

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No. 50375 of 2021

(Arising out of Order-in-Appeal No. 358/CRM/ST/JDR/2020 dated 15.12.2020 passed by the Commissioner (Appeals) CGST, Jodhpur.)

M/s Mec Shot Blasting Equipment Ltd

Appellant

Plot No. E-279, MIA,
Basni Phase-II, Dist
Jodhpur, Rajasthan-342005

VERSUS

Commissioner, CGST- Jodhpur

Respondent

G-105, New Jodhpur Industrial Area,
Jodhpur, Rajasthan-302003

APPEARANCE:

Shri O.P. Agrawal, Advocate for the Appellant

Miss Tamanna Alam, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 50626 / 2022

Date of Hearing: 18.07.2022

Date of Decision: 18.07.2022

ANIL CHOUDHARY:

Heard the parties.

2. The issue involved before this Tribunal is:

i) Whether the appellant is liable to pay service tax of Rs. 29,209/-

(including cess) on renting of immovable property service.

ii) Whether the appellant was liable to pay service tax under RCM of Rs. 70,140/- on rent paid to Director for hiring of residential property which is used as residence of director.

iii) Whether service tax is required to be paid under RCM on GTA service.

3. The period in dispute is April 2015 to June 2017. The appellant is registered with the service tax department and deposits service tax regularly, maintained proper books of accounts and also filed their periodical returns. Pursuant to audit, show cause notice dated 11/07/2019 was issued, invoking the extended period of limitation.

4. So far the demand of Rs. 70,140/- and Rs. 56,005/- are concerned, which have been raised under the RCM, learned Counsel have urged that admittedly, appellant was registered with the service tax department and have regularly paid the service tax including service tax paid in cash by challan. Further, appellant was entitled to Cenvat credit for service tax paid under RCM. Thus, the situation is wholly revenue neutral.

5. Further, so far the demand of Rs. 70,140/- is concerned, the admitted fact is that the appellant company have taken on rent residential premises from the Director and such premises have been used by the appellant company as residence for its director. No service tax is chargeable, unless the premises are taken and used for commercial purpose. Thus service tax is not chargeable.

6. So far, the demand of Rs. 29,209/- is concerned, the learned Counsel state that the said service tax was not paid due to over site, as there are several transactions and when the appellant has been

regularly paying service tax and such receipts are properly declared in the books of accounts which have been subjected to audit, both by the tax auditor and statutory auditor under the provisions of various tax laws. Further, such demand is raised on the basis of records maintained by appellant-assessee. Thus, there is no element of suppression or contumacious conduct. Further, the appellant is registered a manufacturer, was entitled to Cenvat credit of such service tax paid and now due to implementation of GST, the said amount becomes refundable after payment of service tax and hence, the situation in this case is also revenue neutral.

7. Learned Authorised Representative for revenue relied on the impugned order.

8. Having considered the rival contentions, I find that the demand of tax of Rs. 70,140/- have been wrongly raised as the premises are residential premises and being used for residence of the director. So far the other two demands are concerned, I hold that the situation is wholly revenue neutral and accordingly, invocation of extended period of limitation is not available to the Revenue in the facts and circumstances.

9. Accordingly, in view of my findings, I allow this appeal and set aside the demand alongwith penalty. Appeal allowed.

(Order dictated in open Court)

Anil Choudhary
Member(Judicial)