

IN THE HIGH COURT OF ALLAHABAD

Central Excise Appeal No.2 of 2012

COMMISSIONER OF CENTRAL EXCISE, LUCKNOW

Vs

TECHNICAL ASSOCIATES LTD, LUCKNOW

Uma Nath Singh and Satish Chandra, JJ

Dated: January 12, 2012

Appellant Rep by: Rajesh Singh Chauhan
Respondent Rep by: None

JUDGEMENT

Per: Satish Chandra:

Present appeal under Section 35-G of the Central Excise Act, 1944 has been preferred against the impugned order dated 20.06.2011 passed by Customs, Excise & Service Tax Appellate Tribunal, New Delhi in *Appeal No.ST/1536/2010-CU (DB), Commissioner, Central Excise, Lucknow vs. M/s Technical Associates*.

The brief facts of the case are that the respondent-M/s Technical Associates Limited is engaged in rendering the services of maintenance and repair of Transformers. The respondent entered into an agreement with U.P. Power Corporation Limited for repair and testing of damaged Transformers, whereby respondent has to lift the damaged Transformers and after repair, re-installed the same.

During the scrutiny, the A.O. found that during the period from 01.04.2006 to 31.03.2007, the respondent has lifted the damaged Transformers by their own Trucks and charged a sum of Rs.5,31,400 /- from U.P. Power Corporation on account of "maintenance and repair" of the old and damaged Transformers. The A.O. opined that on this amount, the respondent is liable to pay Service Tax amounting to Rs.66,294 / - which was not paid by him. So, the A.O. has made a demand of Service Tax of Rs.66,294 /- for the period 01.04.2006 to 31.03.2007. On the similar analogy, the A.O. raised demands of Service Tax of Rs.74,137 /- for the period 01.04.2003 to 31.03.2006, and Rs.40,553 /- for the period 01.04.2007 to 31.03.2008. In addition to above, the A.O. levied a penalty of Rs.5000 /- under Section 77 of the Finance Act, 1994. The A.O. also levied another penalty of Rs.1,80,984 /- under Section 78 of the Finance Act, 1994.

Being aggrieved, the respondent – assessee has filed an appeal before the First Appellate Authority, who vide its order dated 27.07.2010 has deleted the above mentioned demand of Service Tax and cancelled both the penalties. Not being satisfied, the department has filed an appeal before the Tribunal, who vide its impugned order affirmed the order of the First Appellate Authority and dismissed the appeal filed by the department. Not still being satisfied, the department has knocked the door of this Court by filing the present appeal.

With this background, Sri Rajesh Singh Chauhan , learned counsel for the department relied on the order of the A.O. He submits that transportation is a taxable service. Therefore, the value of taxable service would also include the cost of transportation and,

as such, the tax liability would arise on the total gross value paid on account of "repair and maintenance". He further submits that transportation charges should be included in the gross value and in the instant case, the respondent has not paid Service Tax on the amounts in question. So, the respondent is liable to pay Service Tax along with interest and penalty as per Section 64 (50b) of the Finance Act, 1994. He read out this Section, which on reproduction, reads as under:

"50b : - 'goods transport agency' means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called."

Lastly, he made a request to set aside the impugned order passed by the Tribunal.

We have heard learned counsel for appellant-department and gone through the materials available on record.

It may be mentioned that service sector in India is growing significantly can be discerned from the statistical information furnished by Excise Department of Government of India. It is interesting to note that in India the contribution of service sector to the GDP has grown to such an extent as to surpass the share of agriculture and industry at a rapid phase, when compared to other industrialist countries.

In the instant case, the respondent entered into an agreement with the U.P. Power Corporation Limited for repair and maintenance of the damaged Transformers. Clause 5.1 of the said contract/agreement, on reproduction, reads as under:

"5.1 :- Rate for transportation/carriage are inclusive of loading, unloading, handling and insurance and shall remain firm during the currency of the contract. Any loss or damage to the transformers during the transportation/carriage will be the responsibility of the contractor."

From the above, it appears that it is the responsibility of the contractor to transport the defective Transformers and any damage caused during transportation shall be charged from the contractor. Further, it appears that the respondent has lifted the Transformers in his own Truck and no services were taken from any transporter. The contract is only for repair and maintenance of the Transformers but without lifting the Transformers, repair is not possible. Thus, lifting and re-installation of the Transformers is an integral part of the repair, for which a contract was entered into between the respondent and U.P. Power Corporation Limited.

When Transformers have been transported in their own Truck and no transportation charges were paid to any third party, then there is no question for charging the Service Tax as per Section 65 (50b) of the Finance Act, which states that 'goods transport agency' means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called.

In the instant case, no consignment note was issued and no services were taken from any third party for transportation of the Transformers. The lifting, repair and installation are the composite activities, for which the contract was signed between U.P. Power Corporation and the respondent. Neither transportation services were provided by third party nor any transportation charge was paid by the respondent to anyone. When it is so then no service tax is leviable in the instant case as no transportation charges were paid by the respondent.

In the circumstances, we are of the view that transportation of the Transformers is an integral part of the "repair and maintenance". Lifting and re-installation of the

Transformers are necessary components of the "repair and maintenance" as long as it is not provided by the third party. Therefore, we find no reason to interfere with the impugned order passed by the Tribunal. The same is hereby sustained along with the reasons mentioned therein.

The appeal being devoid of merits, is hereby dismissed at the admission stage.

No cost.