

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,  
EAST REGIONAL BENCH : KOLKATA**

**Appeal Nos.1)ST/102/2009, 2)ST/129/2009**

(Arising out of Order-in-Original No.01/Commr/ST/ADJ/DIB/09 dated 09.02.2009 passed by the Commissioner, Central Excise & Service Tax, Dibrugarh)

Devanchand Ramsaran  
Commissioner of Central Excise, Dibrugarh ...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Dibrugarh  
Devanchand Ramsaran

...RESPONDENT (S)

**APPEARANCE**

Shri V.Y.Khare, CS for the Appellants  
Shri S.Mukhopadhyay, Suptd.(AR) for the Revenue

**CORAM:**

**HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER**  
**Hon'ble SHRI V.Padmanabhan, Member (Technical)**

Date of Hearing/Decision : 11.12.2018

ORDER NO.FO/A/77090-77091/2018

**Per Bench :**

The present appeals have been filed against the Order-in-Original No. 01/Commr/ST/ADJ/DIB/09 dated 09.02.2009. The period of dispute is from 01.07.2003 to 30.04.2006. During this period the appellant entered into contract agreement with M/s. Oil and Natural Gas Corporation Ltd.(ONGCL) for providing cranes on hire basis. The cranes were made available alongwith operators and operated as per their requirement of ONGC. For such service they were to be paid consideration in the form of monthly operational charges as well as empty run charges. Revenue was of the opinion that the services provided to ONGC were of the nature covered by the definition of Business Auxiliary Service falling under Section 65 (19) of the Finance Act,

1994 which was introduced w.e.f. 01.07.2003. For demand of service tax under the above category, show cause notice dated 11.02.2008 was issued which was adjudicated by passing the impugned order. The adjudicating authority took the view that the activities performed by the assessee are covered under Section 16(19) (iv) "procurement of goods or services, which are inputs for the client". Since this sub-section was introduced only w.e.f. 10.09.2004, he dropped the demand of service tax for the period up to 09.09.2004 and confirmed the demand of service tax for the subsequent period.

The assessee has challenged the demand for service tax under the category of Business Auxiliary Service. The Revenue has also challenged a portion of the impugned order in which the part of the demand has been dropped.

Both these appeals are being disposed of through this common order.

2. The assessee is represented by Shri V.Y.Khare, CS and Revenue is represented by Shri S.Mukhopadhyay, Suptd.(AR).

3. On behalf of the assessee the following main arguments are advanced;

(i) It was submitted that the activity carried out for ONGC will not fall within the category of Business Auxiliary Service. He added that the Contract clearly indicated that it was a case of pure hire of cranes which were placed at the disposal of ONGC for their operation alongwith necessary operators. At best such activities are falling under the category of Section 65(105)(zzzz) i.e. under the category of 'Supply of Tangible Goods Service'. Since this service was introduced in the statute only w.e.f. 16.05.2008, he argued that the entire demand for service tax under the category of Business Auxiliary Service merits to be set aside.

4. Ld. DR justified the impugned order.

5. Heard both sides and perused the appeal records.
6. We have perused a copy of the Contract executed by the assessee with ONGC. The contract specifically is for hiring the service of Type-II Cranes. The contract agreement clearly specified that the cranes are to be placed at the disposal of ONGC along with operators and consideration will be paid by ONGC on the basis of monthly operation charges as well as empty run charges. It is required to be noted that the contract is only between two parties i.e. the assessee as well as ONGC. By any stretch of imagination, the contract cannot be considered to be one of procurement of service which are inputs for the client, for the simple reason that there is no third party in the contract. Evidently the activity has not been carried out on behalf of ONGC.
7. The definition of Business Auxiliary Service under Section 65(19) is clearly applicable only when the service is rendered on behalf of someone else. Perusal of the contract reveals that the activity can at best fall under Section 65(105) (zzzz) w.e.f. 16.05.2008. Since the entire demand in the present proceedings is for the prior period, we find no justification for the levy of the service tax under the category of Business Auxiliary Service.
8. On the above discussions the impugned order is set aside and the appeal filed by the assessee is allowed. Consequently the appeal filed by the Revenue is rejected.

(Ordered portion have already been pronounced in the open court.)

S/d.

**(P. K. CHOUDHARY)**  
**MEMBER (JUDICIAL)**

S/d.

**(V. Padmanabhan)**  
**MEMBER (TECHNICAL)**