CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 1346 of 2010

(Arising out of Order-in-Appeal No.13/2010 dated 30.03.2010 passed by the Commissioner (Appeals), Large Tax Payer Unit, Bangalore.)

M/s. ABB Ltd.
Building and Systems Electricals
KSIIDC, TI-BT Park,
Rajajinagar Industrial Estate,
Rajajinagar,
Bangalore.

Appellant(s)

VERSUS

Commissioner of Central Excise and Service Tax,
LTU, JSS Towers,
100 Feet Ring road,
Banashankari III Stage,
Bangalore – 560 085.

Respondent(s)

APPEARANCE:

S/Shri Syed Peeran and Tushar Sharma, Advocates for the Appellant.

Shri M.A. Jithendra, Asst. Com. (AR) for the Respondent.

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

FINAL ORDER NO. 20130 /2025

DATE OF HEARING: 29.01.2025

DATE OF DECISION: 29.01.2025

PER: D.M. MISRA

This appeal is filed against Order-in-Appeal No.13/2010 dated 30.03.2010 passed by the Commissioner (Appeals), Large Tax Payer, Bangalore.

2. Briefly stated the facts of the case are that the appellants are engaged in the manufacture of electrical equipment such as current transformers, power transformers, etc., during the relevant period. On the basis of investigation, a show-cause notice was issued to them on 14.05.2008 for recovery of Service Tax not paid during the period 01.07.2003 to 27.03.2007 in relation to services rendered under taxable category of Erection, Installation and Commissioning Services with interest and penalty. On adjudication, demand was confirmed with interest and penalty. Hence, the present appeal.

3. At the outset, the learned advocate for the appellant submits that appellants were discharging service tax on Erection, Installation and Commissioning Services wherever only said services were rendered; however, they were not discharging service tax when along with Erection, Installation and Commissioning Services, materials were also supplied against the said contracts treating the same as turnkey projects/works contract. He submits that wherever materials were supplied along with Erection, Installation and Commissioning Services, they discharged VAT on the material portion and therefore, no service tax is payable, hence not paid on the total value of the contracts treating the same as 'works contract service'. Further, he fairly submits that copies of the contracts inspite of their best efforts could not be located, hence, it cannot be produced before this Bench to substantiate their claim that the said services so rendered were works contract.

3.1 Further, he submits that the entire amount of Service Tax of Rs.29,47,547/- has been paid on 31.08.2007 much before issuance of show-cause notice. He also submits that the issue of levy of service tax on works contract service has been settled by the Hon'ble Supreme Court recently, therefore, imposition of penalty equivalent to service tax on the appellant is not warranted, particularly when the entire amount of service tax has been paid and now they would be willing to pay the interest. Therefore, penalty imposed on them be dropped in view of the provisions of Section 80 of the Finance Act, 1994. In support, they have referred to the following judgments.

- **ETA Engineering Ltd. vs. CCE, Chennai: 2004 (174) ELT 19 (Tri.-LB)**
- **Star Neon Singh vs. CCE, Chandigarh: 2002 (141) ELT 770 (Tri.-Del.)**
- **Sree Venkateswara Hi-Tech Machinery vs. CCE, Coimbatore: 2007 (6) STR 139 (Tri.-Chennai)**
- **Ram Krishna Travels Pvt. Ltd. vs. CCE, Vadodara: 2007 (6) STR 37 (Tri.-Mumbai)**
- **Mohan Industrial Security Services vs. CCE, New Delhi: 2006 (2) STR 527 (Tri.-Del.)**
- **Sajjan Kumar Kariwala vs. CCE: 2003 (159) ELT 1131 (Tri.-Del.)**
- **Ashok Rastogi vs. CCE: 1998 (104) ELT 480 (Tri.)**
- **Catalyst Capital Services Pvt. Ltd. vs. CCE, Mumbai: 2005 (184) ELT 34 (Tri.-Mum.)**
- **CCE, Rajkot vs. Air Express Courier Services: 2005 (182) ELT 409 (Tri.-Mum.)**

4. Learned Authorised Representative for the Revenue reiterated the findings of the learned Commissioner.

5. Heard both sides and perused the records. The short issue involved in the present appeal for consideration is whether penalty in the facts and circumstances, is imposable when the entire amount of service tax has been paid much before issuance of show-cause notice and under instruction, it is stated by the learned advocate that the appellant is willing to pay interest on

the service tax paid before issuance of the show-cause notice. It is the contention of the learned advocate for the appellant that even though during the relevant period they had not paid service tax on turnkey contracts, since both service as well as materials had been supplied under the said contract treating the same as works contract. However, since those contracts are not available with them being more than two decades old, it would be difficult on their part to substantiate their claim. Therefore, on instruction from the appellant, the learned advocate submits that they are willing to discharge interest applicable on the service amount of Rs.29,47,547/- already paid and prays for invoking Section 80 of the Finance Act, 1994

6. We find that the entire amount of service tax confirmed has been paid by the appellant much before the issuance of show-cause notice. It is their contention that wherever services are rendered during the period 01.07.2003 to 27.03.2007 involving only Erection, Installation and Commissioning, appropriate Service Tax was paid and they had not discharged Service Tax on works contract. Fairly they submitted that these contracts could not be placed being not traceable. Hence, it is only in the nature of works contract cannot be ascertained, since all these contracts could not be placed on record due to lapse of time. In their reply to show-cause notice and in their Appeal Memorandum, they have been claiming consistently that the service rendered by them, wherever VAT is paid and service tax not paid when it is in the nature of works contract service. The applicable Service Tax has been already paid and the appellant agree to discharge the interest on the said amount. In these circumstances, we do not see any reason not to invoke Section 80 of the Finance Act, 1994 as far as imposition of penalty is concerned. Consequently, the impugned order is modified to the

extent of confirmation of Service Tax and interest and imposition of penalties is set aside.

7. Appeal is disposed of accordingly.

(Dictated and pronounced in Open Court)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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