# Customs, Excise & Service Tax Appellate Tribunal
# West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO. 3

**Service Tax Appeal No. 12839 of 2014-DB**

[ST/CROSS/16380/2014]

(Arising out of OIA-AHM-SVTAX-000-APP-410-13-14 Dated 28/03/2014 passed by Commissioner of Service Tax-SERVICE TAX - AHMEDABAD)

**C.S.T.-Service Tax – Ahmedabad** ........**Appellant**
7 th Floor, Central Excise Bhawan, Nr. Polytechnic
Central Excise Bhavan, Ambawadi,
Ahmedabad, Gujarat- 380015

*VERSUS*

**Adani Enterprise Ltd** ........**Respondent**
Adani House, Near Mithakhali Six Roads,
Navrangpura,
Ahmedabad-Gujarat

**APPEARANCE:**
Shri A K Mudvel, Superintendent (AR) appeared for the Appellant
Shri Hardik Modh, Advocate appeared for the Respondent

**CORAM: Hon'ble Mr. Ramesh Nair, Member (Judicial)**
**Hon'ble Mr. C.L. MAHAR, Member (Technical)**

**FINAL ORDER NO. 11288/2024**

DATE OF HEARING:18.03.2024
DATE OF DECISION: 12.06.2024

**RAMESH NAIR**

The brief facts of the case are that M/s. Adani Enterprises Ltd. (Respondent) are registered with Service tax department under the categories of management consultants, C&F Agency, Consulting Engineer, Manpower Recruitment Agency, Port Services, cargo handling services etc.. Respondent had filed refund claim of Rs. 95,35,833/- under their application dtd. 04.02.2012 in terms of Section 11B of the Central Excise Act, 1994 read with Section 83 of the Finance Act,1994. The respondent had entered into contract with M/s. Gujarat Energy Transmission Corporation Ltd. (GETCO) for the Erection of 400 KV D/C Mundra –Zerda Line No. 2-330.563 KM Transmission lines on D/C tower with ACSR 'Moose Conductor' on Turnkey basis. They had classified the said services under the category 'Erection, Commissioning & Installation

Service' and the service receiver i.e M/s GETCO is denying payment of Service tax on the premise that service is exempted in view of the Board Circular No. 123/5/2010-TRU dtd. 24.05.2010. Accordingly respondent filed the refund claim. Revenue observed that in invoices each of the job carried out by the respondent and its value has been shown separately and since all the job carried out are of independent nature and are not covered under the definition of "Laying of cables under or alongside road and Laying of electric cables between grids/sub-stations/ transformer stations en-route" as per the Board's circular dtd. 24.05.2010, refund therefore appeared to be not tenable. Respondent was issued show cause notice that why the refund claim should not be rejected. The said show cause notice was adjudicated vide order-in-original dtd. 02.07.2012 and the adjudicating authority has rejected the refund claim. On such an order passed by Adjudicating Authority, in rejecting the refundclaim, the respondent herein preferred an appeal before the Appellate Authority and the Appellate Authority vide impugned Order-In-Appeal No. AHM-SVTAX-000-APP-410-13-14 dtd. 28.03.2014 has set aside the Adjudication Order and allowed the appeal. Being aggrieved by the said Order-in-appeal, revenue filed the present appeal.

2. On behalf of the Revenue, Shri Anoop Kumar Mudvel, Ld. Superintendent (AR) appeared and reiterating the grounds of appeals submits that the Ld. Commissioner (Appeals) has taken recourse of Board's Circular dtd. 24.05.2010 in holding that services provided by the respondent are covered by the said circular and hence not liable to service tax. In order to determine the applicability of the above circular, it is necessary to critically examine the exact nature of activity being undertaken by the respondent. It is a fact that the respondent received contract for turnkey project and quoted single price. However

the single price is further segregated into various activities in the work order. Further, invoices issued by the respondent indicate that each job carried out by respondent and its value has been shown separately. Hence it can be seen that the respondent has not only undertaken the only activity as mentioned at Sr. No. 2 and 3 of the table under para 3 of the circular but many other activities. As per the agreement between M/s. GETCO and Respondent, dtd. 23.10.2009, M/s GETCO has allotted different jobs to the claimant which includes 'Check Survey, Excavation, Installation of Steel re-inforcement in concrete foundation, sub-setting. Concerting of foundation by M20/M15 mixture, Grounding of towers with pipe type earthing, Grounding of towers with counter poise type, Erection of super structure upto 6 meter extension. Fixing of anti-climbing devices, Fixing of DP/NP/PP/CIP, Track welding of nuts upto 10 mtrs. height , Stringing of two ground wires and Stringing of ACST Twin Moose 12 conductor for double credit etc.' From the facts it is observed that the Board's circular allows exemption only to the activities viz. " Laying of cables under and alongside road and Laying of electric cables between grids/sub-station/transformer stations en route" and not to other activities undertaken by the Respondent. Since the respondent has undertaken activities other than those mentioned in the Board's above circular, they do not qualify for the exemption available under the Board's circular dtd. 24.05.2010 and accordingly liable to pay service tax. The Ld. Commissioner has committed gross error of law by holding that the Service provided to M/s GETCO by respondent comes under the purview of Boards circular dtd. 24.05.2010. Therefore, in view of above facts and reasons, the impugned order passed by the Ld. Commissioner (Appeals) is not proper and legal and deserves to be set aside.

3. On the other hand, Shri HardikModh, Ld. Advocate appearing on behalf of the respondent supported the finding of the impugned order. He submits that the revenue ought to have appreciated the agreement dtd. 23.10.2009 wherein M/s GETCO awarded separate contract for erection of transmission line on turnkey basis between Mundra-Zerda line No. 2-330.563 KM. The contract specified that the contract was awarded on turnkey basis on firm price. Since the schedule appended to the Erection Works contract delineated into contract for the erection of the transmission line into various activities with separate rates does not necessarily imply that there are separate contracts for different activities. The revenue ought to have appreciated that the body of the contract read with Part B of the Contract specifically mentions that it is turnkey contract on firm price. He placed reliance on the decision of Hazirabaug Mining and Engineering Pvt. Ltd. Vs. C.C.Ex- 2017(49)STR 289.

3.1 He also submits that the revenue ought to have appreciated that M/s GETCO and the company mutually agreed to amend the aforementioned agreement due to a change in the rate of service tax. Initially, M/s GETCO agreed to pay service tax at a rate of 3.43% of the contract value, which was later corrected through the amended agreement to reflect the correct rate of service tax for the work undertaken, which was 10.3% .

3.2 He also argued that the entire activities undertaken by the company is exempted from service tax in terms of Notification No. 11/2010 –Service tax dtd. 27.02.2010 read with Circular No. 123/5/2010 TRU dtd. 24.05.2010. The Notification exempts all taxable activities undertaken for transmission of electricity from the whole of service tax leviable thereon. He placed reliance on the following judgements:-

(i) M/s. Badri Singh Vs. CCE -2018(6)TMI 1255.

(ii)M/s Deepak Cables (India) Ltd. Vs. Commissioner of Central Tax – 2018(6)TMI 673.

(iii) Royal Electricals Vs. Commissioner of Central Excise and Service tax 2018(9) GSTL 25.

3.3 He further submits that the laying of underground cable is not chargeable to Service tax. He placed reliance on the following decisions:-

(i) Siddharth Industries Vs. Commissioner of Central Excise and Service tax -2023(4)TMI 924;

(ii) Commissioner of Central Excise Vs. H.M. Satyanarayan Engineers and Contractors – 2018(8)TMI 736.

4. Heard both the sides and perused the records. We have gone through the copy of work order issued to the respondent by M/s GETCO for supply & erection of works 400KV D/C Mundra-Zerda Line No. 2-330-563 KM transmission lines on Turnkey basis. We noticed that contract issued by M/s GETCO was lump sum value. Erection works of transmission line has been segregated in various activities under Schedule –I of Part B of the work order. The entire work allotted to the respondent falls within the Circular which read as under :-

*"Cable laying under or alongside roads — Service tax liability*

*Circular No. 123/5/2010-TRU, dated 24-5-2010*

*F.No. 332/5/2010-TRU*
*Government of India*
*Ministry of Finance (Department of Revenue)*
*Central Board of Excise & Customs, New Delhi*

*Subject : Applicability of Service tax on laying of cables under or alongside roads and similar activities - Clarification regarding.*

*Disputes have arisen in some parts of the country regarding applicability of service tax on certain activities such as shifting of* *overhead cables to underground on account of renovation/widening of roads; laying of electrical cables under or alongside roads/railway tracks; between grids/sub-stations/transformers the distribution points of residential or commercial complexes and such activities as electrification of railways, installation of street-lights, traffic lights, flood-lights. This clarification takes into account the taxability of different activities taking into account the scope of all services (such as site formation/excavation/ earth moving service, commercial or industrial construction services; erection, commissioning or installation services; or works-contract service) that are presently taxable as well as those which are covered under the Finance Act, 2010.*

*2.* ***Scope of certain taxable services in brief;***

*(i) 'Commercial or industrial construction services', in brief, cover construction of and the completion, finishing, repair, alteration, renovation, restoration or similar activities pertaining to buildings, civil structures, pipelines or conduits. Therefore, only such electrical works that arc parts of (or which result in emergence of a fixture of) buildings, civil structures, pipelines or conduits, are covered under the definition of this taxable service. Further, such activities undertaken in respect of roads, railways, transport terminals, bridges, tunnels and dams are outside the scope of levy of service tax under this taxable service.*

*(ii) Under 'Erection, commissioning or installation services', the activities relevant to the instant issue are (a) the erection, commissioning and installation of plant, machinery, equipment or structures; and (b) the installation of electrical and electronic devices, including wiring or fitting there for. Thus, if an activity does not result in emergence of an erected, installed and commissioned plant, machinery, equipment or structure or does not result in installation of an electrical or electronic device (i.e. a machine or equipment that uses electricity to perform some other function) the same is outside the purview of this taxable service.*

*(iii) Works Contract' incorporates the inclusions and exclusions of the aforementioned two taxable services (amongst others) and it is the nature of the contract (i.e. a contract wherein the transfer of property in goods involved is leviable to a tax as sale of goods) rather than the nature of activities undertaken, that distinguishes it from the previously stated taxable services. Thus, even in the case of 'works contract' if the nature of the activities is such that they are excluded from aforesaid two services then*

*they would generally remain excluded from this taxable service as well.*

*(iv) 'site formation and clearance, excavation, earthmoving and demolition services' are attracted only if the service providers provide these services independently and not as part of a complete work such as laying of cables under the road.*

*3. The taxable status of various activities, on which disputes have arisen*

*Based on the foregoing, the following would be the tax status of some of the activities in respect which disputes have arisen,*

| *S. No.* | *Activity* | *Status* |
|---|---|---|
| *1.* | *Shifting of overhead cables/ wires for any reasons such as widening/renovation of roads* | *Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994.* |
| *2.* | *Laying of cables under or alongside roads* | *Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994* |
| *3.* | *Laying of electric cables between grids/sub-stations/ transformer stations en route* | *Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994.* |
| *4.* | *Installation of transformer/ substations undertaken independently* | *Taxable service, namely Erection, commissioning or installation services [section 65(105)(zzd)].* |
| *5.* | *Laying of electric cables up to distribution point of residential or commercial localities/ complexes* | *Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994.* |
| *6.* | *Laying of electric cables beyond the distribution point of residential or commercial localities/complexes.* | *Taxable service, namely commercial or industrial construction' or 'construction of complex' service [section 65(105)(zzq)/(zzzh)], as the case may be.* |
| *7.* | *Installation of street lights, traffic lights flood lights, or other electrical and electronic appliances/devices or providing electric connections to them* | *Taxable service, namely Erection, commissioning or installation services [section 65(105)(zzd)].* |

| | | |
|---|---|---|
| *8.* | *Railway electrification, electrification along the railway track* | *Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994.* |

*4. The conclusions drawn above are essentially general in nature and would have to be applied in an individual case depending upon its facts and circumstances. The pending disputes/cases may be decided based on the clarifications contained in this circular.*

*5. Please acknowledge receipt.*

*6. Hindi version follows."*

The respondent is undertaking the activity of laying of transmission lines on turnkey basis. It is the case of the Revenue that such activity is taxable, while we find the activity of respondent covered at Sr. No.2 ,3& 4. of the above Circular, hence not Taxable Service.

4.1 Without prejudice, we also find that on examination of the contract awarded by M/s. GETCO to the respondent, it transpires that the scope of work is in connection with transmission line of electricity. In exercise of the powers conferred by Section 11C of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994, the Central Government vide Notification No. 45/2010-S.T., dated 20-7-2010 has directed that the servicetax payable on transmission and distribution of electricity provided by the service provider, which has not been levied, shall not be required to be paid in respect of the taxable service under the category of Erection, Commissioning or Installation. We find that the issue of eligibility of Notification No. 45/2010-S.T. in identical situation is no longer *res integra* and has been decided in favour of service providers such as the respondent, in a number of cases. The very same Notification was considered by the Bench of the Tribunal in the case of Kedar Constructions [2015 (37) S.T.R. 631] wherein the Bench has considered the activity of the appellant therein of construction of sub-station and also for maintenance of sub-station. The Bench dealing with the issue as to whether the servicetax liability under commercial and industrial construction services would be exempted under Notification No. 45/2010 or otherwise in Paragraph No. 5 & 6, held as under :

> *"5. We notice that out of the total demand confirmed of ` 2,04,14,368/-, bulk of the demand of ` 1,90,47,124/- pertains to Commercial or Industrial Construction service rendered to Maharashtra State Electricity Transmission Co. Ltd., Maharashtra State Electricity Distribution Co. Ltd., Sunil Hi-Tech, Suraj Constructions, V.B. Bhike, etc. for transmission of electricity. Vide Notification 45/2010-S.T., all taxable services rendered 'in relation to' transmission and distribution of electricity have been exempted from the purview of ServiceTax. The expression 'relating to' is very wide in its amplitude and scope as held by the Hon'ble Apex Court in Doypack Systems P. Ltd. - 1988 (36) E.L.T. 201 (S.C.). Therefore, all taxable services rendered in relation to transmission/distribution of electricity would be eligible for the benefit of exemption under the said Notification for the period prior to 27-2-2010.*
>
> *6. As regards the demand for the period w.e.f. 27-2-2010, the said exemption is available if the taxable services are rendered for transmission of electricity. As held by the Hon'ble Apex Court in the case cited supra the expression "for" means 'for the purpose of' As per the definition of transmission (given in the Electricity Act, 2003), it covers a very wide gamut of activities including sub-station and equipments. Therefore, the various activities undertaken by the appellant, though classifiable under Commercial or Industrial Construction prior to 1-6-2007 or under works contract service on or after 1-6-2007, would be eligible for the benefit of exemption as held by this Tribunal in the case of Noida Power Co. Ltd., PashchimanchalVidyutVitran Nigam, PurvanchalVidyutVitran Nigam and Shri Ganesh Enterprises cited supra. Therefore, the confirmation of ServiceTaxdemand in respect of the construction, maintenance or repair activities undertaken by the appellant so far as it relates to the transmission/distribution of electricity cannot be sustained in law. As regards the other demands which has been confirmed in respect of construction of transformer station for the sugar factory or GTA service etc. the appellant is not disputing the tax liability and therefore, in respect of the other activities of the appellant which are not related to either transmission"*

*(emphasis supplied)*

*4.2* Even the Tribunal has decided this issue in *HyderabadPower Installations Pvt. Ltd.* v. *CCE, C & ST, Hyderabad-II*(Final Order No.

A/30489/2016, dated 23-5-2016). The relevant portion of the order is reproduced below :-

*"The appellant is registered with the Service Tax Department. On verification of records it emerged that the appellant had entered into contract agreements with Power Distribution/Transmission Companies which involved supply of material, erection and installation of sub-stations, related lines, installation of transformers and other electrical equipments, etc. They also provided their land under lease agreement to a business organisation and received payment to that effect. The department entertained the view that the appellant has provided taxable services under the category of "Erection Commissioning or Installation Services (ECIS)" and Renting of Immovable Property Services, however, have neither disclosed these facts to the Department nor discharged appropriate service tax liability thereon.*

*2. In adjudication proceedings, servicetaxdemand of Rs. 60,68,455/- was confirmed on services rendered under the category of ECI Services. Demand of Rs. 4,91,145/- was confirmed on services rendered under the category of Renting of Immovable Property. Hence this appeal.*

*3. The learned Counsel appearing for the appellant Shri R. Raghvendra Rao submitted that the challenge in this appeal is now limited to the demand, interest, penalty, etc., confirmed under ECIS. He pointed out that the issue is no longer res integra as the same is settled in the following cases :*

**Shri Ganesh Enterprises v. CCE, Hyderabad-III [2014-TIOL-187-CESTAT-BANG]*

**K. Shanmugavelu v. CCE, Madurai [2014-TIOL-1325-CESTAT-MAD]*

**Kedar Construction v. CCE, Kolhapur [2015 (37) S.T.R. 631 (Tri.-Mumbai)]*

**UP RajkiyaNirman Nigam Ltd. v. CCE, Meerut [2015-TIOL-1485-CESTAT-DEL]*

**Elmech Enterprises v. CCE, Hyderabad-III [2015-TIOL-459-CESTAT-BANG].*

*4. We find that the appeal before us is more than amply covered by the above judgments. The relevant portion of the judgment in Elmech Enterprises case is reproduced below :*

*5. The Notification No. 45/2010-S.T. provides exemption to all taxable services relating to transmission and distribution of electricity by a person to another person during the relevant period covered by the proceedings. It is not limited only to taxable service of transmission by the transmission company as observed by the learned original adjudicating authority. Prima facie, I find that appellant is eligible for the benefit of Notification and therefore the appeal could have been heard without insisting on pre-deposit. Accordingly, the impugned order is set aside and the matter is remanded to the Commissioner (A) with a request to hear the appeal without insisting on any pre-deposit.*

*5. Similar view has been accorded in the other cited judgments also. Applying the dictum laid in the above judgments we find that the demand raised under ECIS is unsustainable and requires to be set aside, which we hereby do.* "

Following the ratio of the judgments supra, we consider that the activity of respondent is clearly exempted from payment of Service tax.

5. Accordingly, We find no infirmity in the impugned order and in consequence, the impugned order is upheld. The appeal filed by Department is dismissed. CO also stands disposed of.

*(Pronounced in the open court on 12.06.2024)*

**(RAMESH NAIR)**
**MEMBER (JUDICIAL)**

**(C L MAHAR)**
**MEMBER(TECHNICAL)**

Bharvi