

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

REGIONAL BENCH – COURT NO. III

Service Tax Appeal No. 42378 of 2013

(Arising out of Order-in-Appeal Nos. 118 & 119/2013 dated 23.08.2013 passed by Commissioner of Central Excise (Appeals), No. 1, Williams Road, Cantonment, Tiruchirappalli – 620 001)

Mr. C. Manikanteswaran

M/s. Metal Care,
No. 31, Viswas Nagar,
Chennai By-pass Road,
Tiruchirappalli – 620 008.

...Appellant

Versus

Commissioner of GST and Central Excise

Tiruchirappalli Commissionerate,
No. 1, Williams Road,
Cantonment,
Tiruchirappalli – 620 001.

...Respondent

APPEARANCE:

For the Appellant : Ms. J. Ragini, Advocate

For the Respondent : Mr. N. Satyanarayanan, Assistant Commissioner / A.R.

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

DATE OF HEARING : 05.09.2023

DATE OF DECISION : 15.09.2023

FINAL ORDER No. 40802/ 2023

Order : Per Ms. SULEKHA BEEVI C.S.

Brief facts are that the appellant is a proprietorship concern owned by Shri C. Manikanteswaran. Intelligence gathered by the Department revealed that the appellant is providing taxable services in the nature of "Technical Testing and Analysis Services" and had neither registered with the Department nor paid the Service Tax on the taxable value received by them from their customers. The officers attached to the Head Quarters Anti

Evasion Unit, Tiruchirappalli visited the premises of the appellant and conducted verification of their records. The nature of service rendered by the appellant revealed that customers of the appellant are mainly manufacturers/fabricators of various items such as boiler parts, plant and machinery, pipe line, etc.,. Such customers have issued work orders / purchase orders to the appellant. As per these work orders / purchase orders, the appellant is required to carry out the Heat Treatment or Stress relieving on the welded joints of the products manufactured / fabricated by their customers. On verification, it was ascertained that the appellant was engaged by their customers for the purpose of testing and analyzing the quality and fitness of the welded areas on the joints of the products fabricated before such manufactured / fabricated items are sold or taken for further use in manufacture / fabrication activity. It therefore appeared to the Department that the services provided by the appellant was in the nature of technical testing and analysis of the quality of welding done on the fabricated items as the case may be.

2. It was also noted that after testing of the welded joints, the appellant was required to issue a testing report to their customers. From the copies of the invoices issued by the appellant, it was seen that the test report No. in respect of each customer was referred by the appellant to claim the service charges for the service rendered by them. On verification of purchase order / work order, it was seen that the customers were required to pay Service Tax in addition to the service charges. Their main customers are contractors / industries entrusted with the work of fabrication, erection or repairing of fabricated items in the premises of the industries or power plants of major units which include M/s. BHEL, M/s. NLC, M/s. India Oil Corporation, M/s. CPCL and various other industries. From the invoices raised by the appellant, it was noted that they had collected service charges as 'labour charges' and they have not discharged Service Tax on the amount so collected. They have not filed ST-3 Returns also. A Show Cause Notice dated 19.04.2012 was issued to the appellant proposing to demand the Service Tax under 'Technical Testing and Analysis Services' for the period from 01.10.2006 to 01.09.2011 along with interest and for imposing penalties. After due process

of law, the original authority confirmed the demand along with interest and imposed equal penalty. While confirming the demand, the original authority extended the benefit of cum-tax value observing that no separate tax was collected. Against the said order of confirmation of duty, the appellant filed appeal before the Commissioner (Appeals). The Department also preferred an appeal before the Commissioner (Appeals) against the findings of the adjudicating authority that the appellant is eligible for cum-tax benefit. The Commissioner (Appeals) *vide* order impugned herein allowed the appeal filed by the Department observing that the appellant is not eligible for cum-tax benefit as they have collected separately Service Tax from the customers. The demand, interest and penalties were upheld, thus, dismissing the appeals filed by the appellant. Aggrieved by such order, the appellant is now before the Tribunal.

3.1 The Ld. counsel Ms. J. Ragini appeared and argued for the appellant. It is submitted that the Show Cause Notice has been issued relying on the statement given by the proprietor Shri C. Manikanteswaran. The Department has not been able to establish how the activity of the appellant would fall within the definition of 'Technical Testing and Analysis Services' as defined under Clause 106 of Section 65 of Chapter V of the Finance Act, 1994. The appellant Shri C. Manikanteswaran who is a layman stated before the officers that they test the quality and fitness of the welded joints and give the test report to their customers. Solely based on this statement, the Show Cause Notice has been issued. In fact, the appellant is only doing a process incidental to manufacture and is not doing activity falling within the definition of 'Technical Testing and Analysis Services'. The work done by the appellant is called Postweld heat treatment / stress relief heat treatment. It is generally known as 'PWHT'. As per website, the said activity is explained as under:-



Search

Submi

[Home](#) [Technologies](#) [Industries](#) [Services](#) [News & Events](#) [Membership](#) [About Us](#) [Contact Us](#)

[Home](#) / [Technical Knowledge](#) / [FAQs](#) / [Material FAQs](#) / [FAQ: What is meant by postweld heat treatment / stress relief heat treatment?](#)

Technical Knowledge
FAQs

Share:

What is meant by postweld heat treatment/stress relief heat treatment?

Frequently Asked Questions

Postweld heat treatment (PWHT), or stress relief as it is sometimes known, is a method for reducing and redistributing the residual stresses in the material that have been introduced by welding.

The extent of relaxation of the residual stresses depends on the material type and composition, the temperature of PWHT and the soaking time at that temperature. A commonly used guideline for PWHT is that the joint should be soaked at peak temperature for 1 hour for each 25mm (1 inch) of thickness, although for certain cases a minimum soak time will be specified.

In addition to reduction and redistribution of residual stresses, PWHT at higher temperatures permits some tempering, precipitation or ageing effects to occur. These metallurgical changes can reduce the hardness of the as-welded structure, improving ductility and reducing the risks of brittle fracture. In some steels, however, ageing/precipitation processes can cause deterioration in the mechanical properties of the steel, in which case, specialist advice should be taken on the appropriate times and temperatures to use.

The necessity for PWHT depends on the material and the service requirements. Other factors that influence the need for PWHT are the welding parameters and the likely mechanism of failure. In some standards, PWHT is mandatory for certain grades or thicknesses, but where there is an option, cost and potential adverse effects need to be balanced against possible benefits. The energy costs are generally significant due to the high temperatures and long times involved, but costs associated with time delays may be more important. Detrimental effects include distortion, temper embrittlement, over-softening and reheat cracking, which means that control of heating and cooling rates, holding temperature tolerances and the times at temperature are extremely important, and must be carefully controlled in order to realise the full benefit of the process.

Quenched and tempered (Q&T) steels have the PWHT temperature limited to below the original tempering temperature of the steel, as higher temperatures can change the microstructure of the base material from what was expected or required.

3.2 The Ld. counsel explained that it is a method for reducing and redistributing the residual stresses in the material that have been introduced by welding. It has nothing to do with Technical Testing and Analysis Services. The appellant does not issue any report certifying quality of goods. The job description in the invoices is 'localised pwht of piping product'. It is heat treatment after welding and is often used to improve the properties of weldment. As per technical data, the post heat treatment is used to minimize the potential for hydrogen and also to reduce the stresses that remain locked in a structure as a consequence of manufacturing processes. The appellant thus, gives heating treatment required after welding and does not do any testing as to the welded joints. The allegation of the Department that the appellant is doing testing of the welded joints, etc., is without any factual basis.

3.3. It is thus argued by the Ld. counsel that the activity of the appellant does not fall under the category of taxable service of Technical Testing And Analysis Services.

3.4 Without prejudice to the above argument, the Ld. counsel submitted that the valuation is also incorrect for the reason that some of the amounts are reimbursable expenses. The appellant has collected charges in the nature of cost of transport, etc., which are nothing but reimbursable expenses. The cost of materials and other charges paid by the customer is also included by the Department to arrive at taxable value which is erroneous. The period being prior to 2015, the reimbursable expenses have to be excluded.

3.5 Further, that the adjudicating authority had correctly allowed cum-tax benefit, since the appellant had not collected Service Tax. After obtaining Service Tax registration as per direction of the Department, the appellant had started paying Service Tax. Prior to that, the appellant has not collected any Service Tax. The Commissioner (Appeals) has erred in holding that the appellant has collected Service Tax and therefore is not eligible for cum-tax benefit. The Ld. counsel prayed that the appeal may be allowed.

4. The Ld. Authorised Representative Shri N. Satyanarayanan appeared and argued for the Department. The Ld. Authorised Representative reiterated the findings in paragraph 16 of the Order passed by the adjudicating authority. It is stated that the service under taken by the appellant is nothing but testing of the welded joints and therefore is not an incidental activity to manufacture. The appellant also issues test certificate after carrying the heat treatment test. The demand has been correctly confirmed by the authorities below.

5. Heard both sides.

6.1 The appellant is aggrieved by the demand of Service Tax under 'Technical Testing and Analysis Services'. The foremost issue to be decided is whether the activity under taken by the appellant would fall within the definition of 'Technical Testing and Analysis Services'. The definition of the service

under Section 65(105)(zzn) of the Finance Act, 1944 is as under:-

"technical testing and analysis" means any service in relation to physical, chemical, biological or any other scientific testing or analysis of goods or material or information technology software or any immovable property, but does not include any testing or analysis service provided in relation to human beings or animals."

6.2 This taxable service which was introduced with effect from 01.07.2003 as per Section 65 (106) of the Finance Act, 1944 provides that "taxable service means any service provided or to the provided to any person by a technical testing and analysis agency in relation to technical testing and analysis".


6.3 Section 65(107) states that 'technical testing and analysis agency' means 'any agency or person engaged in providing services in relation to technical testing and analysis'.

6.4 The authorities below have mainly relied upon by the statement given by Shri C. Manikanteswaran to conclude that the activity carried out by him is technical testing. It is correct that while giving the statement, the appellant has used the word 'testing of welding joints'. His statement as in the Show Cause Notice is as under:-

"The machineries mainly required for during the testing work are 1. Temperature Recorder 2. Panel Box 3. Heatin elements 4. Thermo Couple Cables and 5. Power Cable. The Temperature recorder indicates the temperature at which the testing is to be done on the welded joints. This temperature is fixed as per the requirement of the customer. The Panel box is for operating the system at the time of testing. The heating elements and cables contribute to the heating process. After the completion of the testing we furnish a testing report to the customers. The testing report is a chart taken from the temperature recorder after each testing. The said chart will normally indicate the temperature details under which the testing was carried out. This chart is the testing report given by us signed by our technical staff and also signed by the staff of the client/customers. I further state that such testing reports are normally to be maintained by the manufacturers/ fabricators of the products tested for welding joints. As per the practice such testing reports of the welded joints shall also be furnished by the manufacturers/ fabricators to their buyers. I further state that majority of our service is done at the site of the customers where fabrication or erection of item involving welding of joints is done. In some cases where the customers are not accepting our test report for technical reasons we have to carry out the testing of welded joints once again and fresh testing report will be provided to the customers. Only after the acceptance of the testing report referred to above the customers will make payments. The work of Stress Relieving is to strengthen the area welded. For Stress Relieving work also we are giving a testing report generated from the recorder as stated above. As regards the payment of service tax by our customers as per the work orders enquired by you I state that though the work orders provide for payment of service tax on

production of documents, so far we have not collected service tax from any of our customers."

6.5 From the above statement, it can be seen that the main activities carried out by the appellant is PWHT and stress relieving treatments. Though he has used the word testing, it is now argued by the Ld. counsel that the activity under taken by the appellant is not technical testing and is only part of manufacturing activity. The word 'testing' is used by him in an unprofessional sense. The work orders do not show that the appellant has been entrusted with the job of technical testing. Instead, the job description says 'localised PWHT of piping product'. The job work is explained as under:-

Account Assignment :	
General Note: SCOPE FOR LOCALISED PWHT OF PIPE ATPPPU/THIRUMAYAM BY VENDOR.	
1. SUB-CONTRACTOR SHALL BRING THE HT.FACILITIES <(>&<)> RECORDER FOR CONDUCTING PWHT AT BHEL WORKS atPPPU/THIRUMAYAM. PERSONS CONDUCTING THE HEAT TREATMENT SHOULD BE AWARE OF VARIOUS H.T CYCLES.	
3. SUITABLE TRAINED PERSONS HAVING PREVIOUS EXPERIENCE IN CONDUCTING VARIOUS H.T CYCLES <(>&<)> H.T CHART CLEARED BY IBR ARE REQUIRED.	
4. HEAT TREATMENT INVOLVE THE FOLLOWING ELEMENTAL OPERATIONS.	
a) WOUND AROUND THE H.T LOCATION WITH RESISTANCE HEATING ELEMENTS WITH INSULATION PAD FOR 300MM ON EITHER SIDE.	
b) PROVIDING OF THERMOCOUPLE ARRANGEMENT TO THE JOB <(>&<)>RECORDER.	
c) CALIBRATION OF THE RECORDER AND RECORDER SETTING TO ENSURE THE REQUIRED HT TEMP AT ROOT OF THE JOINT (ID).	
d) CONNECTION TO THE APPROPRIATE POWER SOURCE.	
e) MAINTAIN RATE OF HEATING, SOAKING TIME <(>&<)> RATE OF COOLING DURING H.T.CYCLE. REPEAT THE CYCLE WHEN POWER INTERRUPTION OCCURS.	
f) PREPARATION OF H.T CHART AND GETTING IT CLEARED BY BHEL QC/IBR.	
5. DETAILS OF PWHT CYCLES REQUIRED ARE AS BELOW.	
a) BASE PIPE MATL SPECIFICATION	PWHT TEMP
Yours faithfully, For BHARAT HEAVY ELECTRICALS LIMITED  MANAGER, PURCHASE (Piping Centre)	

6.6 The activity under taken by the appellant as per the above work order does not indicate any activity of technical testing. It is in the nature of heat treatment, stress relief treatment, etc. For an activity to fall under technical testing, some process so as to test the quality, strength, toughness, etc., has to be done.

6.7 The Ld. counsel for the appellant has produced details from the website to explain that PWHT is an heat treatment which is essential after welding process. It is seen that PWHT is done in order to maintain or improve material strength and mechanical properties and to relieve residual stress. In steel fabrication, the most common PWHT procedures applied are post heating and stress relieving. It is explained that when welding is done, much heat is introduced to melt the base material. This elevated temperature causes microstructural changes to the base material which can change very important internal properties such as tensile strength, hardness, ductility and toughness. The degree to which these properties are affected depends on the chemical composition on the base material and cooling made after welding. PWHT treatment requirements are typically dictated by codes and standards and by any special requirements due to the service conditions of the welded structure. Post heating is primarily done to avoid Hydrogen Induced Cracking (HIC), also known as Cold Cracking and Hydrogen Assisted Cracking (HAC).

6.8 What we understand is that heat treating done on welded joints can improve wear resistance by hardening the material. Metal can be hardened either on the surface or all the way through to make the material stronger, tougher, more durable and more resistant to wear. From the literature available in website, we are not able to conclude that the activity under taken by the appellant falls within the definition of 'technical testing and analysis services'. Further, in the present case, it is not seen that the appellant has issued any certificate with regard to the testing done. From the statement given by Shri C. Manikanteswaran, it is inferred that while doing the heat treatment, the temperature at which the material is subjected to heating is recorded. It is prepared in a chart form and given the customer. Thus, the temperature chart provided by the appellant is considered to be the test report by the Department. We do not find any material throwing light with regard to a certificate issued by the appellant as to the technical nature/ quality of a product. In our view, the issue therefore requires re-consideration.

7.1 Again, while quantifying the Service Tax demand, the original authority had given the appellant, the benefit of cum-tax value. The same has been set aside by the Commissioner (Appeals). In paragraph 4 of the Show Cause Notice, it is stated that on verification purchase order issued by the customers of the appellant, it showed that customers were required to pay Serviced Tax subject to the production of documents by the appellant showing payment of Service Tax. In other words, it states that the appellant would be able to collect Service Tax only on producing documents that he has already paid Service Tax. The appellant has taken Service Tax Registration on 27.02.2012. The work orders prior to this date do not indicate collection Service Tax. However, this fact has to be re-examined.

7.2 Again, from the statement given by Shri C. Manikanteswaran as reproduced above that the amount received from the customers included transportation charges. If the amount includes actual reimbursements in the nature of transportation charges, such expenses cannot be included in the taxable value as per the decision of the Hon'ble Supreme Court in the case of *Union of India Vs. Intercontinental Consultants and Technocrats Pvt. Ltd. [2018 (10) GSTL 401 (SC)]*. This issue as to whether taxable value quantified by the Department includes reimbursable expenses also have to be examined.

8. From the foregoing discussions, we find that it is fit case for remand to the adjudicating authority who is directed to consider all issues discussed above afresh. We therefore remand the matter leaving all issues open.

9. In the result, the impugned order is set aside. The matter is remanded to the adjudicating authority for fresh consideration.

(Order pronounced in open court on 15.09.2023)

(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)