

**T IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I**

APPEAL No. ST/70699/2016-CU[DB]

(Arising out of Order-in-Original No. 36/COMISIONER/NOIDA-II/2015-16 dated 31/03/2016 passed by Commissioner of Central Excise, Noida-II)

**Commissioner of Customs, Central Excise &
Service Tax, Noida-II**

Appellant

Vs.

M/s PME Power Solution (India) Pvt. Ltd.

Respondent

Appearance:

Shri Sandeep Kumar Singh (Deputy Commissioner) AR
Absent on Call

for Appellant
for Respondent

CORAM:

**Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkwar, Member (Technical)**

Date of Hearing : 12/12/2018
Date of Decision : 12/12/2018

FINAL ORDER NO **70038 / 2019**

Per: Anil G. Shakkwar

After rejecting the request for adjournment made by counsel for the respondent we have heard the learned AR Shri Sandeep Kumar Singh, Deputy Commissioner on behalf of the Revenue and perused the record.

2. The grounds of appeal raised by Revenue in the present appeal are reproduced below:-

“3.1 It is pertinent to mention here that the Notification 11/2010 Service Tax dated 27.02.2010 giving exemption to services provided in relation to transmission of electricity has been rescinded by Notification No.34/2012-ST dated 20.06.2012 and after insertion of negative list of services under Section-66D of the Finance Act’ 1994 w.e.f. 01.07.2012. As per Sub Clause (k) to Section-66(D) of the Finance Act’ 1994, only the following service is not taxable – “transmission or distribution of electricity by an electricity transmission or distribution utility.”

3.2 Since, the party has provided services under “Work Contract” to M/s U P Power Transmission Corporation Ltd, 14 Ashok Marg, Lucknow which is profit making business entity. Therefore, in view of the withdrawal of exemption to power transmission related services by way of rescinding of the Notification 11/2010 dated 27.02.2010, the party was liable to pay service tax.

3.3 The party namely M/s PME Power Solution (India) Pvt. Ltd. B-10 & 11, Site-C, UPSIDC, Surajpur, Greater Noida, they have provided services and received consideration as under:-

<i>S. No.</i>	<i>Year</i>	<i>Amount</i>	<i>Source documents</i>
<i>3</i>	<i>2012-13</i>	<i>Rs.30,89,89,984</i>	<i>Segment reporting (28.02) of balance sheet</i>

3.4 *The Adjudicating Authority without going into the merit of the case dropped the entire Service Tax demand.*

3.5 *Thus, the Adjudicating Authority erred in by way of dropping the demand entirely without going into merit that after insertion of Section-66D of the Act, Services provided under the category of 'Work Contract' to M/s UP Power Transmission Corporation Ltd, the party was required to pay service tax w.e.f. 01.07.2012."*

3. We have perused the wording of Notification No. 11/2010-ST dated 27.02.2010. The said Notification is reproduced below:-

"Exemption to services provided for transmission of electricity

"In exercise of the powers conferred by sub-section (1) of Section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service provided to any person, by any other person for transmission of electricity, from the whole of service tax leviable thereon under Section 66 of the said Finance Act"."

4. As can be seen from the grounds of appeal that services in respect of transmission or distribution of electricity have

been exempted through Clause (k) to Section 66 D of Finance Act, 1994 w.e.f. 01.07.2012. For earlier period the same exemption was provided through Notification No. 11/2010-ST dated 27.02.2010. After going through the wordings and phrases used we do not find any change in the provision of law. We note that whatever was exempted through a notification earlier was subsequently exempted through provision of law in the Finance Act.

5. In respect of ground of appeal at 3.3 above we reproduced the findings by Original Authority.

“18.1 Now I take up the second issue as to whether, the amount of Rs.2,18,98,650/- allegedly received by the Noticee represents the job charges and such job charges are taxable under the provisions of Finance Act, 1994. The Noticee has submitted that the amount of Rs.45,02,871/- shown in their Balance Sheet for the year 2008-09 as job charges for the services exported by them. In support the Noticee has submitted copies of invoice No.012 dated 26.06.2008 and invoice No.013 dated 26.06.2008. I examined the said two invoices both the invoices are in favour of M/s Zesa Enterprises Pvt. Ltd. Harare, Zimbabwe where job charges amounting to Rs.22,90,901/- and Rs.22,11,970/- respectively have been charged. I also examined the ledger account of Job Work (Export) for the year 2008-09 submitted by the Noticee. In the ledger amount of Rs.22,09,901/- against invoice No.012 dated

26.06.2008 and Rs.22,11,970/- against invoice No.013 dated 26.06.2008 have been shown credited. From the above I find that an the amount of Rs.45,02,871/- received on account of ob charges is not taxable under service tax law being in the nature of export of service, I, therefore, find that the said charge leveled in the notice does not hold the force of law.

18.2 Further in the notice on the basis of TDS of Rs.2,39,447/- in the Balance Sheet for the years 2008-09 and Rs.1,96,526/- in the Balance Sheet for the year 2009-10, it has been alleged that these amounts are the TDS deducted by the service receives of the Noticee on account of job work done by them. The job charges have been worked out by backward calculation and demand of service tax has been raised. The Noticee has taken the plea that the TDS shown in their Balance Sheets is on account of TDS deducted by their Bankers on the interest earned by them. The Noticee has submitted Form 26 AS for the Financial Years 2008-09 and 2009-10. I examined the said Form 26 AS and I find that in the year 2008-09 out of total TDS of Rs.2,54,543/-, an amount of Rs.2,45,684/- is on account of TDS deducted by ICICI Bank. Similarly in the year 2009-10 out of total TDS of Rs.2,89,662/- an amount of Rs.79,770/- is the TDS deducted by Oriental Bank of Commerce and an amount of Rs.1,71,636/- is the TDS deducted by the ICICI Bank. Thus a total of Rs.2,51,406/- is on account of TDS deducted by the Banks. I also find that balance

amounts of TDS, the department has not produced any evidence that they represent the TDS deducted by the taxable service receivers of the Noticee.

In view of the above, I find that the Department's allegation that the amount of TDS shown in party's Balance Sheets for the years 2008-09 and 2009-10 are on account of deductions made by the job work service receivers of the Noticee is without any basis and does not sustain. I, therefore, find that the said allegation merits to be dropped.

18.3 In view of the discussion made in paragraph 18.1 and 18.2 I hold that the demand of Rs.30,58,745/- raised on the notice is not sustainable.”

5. On perusal of finding by the learned Commissioner it is very clear that the allegations in the show cause notice were not sustainable. We, therefore, do not find any merit in the grounds of appeal raised by Revenue. We do not find any reasons to interfere with the impugned Order-in-Original. We, therefore, reject the appeal filed by Revenue.

(Pronounced in Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Sd/-
(Archana Wadhwa)
Member (Judicial)