provided the services of repair of transformers to their customers and in course of repair, they used various parts and consumables like transformers oil, for which separate amounts were shown in the invoices. The invoices issued by them show the value of the goods used and the service charges separately. The amounts charged for various parts like HV/LV oils and transformer oil are as per the rates specified in the contracts. It is not disputed that in respect of the supply of the goods used for providing the service of repair, Sales Tax/VAT is paid. This fact is clear from the invoices placed on record. In view of this, the appellants contracts with their customers have to be treated as split contracts for supply of goods and rendering the service. When the value of the goods used has been shown separately in the invoices and Sales Tax/VAT has been paid on the same, the supply of the goods would have to be treated as sale and the transactions which are sale, cannot be the part of service transaction. In view of this, we hold that Service Tax would be chargeable only on the Service/Labour charges i.e. on service component and the value of goods used for

repair would not be includible in the assessable value of the service. The Ld. DR has cited Rule 5(1) of the Service Tax (determine of Valuation) Rules, 2006 accordingly to which that where any expenditure or costs are incurred by any service provider in the course of providing a taxable service, all such expenditures or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value of the services for the purpose of charging service tax on the said service, unless such costs or expenditure have been incurred by the service provider as Pure Agents of the service recipient. However, this Rule has been struck down as Ultra Vires the provisions of Section 66 and Section 67 of the Finance Act, 1994 by Honble Delhi Court in the case of Intercontinental Consultants and Technocrafts Pvt. Vs. Union of India and Others Ltd. reported in 2012 TIOL-966-HC-Del.-ST. In view of this judgment of Honble Delhi High Court, the value of goods used for providing the service, which had been shown by the appellant separately in their invoices and on which Sales Tax/VAT had been paid, cannot be included for assessable value and no Service Tax can be charged on the same. The impugned orders, therefore, are not sustainable. The same are set aside. The appeals are allowed. Miscellaneous Application No.ST/Misc/ 60886/2013 for extension of stay in respect of Appeal No. ST/286/2012 also stands disposed off as the appeals itself has been allowed.

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