CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SCO 147-148, SECTOR 17-C, CHANDIGARH-160017

DIVISON BENCH
COURT NO.1
Appeal No. ST/418/2010, ST/420,237/2010

[Arising out of the Order-in-Appeal No. 281/ST/DLH/2009 dated 09.12.2009 passed by the CCE (Appeals), New Delhi, Arising out of the Order-in-Appeal No. 250/ST/DLH/2009 dated 24.11.2009 passed by the CCE (Appeals), New Delhi, Arising out of the Order-in-Appeal No. 250/ST/DLH/2009 dated 23.11.2009 passed by the CCE (Appeals), New Delhi,]

Date of Hearing/Decision: 04.05.2009

For Approval & signature:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Devender Singh, Member (Technical)

Shri. Rakesh Kumar, Partner
Shri. Nand Lal Garg, Proprietor **Assessees**

Vs.

CCE, Panchkula **Revenue**

And

CCE, Panchkula **Revenue**

Vs

Shri. Nand Lal Garg, Proprietor **Assessee**

Appearance

Shri. Varun Gaba, Advocate- for the assessees
Shri. H. Singh, AR- for the Revenue

CORAM: **Hon'ble Mr. Ashok Jindal, Member (Judicial)**
Hon'ble Mr. Devender Singh, Member (Technical)

FINAL ORDER NO: 62300-62302 / 2018

Per Ashok Jindal:

1. Both sides are in appeal against the impugned order.

2. The facts of the case are that the assessees namely Shri. Nand Lal Garg and M/s Sushil Kumar Gupta and company were

engaged in the activity of laying underground cable on behalf of the BSNL during the period March' 2006. The Revenue is of the view that the said activity falls under the Erection, Commissioning and Installation services in terms of Section 65 (105)(zzb) of the Finance Act, 1994, threrefore, proceedings were engaged against both the assessee. The matters were adjudicated and demand of service tax was confirmed against the assessees. On appeal, the ld. Commissioner (A) gave the benefit of cum tax to the asssessees. Against the said order, both the assessee are in appeal on merits and the Revenue has filed the appeal against Shri. Nand Lal Garg on the ground that the contractor was not entitled for cum tax benefit.

3. The ld. Counsel for the assessees submits that as per the ***CBEC Circular No. 123/5/2010-TRU dated 24.05.2010***, the laying of cable under or alongside road are exempt from levy of service tax, therefore, they are not liable to pay service tax on their activity. Moreover, the issue was dealt by this Tribunal in the case of ***Raj Electric works reported in 2017 (9) TMI 793-CESTAT, Allahabad,*** wherein, this Tribunal held that for laying cable on behalf of the BSNL, there is no service tax liability can be pass on the asssessee.

4. On the other hand, the ld. AR submits that as it is not coming out from the records placed before this Tribunal, whether the table has been laid down along side or under the road, in that circumstances, the matter be remanded back to the authority below to find out the fact whether the cable has been laid down along side or under the road or not?

5. Heard the parties and considered the submissions.

6. We have gone through the CBEC Circular. Paragraph 2 of the said Circular is relevant to decide the issue in hand which is extracted herein below:

"2. ***Scope of certain taxable services in brief;***

(i) 'Commercial or industrial construction services', in brief, cover construction of and the completion, finishing, repair, alteration, renovation, restoration or similar activities pertaining to buildings, civil structures, pipelines or conduits. Therefore, only such electrical works that arc parts of (or which result in emergence of a fixture of) buildings, civil structures, pipelines or conduits, are covered under the definition of this taxable service. Further, such activities undertaken in respect of roads, railways, transport terminals, bridges, tunnels and dams are outside the scope of levy of service tax under this taxable service.

(ii) Under 'Erection, commissioning or installation services', the activities relevant to the instant issue are (a) the erection, commissioning and installation of plant, machinery, equipment or structures; and (b) the installation of electrical and electronic devices, including wiring or fitting there for. Thus, if an activity does not result in emergence of an erected, installed and commissioned plant, machinery, equipment or structure or does not result in installation of an electrical or electronic device (i.e. a machine or equipment that uses electricity to perform some other function) the same is outside the purview of this taxable service.

(iii) Works Contract' incorporates the inclusions and exclusions of the aforementioned two taxable services (amongst others) and it is the nature of the contract (i.e. a contract wherein the transfer of property in goods involved is leviable to a tax as sale of goods) rather than the nature of activities undertaken, that distinguishes it from the previously stated taxable services. Thus, even in the case of 'works contract' if the nature of the activities is such that they are excluded from aforesaid two services then they would generally remain excluded from this taxable service as well.

(iv) 'site formation and clearance, excavation, earthmoving and demolition services' are attracted only if the service providers provide these services independently and not as part of a complete work such as laying of cables under the road.

3. ***The taxable status of various activities, on which disputes have arisen***

Based on the foregoing, the following would be the tax status of some of the activities in respect which disputes have arisen,"

S. No.	Activity	Status
1.	Shifting of overhead cables/ wires for any reasons such as widening/renovation of roads	Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994.
2.	Laying of cables under or alongside roads	Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994
3.	Laying of electric cables between grids/sub-stations/ transformer stations en route	Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994.

7. Further, we find that the ld. Counsel for the assessee produced the agreement against which they executed the work and as per the agreement, the cable was to be laid down under foot path/roads/trenches. In that circumstances, there is no requirement to sent the matter back to the authority below as facts of the case are available before us. Admittedly, as per the said circular dated 24.05.2010, Erection, Commissioning and Installation the activity of laying underground cable has been exempted from levy of service tax, there we hold that the assessees are not required to pay service tax on their activity.

In these circumstances, we set aside the impugned orders and allow the appeals filed by the asssessees with consequential relief and dismissed the appeal filed by the Revenue.

(Dictated and pronounced in the open court)

Devender Singh
Member (Technical)

Ashok Jindal
Member (Judicial)

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