

(2014) 08 AHC CK 0207

In the Allahabad High Court

Case No : Central Excise Appeal No. 159 of 2014

Commissioner of Customs and Central Excise

APPELLANT

Vs

J.P. Transformers

RESPONDENT

Date of Decision : 25-08-2014

Acts Referred:

Citation : (2014) 48 GST 142

Hon'ble Judges : Dr. Dhananjaya Yeshwant Chandrachud, C.J.; Dilip Gupta, J

Bench : Division Bench

Advocate : B.K.S. Raghuvanshi, Advocate for the Appellant

Judgement

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1. The appeal arises from a decision of the Customs, Excise & Service Tax Appellate Tribunal dated 21 February 2014. The Revenue which is in appeal has sought to raise the following question of law:

"Whether the CESTAT has erred in holding that Service tax is not required to be paid on goods used in the repairing process on which Excise duty and VAT has been paid on the value of the said goods, ignoring the fact that as per the contract the respondents were under an obligation to replace the damaged parts and to maintain the transformers in a proper working condition."

2. The assessee is engaged in the manufacture of electrical transformers. The assessee had entered into a contract with M/s. Dakshinanchal Vidyut Vitran Nigam Ltd., Agra and M/s. U.P. Power Corporation Ltd., Lucknow for repair and maintenance of transformers. The assessee was duly registered and was discharging its service tax liability under the service head "Management, Maintenance and Repair". The liability on account of service tax was discharged in respect of the labour charges recovered by the assessee. The case of the Revenue was that the contract with the assessee is a composite contract under which the assessee was to provide the service of repairing transformers. Hence, according to the Revenue, the assessee was required to pay the service tax on

the total contracted value, including consumables and items used in the repair of the transformers.

3. The Commissioner in the course of his order dated 24 May 2011 agreed with the submission of the assessee that where in the course of repair and maintenance, an assessee uses goods which are separately identifiable or replaced, on which tax has been paid, the value of such goods has to be excluded from the total value charged for the levy of service tax.

4. However, in the present case, the Commissioner was of the view that the assessee had entered into a contract for a complete repair package and the break-up of individual items was for the purpose of computing the price variation. The observations in that regard in paragraph 25 of the order of the Commissioner read as follows:

"In this regard, I am in agreement with the party's view that while providing any kind of service of repair and maintenance, if any goods are replaced which are separately identifiable and on which proper taxes have been paid, the value of such goods should be excluded from the total value charged for the purpose of levy of Service Tax and the Service Tax should only be charged on the value representing the labour charges etc. as provided under Notification No. 12/2003 dated 20.6.2003; but in the instant case, the condition are altogether different as in this contract a complete repair package cost per transformer (capacity wise) is being charged by the party. Further, it has been explained under para 1.2 of the said contract that for the purpose of calculations of price variation of HV/LV Leg Coil, Transformer Oil, excise duty, Sales Tax, the breakup of repair package is being given that means the replacement of parts like HV/LV Leg Coil, Transformer Oil was as part and parcel of condition of the said contract and the party was not having any option not to replace these items etc. which do not find a mention in the said contract."

5. The Commissioner confirmed the demand of duty on service tax and imposed a penalty.

6. In appeal, the Tribunal has held that that there was no dispute about the following factual aspects:

(i) the contract showed the cost of each and every item separately;

(ii) as a matter of fact, the Commissioner had accepted that the invoices reflected separately the value of various items such as HV/LV Leg Coils and Transformer Oil on which the assessee paid tax including value added tax.

7. In this background, the Tribunal held that merely because the segregation of various items was shown in the contract for the purpose of price variation, the contract would not be regarded as one for providing services inclusive of the value of the goods which were used. The Tribunal relied upon Notification 12/2003-ST, dated 20 June 2003 under which the value of goods and materials sold by the service provider to the recipient of services stands exempted from

the service tax leviable thereon subject to the condition that there should be documentary proof specifically indicating the value of the goods and materials.

8. In the present case, it has been found as a matter of fact that the value of the goods and materials utilized for repair of the transformers is separately disclosed in the agreement and is separately mentioned in the invoices of the assessee. The assessee has paid excise duty or, as the case may be, value added tax on goods used in the repairing process. It was in this factual background, on which there is no dispute, that the Tribunal held that service tax could not be demanded on that component representing the value of the goods and materials used for carrying out repairs. The mere fact that the cost of the various items was shown for the purpose of price variation was held not to make any difference to the legal position.

9. On this finding of fact which was recorded by the Tribunal, no substantial question of law would arise. As a matter of fact, we may note that in the memo of appeal which has been filed by the Revenue, no effort has been made to displace the finding of fact which has been recorded by the Tribunal as being admitted.

10. In this view of the matter, the conclusion of the Tribunal that the agreements and invoices reflected the cost of materials and labour separately, and that the assessee had duly paid VAT/CST and excise duty on the goods sold, is not in dispute. It was in this background that it was held that no service tax would be leviable on the value of the materials.

11. Before concluding, we may note that the Tribunal has relied upon its own decision in the case of *Balaji Tirupati Enterprises v. CCE* [2014] 44 GST 195/43 taxmann.com 42 (New Delhi-Cestat). The Tribunal has noted that this decision was upheld by the High Court in *CC & CE v. Balaji Tripati Enterprises* [2014] 44 GST 163/43 taxmann.com 39 (All.). This has not been disputed either in the memo of appeal or in the course of submissions before this Court.

12. We may note at this stage that the learned counsel appearing on behalf of the assessee has made a grievance that before appeals are filed before this Court by the Revenue, in view of the directions of the Court, service is required to be effected on the assessee prior to filing. However, it has been stated on behalf of the assessee that the Revenue serves only a narrative prepared by the Commissioner and not the memo of appeal, as a result of which it becomes difficult for the assessee to track the appeals which are being filed. This is disputed by the learned counsel for the Revenue. We only need to clarify that the Revenue, when it causes service to be effected on the assessee, must ensure that a complete set of the paper book is served on the assessee and not just the narrative so as to enable the assessee to pursue and keep track of the appeal when it is filed.

13. In view of the earlier discussion, no substantial question of law would arise in this appeal. The appeal is, accordingly, dismissed. There shall be no order as to

costs.