CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

ST/669/2008-DB, ST/686/2008-DB

[Arising out of Order-in-Appeal No. 130/2008 dated 01/09/2008 passed by the Commissioner of Central Excise (Appeals), Mangalore.]

[Arising out of Order-in-Appeal No. 115/2008 dated 21/08/2008 passed by ,]

M/s. PERFECT ELECTRICALS C/O. MESCOM, O&M DIVISION, B.M.ROAD, NEW ELECTRONIC COLONY, MANDYA – 571 401.	Appellant(s)
M/s. JAYADEVA ELECTRICALS 156, K.S.R.T.C LAYOUT II PHASE, J.P.NAGAR, BANGALORE – 560 078.	Appellant(s)

Versus

Commissioner of Central Excise, Customs and Service Tax MYSORE S1-S2, VINAYA MARGA, SIDDHARTHA NAGAR, MYSORE - 570011 KARNATAKA	Respondent(s)
Commissioner of Central Excise and Service Tax MANGALORE 7TH FLOOR, TRADE CENTRE, BUNTS HOSTEL RD., MANGALORE - 575003 KARNATAKA	Respondent(s)

Appearance:

Mr. T. R. Rajesh Kumar, Advocate **HIRAGANGE & ASSOCIATES** #1010, 1st floor(Above Corp.Bank) 26th Main, 4th T Block, Jayanagar, BANGALORE - 560041 KARNATAKA	For the Appellant
Mr. Pakshirajan, AR	For the Respondent

Date of Hearing: 07/06/2018
Date of Decision: 07/06/2018

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 20798-20799 / 2018

Per : P. ANJANI KUMAR

The issue involved in both the appeals is same. As requested by the learned counsel for the appellant, they are taken up together.

2. Brief facts of the case are that the appellants have entered into works contract with MESCOM for repair and reconditioning of faulty distribution transformers of different capacities; they were doing the repair work of transformers which are used for transmission and distribution of electricity which are in relation to transmission and distribution of electricity. The retrospective exemption is given under Notification No.45/2010-ST dated 20.7.2010. The appellants have also submitted that their works contracts cannot vivisected prior to 1.6.2007; the payment of service tax on labour portion, they are not required to pay during the disputed period in terms of the ratio of Hon'ble Supreme Court decision in the case of ***CCE vs. Larsen & Toubro Ltd.: 2015 (39) STR 913 (SC)***. The appellant relies upon the following case laws:

- ***Hindustan Aeronautics Ltd. vs. CST, Bangalore: 2017-TIOL-3591-CESTAT-BANG.***
- ***M/s. Xerox India Ltd. vs. CCE: 2018-TIOL-1663-CESTAT-CHD.***

The appellants have also pleaded that by the ratio of the following cases, the work undertaken by them is in relation to transmission and distribution of electricity; therefore, they are exempt from paying service tax and as such, the appeals may be allowed.

- ***M/s. Shreya Electricals vs. CCE: 2016-TIOL-2626-CESTAT-BANG.***
- ***GB Desai Saurabh Constructions vs. CCE: 2018-TIOL-1656-CESTAT-MUM.***
- ***M/s. SK Electricals vs. CCE: 2017-TIOL-3526-CESTAT-DEL.***
- ***Shri Ganesh Enterprises vs. CCE: 2014 (35) STR 348 (Tri.-Bang.)***

3. The learned departmental representative has reiterated the submissions made in the Orders-in-Original and Orders-in-Appeal.

4. We have perused the records of the case and we have heard both the parties. We find that Notification No.45/2010-ST dated 20.7.2010 has been issued by the Ministry, which reads as follows:

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.

This exemption appears to be for all taxable services relating to transmission of electricity. However, on this count we find plethora of judgments, wherein it has been held that erection commissioning and installation comes within the ambit of the expression 'in relation to'.

- ***CCE vs. Sri Rajyalakshmi Cement Products: 2017 (52) STR 309 (Tri.-Hyd.)***
- ***Hyderabad Power Installations (P) Ltd. vs. CCE: 2016 (45) STR 217 (Tri.-Hyd.)***
- ***U.P. Rajkiya Nirman Nigam Ltd. vs. CCE: 2016 (41) STR 967 (Tri.-Del.)***
- ***Shri Ganesh Enterprises vs. CCE: 2014 (35) STR 348 (Tri.-Bang.)***

- ***Noida Power Co. Ltd. vs. CCE: 2014 (33) STR 383 (Tri.-Del.)***
- ***Purvanchal Vidyut Vitran Nigam Ltd. vs. CCE: 2013 (30) STR 259 (Tri.-Del.)***

4.1 Going by the ratio of the above judgments cited supra, the activity undertaken by the appellants are to be held to fall in the ambit of 'in relation to' transmission of electricity in terms of Notification No.45/2010 dated 20.7.2010 as there is a clear nexus between the service rendered by the appellant and transmission and distribution of electricity. Therefore, we hold that the exemption contained in the said Notification is squarely applicable to the appellants.

5. In view of the above, the appeals are allowed.

(Operative portion of the Order was pronounced
in Open Court on **07/06/2018**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

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