

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
CHENNAI**

REGIONAL BENCH – COURT NO. I

**Service Tax Appeal No. 297 of 2012**

(Arising out of Order-in-Appeal No. CMB-CEX-000-APP-069-12 dated 27.03.2012 passed by the Commissioner of Customs, Central Excise and Service Tax (Appeals), No.6/7, A.T.D. Street, Race Course Road, Coimbatore – 641 018)

**M/s. Servalaxmi Services**

TS-22, SIDCO Industrial Estate,  
Kurichi, Coimbatore – 641 021

**: Appellant**

**VERSUS**

**The Commissioner of Central Excise and Service Tax : Respondent**

No. 6/7, A.T.D. Street, Race Course Road,  
Coimbatore – 641 018

**APPEARANCE:**

Shri T. Ramesh, Learned Advocate for the Appellant

Shri M. Ambe, Learned Deputy Commissioner for the Respondent

**CORAM:**

**HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)**

**HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 40080 / 2023**

DATE OF HEARING: 15.02.2023

DATE OF DECISION: 24.02.2023

**Order : [Per Hon'ble Mr. P. Dinesha]**

This appeal is filed by the appellant against the Order-in-Appeal No. CMB-CEX-000-APP-069-12 dated 27.03.2012 passed by the Commissioner of Customs, Central Excise and Service Tax (Appeals), Coimbatore whereby the demand of Service Tax along with interest and penalty came to be upheld.

2. It is the case of the appellant that they are the manufacturer of parts for paper mill machinery and are also registered under the category of Consulting Engineer

Service. It is also a fact borne out of record that they had undertaken repair activity which, according to them, was incidental to their manufacturing activity. There was a verification conducted by the Officers of the Revenue, during which time the proprietor of the appellant appears to have stated that they had carried out the repair work under the *bona fide* belief that the same was not covered under the Service Tax net and that there was no written agreement or contract for doing so.

3. The Revenue issued a Show Cause Notice dated 25.02.2010 for the period from 2005-06 to 2008-09 proposing to demand the Service Tax, in response to which the appellant filed a detailed reply; but however, not satisfied with the explanation, the Adjudicating Authority proceeded to confirm the demand as proposed in the Show Cause Notice. Aggrieved by the said order of demand, the appellant preferred first appeal before the Commissioner of Customs, Central Excise and Service Tax (Appeals), Coimbatore, who has vide impugned order rejected the same, against which the present appeal has been filed before this forum.

4. Heard Shri T. Ramesh, Learned Advocate for the appellant and Shri M. Ambe, Learned Deputy Commissioner for the Revenue and we have gone through the case records placed before us.

5. After hearing both sides, we find that the only issue that is to be decided by us is: whether the Service Tax demand made against the appellant is in order?

6. The Learned Advocate for the appellant submitted at the outset that the very same issue has been considered by the Learned Delhi Bench of the CESTAT in the following cases wherein the issue has been decided in favour of the taxpayer:-

(i) *M/s. Crimpson Electronics v. Commissioner of Central Excise, Kanpur* [2010 (18) S.T.R. 450 (Tri. – Del.)];

(ii) *C.C.E., Kanpur v. M/s. Kunal Fabricators & Engineering Works* [2014 (36) S.T.R. 549 (Tri. – Del.)]

7. We have gone through the orders relied upon by the Learned Advocate for the appellant and we find that in the said orders, it has been held that there was no record available to show the manner in which the activities of repair work were carried out by the taxpayer since there was no contract or agreement. The Delhi Bench of the CESTAT in the case of *M/s. Crimpson Electronics (supra)* has held as under:-

*"4. There is nothing on record to show the manner how activities were carried out by the appellant to conclude that repair and maintenance charges were received instead of job work charges. Also there is no contract document available on record to explain the nature of repair and maintenance carried out. In absence of any such documentary evidence, the appellant is entitled to the benefit of decisions cited (supra). Accordingly, we allow the appeal of the appellant and set aside the impugned order."*

We find that a similar view has been expressed in *M/s. Kunal Fabricators & Engineering Works (supra)* by the very same Bench.

8. Further, the Learned Deputy Commissioner for the Revenue was unable to distinguish the above orders nor was he able to contradict the contentions of the appellant as to the non-existence of contract / agreement.

9. In view of the above rulings, we are of the view that the demand cannot sustain, for which reason the impugned order is set aside.

10. The appeal is allowed with consequential benefits, if any, as per law.

(Order pronounced in the open court on **24.02.2023**)

Sd/-  
**(P. DINESHA)**  
MEMBER (JUDICIAL)

Sd/-  
**(M. AJIT KUMAR)**  
MEMBER (TECHNICAL)

Sdd