CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I
(E-Hearing)

Service Tax Appeal No.651 of 2010

(Arising out of Order-in-Appeal No.291-ST/APPL/KNP/2009 dated 04.11.2009 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Kanpur)

M/s Dowell Erectors (P) Ltd., ...Appellant
(Bharat Oman Refinery Project,
AGASOD, Bina, Distt.-Sagar, MP)

VERSUS

Commissioner of Customs, Central Excise &
Service Tax, Kanpur ....Respondent
(117/7, Sarvodaya Nagar, Kanpur)

APPEARANCE:

Shri Sandeep Mukherjee, Chartered Accountant for the Appellant
Ms. Chitra Srivastava, & Shri Prashant Kumar, Authorized Representatives for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.- 70282/2026

DATE OF HEARING : 09.07.2026
DATE OF PRONOUNCEMENT : 11.08.2026

K. ANPAZHAKAN:

This appeal has been filed by M/s Dowels Erectors (Pvt.) Ltd., (Paricha, Jhansi), Bharat Oman Refinery Project, Vill. Agasod, Bina, Distt. Sagar, M.P. (herein after referred to as the Appellant) against the Order-in-Appeal.

2. Briefly stated facts of the case are that during the course of visit of the officers of the Central Excise Commissionerate, Kanpur, it was observed that the Appellant has got themselves registered under the category of "Commissioning and installation" Services only on 09.03.2005, whereas, they were providing "Commissioning and Installation" services since July, 2003 to M/s BHEL, Jhansi but they had started paying service tax with effect from Oct, 2004 only. It was noticed that M/s

BHEL Jhansi had paid an amount of Rs.1,72,63,180.00 to the said Appellant as charges for "Commissioning & Installation", for the services provided by the Appellant to them during the period July, 2003 to March, 2004, however, the Appellant did not pay the amount of Service Tax on the value of commissioning and installation services amounting to Rs.1,75,63,180/- received by them for the period 2003-04. The service Tax liable to be payable by the Appellant on the said amount received comes to Rs.13,81,054/- @ 8% Adv.

2.1. The officers also observed that as per ST-3 Returns submitted by the Appellant during 2004-05 & 2005-06, the Appellant had shown the taxable amount of Services provided by them as Rs.1,27,33,122/- and Rs.1,98,09,472/- for the period 2004-05 to 2005-06 respectively, however as per the Form -16A provided by the BHEL, Jhansi to the said Appellant for the period 2004-05 to 2005-06, it is evident that they had been paid an amount of Rs.2,85,99,471/- and Rs.2,38,48,549/- during the year 2004-05, to 2005-06 respectively for providing services of commissioning and installation to M/s BHEL, Jhansi. The said Appellant did not pay the amount of service tax on the value of Rs.3,71,68,606/- involving service tax of Rs.33,71,596/- and Education Cess of Rs.39,811/-. The Department contended that the Appellant had not paid any service tax on the differential gross amount of Rs.3,71,68,606/- which has been received by the Appellant from M/s BHEL, Jhansi in lieu of taxable services of Erection, Commissioning and Installation Services provided during the year 2003-04, 2004-05 & 2005-06 and had thereby short paid services tax amounting to Rs.33,71,596/- and E.Cess of Rs.39,812/- totaling to Rs.34,11,408/-.

2.2. Accordingly, a Show Cause Notice bearing C.No. V(15) Off/Adj/126/20072002-04 dated 18.02.2008 was issued to the Appellant demanding Service tax amounting to Rs.34,11,408/- along with interest and penalty. The said Notice was adjudicated vide Order-in-Original No.01/Add. Commr./ST/2009 dated 06.03.2009, by the Addl. Commissioner, Central Excise, Kanpur, passed vide C.No. V(15) Off/Adj/126/07 dated 06.03.2009, wherein the demand of service tax has been confirmed along with interest. Penalty equal to the service tax demand confirmed has also been imposed.

2.3. On appeal, the Ld. Commissioner (Appeals) upheld the demands confirmed in the impugned order. Aggrieved against the impugned Order-in-Appeal, the Appellant has filed this appeal.

3. The Appellant submits that they were awarded the job of erection of 2 X 250 mw boilers at Parichha, Jhansi from M/s BHEL on 25.04.2003. They have started the Erection work since April, 2003 and no service tax was payable on 'Erection service' during that period. It was only on 10.09.2004, the Erection Services have come under service tax net and they were instructed for the Registration and remittance of the monthly dues of service tax by BHEL. The Appellant further submitted that they have remitted all the dues as paid by M/s BHEL on account of service tax and filed their returns and have undergone audit by the concerned authorities. During the audit the aforesaid matter, the above said fact was clarified by M/s BHEL directly to the aforesaid authorities.

3.1. The submission of the Appellant is that they have started erection work w.e.f. July, 2003 but the commissioning work started w.e.f. 2006. Service tax became leviable on erection w.e.f. budget 2004 and therefore payout of Rs.1.72 crores received on account of erection work in the year 2003-04 is not liable to service tax. The Appellant submits that short paid service tax the tune of Rs.4,01,408/-, for the year 2004-05 and 2005-06 has been paid by them. Thus, the Appellant submits that the demands of service tax confirmed in the impugned order for the amounts received in connection with the Erection work undertaken by them prior to 10.09.2004 is legally not sustainable.

3.2. The Appellant submits that Board Circular No.80/10/2004-S.T., dated 17-09-2004, clarified that "Erection" service was to be taxed along with "Commissioning and Installation" from

10.09.2004. Notification No.25/2004-ST dated 10.09.2004, clearly exempts the service of erection provided by "Commissioning and installation Agency", received prior to 10th September, 2004.

3.3. In the of Power Best Electricals Limited Vs. CCEX, Calicut, reported at 2008 (9) S.T.R. 497 (Tri.-Bang), the Honorable Bench held in para 6 that erection services have become taxable only from the 10th September, 2004.

3.4. The Appellant further submits that the issue has been raised by Audit on the basis of information available on their records. They have not suppressed any information from the Department and hence, the demands raised and confirmed by invoking the extended period of limitation is not sustainable.

3.5. Accordingly, the Appellant prayed for setting aside the demands of service tax along with interest and penalty confirmed in the impugned order.

4. The Ld. A.R. reiterated the findings in the impugned order. The Ld. A.R. submits that the Appellant has rendered the composite services of 'Erection, Installation and Commissioning' and hence they are liable to pay service tax on the charges received from BHEL for rendering of such services.

5. Heard both sides and perused the appeal documents.

6. It is a fact on record that the Appellant were awarded the job of Erection of 2 X 250 mw boilers at Parichha, Jhansi from M/s BHEL on 25.04.2003. The Appellant have started the 'Erection work' since April, 2003. We observe that services rendered in connection with Erection work were not liable to service tax till 10.09.2004. It is not in dispute that 'Erection service' was brought within service tax net only w.e.f 10.09.2004 and hence we hold that no service tax was payable on the amount of Rs.1.72 crores received by the Appellant on account of Erection work in the year 2003-04.

6.1 We find that Board Circular No.80/10/2004-S.T., dated 17-09-2004, has clarified that "Erection" service was to be taxed along with "Commissioning and Installation" from 10.09.2004. We also find that Notification No.25/2004-ST dated 10.09.2004, clearly exempts the service of erection provided by "Commissioning and installation Agency", received prior to 10th September, 2004. We find that the said view has been held by the Tribunal, Bengaluru in the case of Power Best Electricals Limited Vs. CCEX, Calicut, reported at 2008 (9) S.T.R. 497 (Tri.-Bang), wherein the Tribunal has held in para 6 that erection services have become taxable only from the 10th September, 2004. Thus, by relying on the Board Circular and the decision of the Tribunal cited supra, we hold that the demand of service tax confirmed in the impugned order on this amount of Rs.1.72 crores received in connection with Erection service rendered by the Appellant prior to 10.09.2004 is legally not sustainable and hence we set aside the same.

6.2. Regarding the balance amount confirmed in the impugned order, we find from the submission of the Appellant that the Appellant have already paid the short paid service tax to the tune of Rs.4,01,408/-, for the year 2004-05 and 2005-06.

6.3. We also find that the issue has been raised by Audit on the basis of information available on their records. The Appellant have not suppressed any information from the Department and hence, the demands raised and confirmed by invoking the extended period of limitation is not sustainable.

6.4. As the demands of service tax confirmed in the impugned order for the amounts received in connection with the Erection work undertaken by the Appellant for the period prior to 10.09.2004 is legally not sustainable and the Appellant has already discharged the balance short paid service tax amounting to Rs.4,01,408/-, for the year 2004-05 and 2005-06, we hold that the demand of service tax confirmed in the impugned order is not legally sustainable and hence we set aside the same on merits as well as on the ground of limitation. As the demand of service tax is not sustained, the question of demanding interest or imposing penalty does not arise and hence we set aside the same.

7. In the result, we set aside the impugned order and allow the appeal filed by the Appellant with consequential relief, if any, as per law.

(Order pronounced in open court on - **11.08.2026**)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

LKS