

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
MUMBAI**

REGIONAL BENCH - COURT NO. I

**Service Tax Miscellaneous Application No. 85705 of 2023
In
Service Tax Appeal No. 85943 of 2016**

(Arising out of Order-in-Original No.40-42/COMMR/ST-II/SM/2015-16 dated 30.12.2015 passed by the Commissioner of Service Tax Mumbai-II)

M/s Michigan Engineers Pvt Ltd **Appellant**
D-7, Commerce Center 78, Javji Dadaji Road,
Tardeo, Mumbai- 400 034.

Versus

Commissioner of Service Tax-II, Mumbai **Respondent**
4th Floor, New Central Excise Building,
Maharshi Karve Road, Churchgate, Mumbai- 400 020.

And

**Service Tax Miscellaneous Application No. 85706 of 2023
In
Service Tax Appeal No. 87013 of 2016**

(Arising out of Order-in-Original No. 14/ST-V/SKD/2016 dated 23.05.2016 passed by the Commissioner of Service Tax-V Mumbai)

**M/s Reliance Michigan Joint Venture
Mithi River** **Appellant**
105-C, Shyam Kamal, Agarwal Market,
27-Tejpal Road, Vile Parle (E), Mumbai- 400 057.

Versus

Commissioner of Service Tax-V, Mumbai **Respondent**
3rd Floor, Utpad Shulk Building, Bandra Kurla Complex,
Bandra, Mumbai- 400 051.

Appearance:

Shri Bharat Raichandani, Advocate for the Appellant

Shri A.K. Shrivastava, Authorized Representative for the Respondent

With

Service Tax Appeal No. 87219 of 2016

(Arising out of Order-in-Original No. 14/ST-V/SKD/2016 dated 23.05.2016 passed by the Commissioner of Service Tax-V, Mumbai)

Commissioner of Service Tax-V, Mumbai **Appellant**
3rd Floor, Utpad Shulk Building, Bandra Kurla Complex,
Bandra, Mumbai- 400 051.

Versus

M/s Reliance Michigan Joint Venture

.... Respondent

105-C, Shyam Kamal, Agarwal Market,
27-Tejpal Road, Vile Parle (E), Mumbai- 400 057.

Appearance:

Shri A.K. Shrivastava, Authorized Representative for the Appellant

Shri Bharat Raichandani, Advocate for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85038-85040/2024

Date of Hearing: 15.01.2024

Date of Decision: 15.01.2024

Per: S.K. MOHANTY

The appellants-assessee herein have filed these Miscellaneous Applications, seeking consideration of additional grounds. Those applications were filed in context with the services provided by the appellants. The appellants had claimed that the classification of the services should be categorized under 'works contract service' and not the 'dredging service'. Since the additional grounds urged at this juncture by the appellants are in context with proper classification of the service, we are of the view that the said applications merit consideration for taking the additional grounds as a part of the appeal records for a decision on merits.

2. The appellants have filed these appeals before the Tribunal against the impugned order dated 30.12.2015 passed by the learned Commissioner of Service Tax-II, Mumbai and order dated 23.05.2016 passed by the learned Commissioner of Service Tax-V, Mumbai. In one of the adjudication order dated 30.12.2015, the learned adjudicating authority had confirmed the service tax demand on the ground that the activities undertaken by the appellants fall under the taxable category of dredging service and accordingly, the service tax liability is required to be discharged by them. In respect of the other

impugned order dated 23.05.2016, the learned adjudicating authority has bifurcated the services provided by the appellant and confirmed the demand with regard to the 'dredging service' provided by them and dropped the proposed demand, holding that 'works contract service' should not attract levy of service tax as proposed for recovery under the dredging service. Feeling aggrieved with both the impugned orders, the appellants have preferred these appeals before the Tribunal. Further, Revenue has also filed the appeal against the impugned order dated 23.05.2016, wherein the original authority had dropped the proposals made in the SCN, proposing for recovery of service tax under the category of dredging service.

2. The appellants have mainly contended that they have not provided any taxable service and the entire assignments were given to the sub-contractor M/s. Relcon Infraprojects Ltd., who had undertaken the activities. Thus, it has been contended that since the appellants in these cases have not provided any taxable service, no service tax liability can be fastened on them and service tax liability, if any, can be determined and demanded from the sub-contractor, who had actually undertaken the activity arising out of the agreements. The appellants also contended that the activities provided by the sub-contractor should also not fall under the taxable category of dredging service and the same should be qualified as 'works contract service' inasmuch as the work executed involved both supply of labour as well as material on payment of VAT/Sales Tax liability.

3. On perusal of the impugned orders, we find that the learned adjudicating authority has not addressed to the submissions made by the appellants, which were to the effect that the service tax liability should appropriately be confirmed under the works contract service and not dredging service and service tax liability, if any, should be recovered or computed on the basis of the work executed by the sub-contractor, who had actually executed the assigned task. Since those vital aspects have not been dealt with by the adjudicating authority, we are of the view that the matter arising out of the present impugned orders should go back to the original authority for a fresh

fact finding on the issues, especially raised by the appellants, at this juncture.

4. Therefore, by setting aside the impugned orders, the matter arising out of the present dispute is remanded back to the original authority for a fresh fact finding on all the issues involved. In other words, we would like to make it clear that this is an open remand and the original authority should consider all the allegations leveled against the appellants in the SCNs afresh and should pass a reasoned and speaking order, upon consideration of the submissions already made/ to be made by the appellants, during the course of adjudication proceedings. Needless to say that opportunity of personal hearing should be granted to the appellants before deciding the issue afresh.

5. In the result, all the appeals filed by the assessee-appellants and the Revenue are allowed by way of remand.

Miscellaneous applications are disposed off.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)