

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL**

BANGALORE

REGIONAL BENCH - COURT NO. 2

Service Tax Appeal No. 906 of 2012

(Arising out of Order-in-Appeal No. 27/2012 dated 16.01.2012 passed
by the Commissioner of Central Excise (Appeals), Mangalore.)

Shakti Feeds

#382, Chabbi Village, NH-4, 14th KM Stone,
PB Road, Hubli
Karnataka- 581 233.

.....**Appellant**

VERSUS

**Commissioner of Service Tax,
Belgaum**

No. 71, Club Road, Central Excise Building,
Belagavi,
Karnataka - 590 001

.....**Respondent**

Appearance:

Mrs. Madhura Iyer, Advocate for the Appellant

Mrs. Money Jain, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)

HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order Nos. 21912 /2025

Date of Hearing: 24.07.2025

Date of Decision: 28.11.2025

PER: P. A. AUGUSTIAN

The issue in the present appeal is regarding demand of service tax on Erection, Commissioning and Installation, Construction and Transportation of Goods. On scrutiny of the documents, it is observed that Appellant had made short payment against said activities and accordingly show cause notice was issued on 30.07.2009 for different period. Thereafter the Adjudication authority as per the impugned order, confirmed the demand and also imposed penalty under various provisions of law. Aggrieved by said

order, an appeal was filed before the Commissioner (Appeals) and Commissioner (Appeals) as per the impugned order dated 16.01.2012 rejected the appeal. Aggrieved by said order, present appeal is filed. The details of the demand are appended below:

Category of service	Period	Service Tax and Edn. Cess
Erection & Commissioning service (Civil Works)	2004-05 To 2007-08	4,51,687
GTA service	October 2006 to March 2008	9194
Loading and unloading charges classified under "Cargo Handling Service"	2003-04 to 2006-07	16,519
	Total	4,77,400

2. When the appeal came up for hearing, as regarding demand under ECS, the Learned Counsel for the Appellant submits that M/s Hugli Electricity Supply Company Ltd (HESCOM) had proposed setting up for heavy substation and awarded separate works order dated 19.06.2004 towards supply portion, erection portion and civil portion. As per the work order dated 19.06.2004, the cost of civil works awarded was Rs. 29,31,677/- and scope of each Contract/Work Order envisages the work to be executed as explained below:-

a) Turnkey contract for Work Award "Supply" STN/HESCOM/DWA-14/2004-05 dated 19.6.2004 for Rs. 1,22,79,783/- is a Turnkey contract for 'Supply of Equipment' is to procure equipments from HESCOM approved vendors, complete the Pre-commission testing of equipments at the approved vendors site and transportation from vendor to the stores of HESCOM.

b) Work Award No. STN/HESCOM/DWA-16/2004-05 dated 19.6.2004 is also Turnkey contract for "Civil work" for Rs. 29,31,677/- is also a turnkey contract. It include preparation of drawing of civil work to getting approval of drawings, mobilization of materials like steel, cement, bricks, sand, water, labour, equipments, for excavation (Pokelane, leveler etc) and manpower for construction and complete the civil work as per the tender; including painting, finishing and ready to use condition.

c) Work Award No. TK-STN/HESCOM/DWA-15/2004-05 dated 19.6.2004 for Rs. 4,57,590/- is also a Turnkey contract for "Erection, Testing & Commissioning"- includes Erection, Testing & Commissioning under turnkey means, to procure the equipments from HESCOM Stores, transport to the site, install the equipments (erection), coordinate with approved MT & RT (Material Testing & Relay Testing) agency of HESCOM, get the equipments calibrated, tested before commissioning and then commission the substation in presence of HESCOM authorities

3. The Learned Counsel submits that from the above activity undertaken by appellant is works contract and Appellant had paid VAT under the KVAT Act, 2003 and it is deducted by HESCOM and remitted to Government. Since the activity was works contract, same was not liable to service tax prior to 01.06.2007. The Learned Counsel further submits that the issue is settled on introduction of new entry and inclusion of certain service in that entry pre supposes that there was no earlier entry covering such services. Section 66 of Finance Act, 1994. The Appellant relied on judgment of Hon'ble High Court of Bombay in the matter of **M/s Indian National Ship Owner's Association vs Union of India (2009 (14) STR 289 (Bombay)** which is upheld by Hon'ble Supreme Court.

4. The Learned Counsel further submits that the Appellant is also eligible for exemption of all taxable services since the activity is relating to transmission and distribution of electricity, as per Notification No. 45/2010-ST dated 20.07.2010, it is exempted from payment of service tax. Relevant part of the notification is extracted below:-

Electricity - Exemption to all taxable services relating to transmission of electricity till 26-2-2010 and distribution of electricity till 21-6-2010

Whereas, the Central Government is satisfied that a practice was generally prevalent regarding levy of service tax (including non-levy thereof), under section 66 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as 'the Finance Act'), on all taxable services relating to transmission and

distribution of electricity provided by a person (hereinafter called 'the service provider') to any other person (hereinafter called 'the service receiver'), and that all such services were liable to service tax under the said Finance Act, which were not being levied according to the said practice during the period up to 26th day of February, 2010 for all taxable services relating to transmission of electricity, and the period up to 21st day of June, 2010 for all taxable services relating to distribution of electricity;

Now, therefore, in exercise of the powers conferred by section 11C of the Central Excise Act, 1944 (1 of 1944), read with section 83 of the said Finance Act, the Central Government hereby directs that the service tax payable on said taxable services relating to transmission and distribution of electricity provided by the service provider to the service receiver, which was not being levied in accordance with the said practice, shall not be required to be paid in respect of the said taxable services relating to transmission and distribution of electricity during the aforesaid period.

5. The issue was also considered by the Tribunal in the matter of **M/s Noida Power Co. Ltd Vs CCE, Noida (2014 (33) STR 383 (Tri. Del)** where it is held that:-

"6. In M.P. Power Transmission Co. Ltd. v. CCE, Bhopal 2011 (24) S.T.R. 67 (Tri.-Del.) Revenue demand of Service Tax on transmission and distribution of electricity was declared unsustainable in view of Notification No. 45/2010, dated 20-7-2010. Again in Paschimanchal Vidyut Vitran Nigam Ltd. v. CCE, Meerut 2012-TIOL-1175-CESTAT-DEL = 2012 (28) S.T.R. 412 (Tri.-Del) after analyzing the provision of Notification No. 45/2010-S.T., dated 20-7-2010 it was held that for the purpose of billing the consumer for electricity consumed it is essential to install the electricity meter having capacity to withstand the load provided to the customer; any activity or service like erection, commissioning and installation of transmission towers and meters as also technical testing and analysis would constitute the activity of transmission and distribution by the service provider to the service receiver; and

such service would be squarely covered under exemption provided under this notification. The earlier decision in M.P. Power Transmission Co. Ltd. was affirmed”.

“7. In view of the aforesaid decisions, in particular the decision in Paschimanchal Vidyut Vitran Nigam, the impugned adjudication order is unsustainable and is accordingly quashed. This appeal by the assessee is allowed, but in the circumstances without costs. As the appeal is allowed the stay petition stands disposed of”.

6. The Learned Counsel also draw our attention to the details of the work awarded to the Appellant and the communication dated 07.06.2004 showing that the contract was for construction of substation at KMC, Hugli.

7. The Learned Counsel also draw our attention to the decisions in the matter of **(i) Kailash Devbuild India Pvt. Ltd Vs. CCE (2024) 18 Centax 224 (Tri. - Del), Tamilnadu Electricity Board Vs. CCE Salem (2024) 17 Centax 9 (Tri. - Mad) and ICOMM TELE LTD Vs. CCE Hyderabad III 2020 (43) G.S.T.L. 408 (Tri. - Hyd.)**.

8. As regarding demand against Cargo Handling Service, the Learned Counsel submits that they were engaged in sale of cattle feed and in the process of transportation and delivery of cattle feed, they have received Hamali charges and were collected as part of the sale price. In the absence of any elements of loading, unloading or packing and unpacking of cargo for freight and handling of such cargo hamali charges or loading and unloading charges alone cannot be regarded as covered under the definition of cargo handling services under the definition of Section 65(23) and Section 65(105)(zr) of the Finance Act, 1994. The Learned Counsel for the Appellant also draw our attention to the reply to show cause notice where they have specifically stated that they were engaged in sale of cattle feed and in the process of transportation they had incurred and received hamali charge. The CBEC Circular No 104/7/2008-S.T., dated 6-8-2008 had clarified that service may include various intermediate and ancillary services like loading/unloading, packing/unpacking, transshipment, temporary warehousing, etc., which are provided in the course of transportation by road. These

services are not provided as independent activities but are the means for successful provision of the principal service, namely, the transportation of goods by road. Hence, such ancillary services form part of the GTA Service. Therefore, the demand of service tax under the category of "cargo handling service" is required to be set aside as being contrary to law. Further submits that as per Rule 2 (1)(d) (v) of the Service Tax Rules, 1994 the liability to pay service tax is under reverse charge on the person who pays or liable to pay freight either by himself or as agent as the case may be. The buyers of the goods having paid the freight charges were liable to pay Service Tax. Wherever, the Appellant has merely collected the freight charges from the buyers, the same has been paid over to the GTA/Transporters. Further submits that the amounts paid by the customers for local transportation and delivery to the transporters being less than Rs. 750/- per trip was eligible for exemption under Notification No 34/2004 ST dated 3.12.2004. Therefore, there was no liability to pay Service Tax on the GTA service. Accordingly, the demand of Service Tax is required to be set aside as being contrary to law.

9. The Learned Counsel further submits that the show cause notice issued on 30.07.2009 claiming the demand for the period from 2004-2005 and 2007-2008. As per the show cause notice, it is admitted that the Appellant had paid service tax on some portion of the activity. When the transactions are recorded in the books on the books of account and service tax has been paid on certain services, the allegation of suppression of facts and intension to evade payment of service tax is unsustainable. Thus there is no reason or justification to confirm the demand and to impose penalty on the Appellant.

10. The Learned Authorized Representative (AR) for the revenue reiterated the finding in the impugned order.

11. Heard both sides. As regarding the demand against erection, commissioning service, we find that the demand is related to construction of substation for HESCOM and as per the Notification No. 45/2010-ST dated 20.07.2010, said activity is exempted from payment of service tax with retrospective effect. Further we find that the Appellant had bifurcated the contract into three parts which is

supply of material portion where they have paid service tax, civil works and erection and commissioning portions. Considering the service provided by them, they have paid an amount of Rs.16,741/- on the erection and commissioning. Facts being so, further demand of service tax on Erection, Commissioning and Installation is unsustainable. As regarding demand against Cargo Handling Service, the Appellant is engaged in sale of cattle feed and in the process of transportation and delivery of cattle feed, the alleged transaction is on account of Hamali charges collected. It cannot be considered as consideration for Cargo Handling Service since it is considered as part of the GTA service. As regarding demand against GTA services, we find that since beginning Appellant has submitted that the amounts paid by the customers for local transportation and delivery to the transporters being less than Rs. 750/- per trip, appellant is eligible for exemption under Notification No 34/2004 ST dated 3.12.2004. Therefore, demand of Service Tax on the GTA service is also unsustainable.

12. Accordingly, the appeal is allowed with consequential relief if any in accordance with law.

(Order was pronounced on 28.11.2025.)

(P.A. Augustian)
Member (Judicial)

(R. Bhagya Devi)
Member (Technical)

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