CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL

SCO 147-148, SECTOR 17-C, CHANDIGARH – 160 017

COURT NO. I

Appeal No. E/60611/2017-DB

Date of Hearing/Decision : 31.08.2018

[Arising out of Order-in-Original No. OIO-CHD-EXCUS-COM-09-2017 dated 07.04.2017 passed by the Commissioner Central Excise & ST, Chandigarh]

M/s. Arvindra Electricals : **Appellant**

vs.

Commissioner of Central Excise & ST, Chandigarh : **Respondent**

Appearance:

Shri Surjit Bhadu, Advocate for the Appellant(s)
Shri Tarun Kumar, A.R. for the Respondent(s)

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Final Order No. 62732 / 2018

Per : Ashok Jindal

The appellant is in appeal against demanding service tax of Rs. 5,87,98,625/- along with interest and imposing various penalties on the appellant.

2. The facts of the case are that the appellant was engaged in providing the service of Erection, Commissioning or Installation services falling under Section 65(105) (zzd) of the Finance Act, 1994 before 01.07.2012 and falling

under Section 65B (44) of the Act with effect from 01.07.2012. The appellant is providing services of Erection, Commissioning or Installation without payment of due service tax and without observing the legal formalities as required under Section 67, 68 and 70 of the Act read with Rule 6 and 7 of the Service Tax Rules, 1994. Investigation was started against the appellant and preliminary investigation indicated that appellant is engaged in providing Erection, Commissioning or Installation services to various parties and charging hefty amounts as consideration but was not discharging its service tax liability properly. Therefore, the investigation was conducted on 20.05.2014 and the appellant submitted copies of work contracts, copies of balance sheets for the assessment year 2010-11 to 2012-13 and Form 26AS for the assessment year 2010-11 to 2013-14 and submitted that they are not liable to pay service tax. From the documents supplied it was observed that the appellant were engaged in the supply and installation of electric works, laying/ shifting of High Transmission lines, street lightning system etc. as is evident from the work contracts supplied by the appellant. As per the work orders furnished by the appellant they have provided their services to various clients including M/s. Uttar Haryana Bijli Vitran Nigam, Shri Guru Granth Sahib World University, M/s. H.P. Singh & Others, M/s. Greater Mohali Area Development Authority, M/s. Punjab Small Scale Industries & Export Corporation Limited etc. The details of various contracts have been enumerated as under:-

Sr No.	Name of the Party	No. & date of contract/work order	Description of work
1	M/s Uttar Haryana Bijli Vitran Nigam Limited, Panchkula	CH-21/P&D/B-TW-130/2008/ Arvindera dated 08/04/2009	Work Order for Supply, erection/Re-laying, Testing Commissioning of 11 KV/LT underground cables works along with Feeder Pillars, RCC Hime pipes, FRP U/G pipes, Lugs & Glands, release of service connections etc., at various sites in and around Railway-Over Bridges in Rohtak city under OP Circle of UHBVN against NIT-P&D-131/2008
2	Sri Guru Granth Sahib World University, Fatehgarh Sahib	4092 dated 27/12/2010	Supply & Installation of 125 KVA & 380 KVA DG set Completed 18/10/12
3	M/s H.P. Singh & Others, Mohali	HPSO/2011/27 dated 19/01/2011	Electrification work of 39 West, Sector 122 mega Housing Project (phase-1) in village Behlolpur & Jhampur, Mohali
4	Executive Engineer, M.C.P.H., Division-1, Chandigarh	100999 dated 16/02/2011	Up gradation of 11 KV substation at Water Works Sector 37, Chandigarh by replacement of existing obsolete equipment with supply and installation of new equipments thereto.
5	M/s Uttar Haryana Bijli Vitran Nigam Limited, Panchkula	PDC 471/NIT-2/Bid 267/DD-II/P&D/11kV Works/2010-11 dated 16/03/2011	Supply of material/equipment for new 11KV lines (SAI feeder) with Aerial Bunched Cables, VCBs etc., & dismantling of existing 11 KV overhead lines (with ACSR) against NIT-2/Bid 267/DD-II/P&D/11 kV Works/2010-11 on turnkey basis under OP circle Sonepat
6	Greater Mohali Area Dev. Authority, Mohali	GMADA.DE(ELECT)11/ 1670 dated 08/12/2011	Augmentation of street lighting work of Road dividing Sector 75,76 at SAS Nagar
7	Greater Mohali Area Dev. Authority, Mohali	GMADA.DE(ELECT)12 356 dated 7/03/2012	Providing Street lighting system on peripheral road around IAS Officers Society in Mullanpur (SAS Nagar)
8	Punjab Small Scale Industries & Export Corporation Ltd.,	PSIEF/XEN(E)462 dated 21/08/2012	Providing underground HT/LD with automation and street lighting in two pockets of industrial focal point, Mohali
9	Punjab Small Scale Industries & Export Corporation Ltd., Chandigarh	PSIEC/XEN(E)1172-76 dated 22/03/2013	Providing new 11KV Electric Lines after dismantling existing 11 KV Lines of PSPCL and allied works due to widening of roads at IFP, Phase-VII, Mohali
10	M/s Uttar Haryana Bijli Vitran Nigam Limited, Panchkula	PDC-537/NIT NO. 19/P&D/2013-14/B-310/DD-II dated 18/07/2013	Supply of material/equipment for new 11KV lines/feeders with 80mm2 ACSR conductor, augmentation of existing conductor, installation of new VCBs, dismantling/replacing of existing 11KV lines with Aerial Bunched Cables against NIT No. 19(B-310)under (OP) circle Karnal
11	M/s Uttar Haryana Bijli Vitran Nigam Limited, Panchkula	PDC-545/NIT/No.19/P&D/2013-14/B-311/DD-II dated	Supply of material/equipment for new 11 KV lines/feeders with 80mm2 ACSR conductors after dismantling of existing conductor, installation of new VCBs, dismantling/ replacing of the existing 11 KV

On the basis of further investigation, it was held that appellant is liable to pay service tax on their activities. Consequently, the show cause notice was issued to demand service tax on the figures shown in the balance sheet and Form 26AS provided by the appellant for the period 2010 to 2014-15. The matter was adjudicated and demands were confirmed on the basis of the figures obtained from the balance sheet and Form 26AS along with interest and various penalties were also imposed. Against the said order, the appellant is before us.

3. Ld. Counsel for the appellants submits that they are engaged in selling electrical equipments to various government and private institutions as well as carrying out installation thereof. He submits that appellant is a contractor and bids for supply of transformers, sub-stations, high tension wires, low tension wires, street lights, DG Sets, electricity poles, HDPE pipes, feeder pillars, switches etc. and other ancillary electrical equipments to various government and private bodies across the state of Punjab, Haryana and UT Chandigarh. It is his submission that the show cause notice has discussed only work orders executed by the appellant, therefore demand cannot be made beyond the show cause notice. But, while taking value of taxable services, department has taken the figures i.e. highest of the gross receipt in balance sheet, gross receipt as per Form 26AS or gross receipt as per letter of appellant dated 21.09.2015. It is his submission that the demand confirmed on gross amount is erroneous inasmuch as the gross value involved in above 11 contracts was Rs. 1,68,02,739/-. It is further submitted that for the period prior to 01.07.2012 was in negative list regime and the appropriate classification of the works executed by the appellant is Works Contract service. The appellants are supplying the said goods along with service, therefore merit classification under Works Contract service whereas, demand has been confirmed under ‘Erection, Commissioning and Installation Services’.

Therefore, for the period prior to 01.07.2012 demand of service tax is not sustainable against the appellant in the light of decision in the case of *Larsen & Toubro Limited vs. State of Karnataka – 2014 (303) ELT 3 (SC).* He further submitted that all the 11 contracts are not taxable in terms of CBEC Circular No. 123/05/2010-TRU dated 24.05.2010. For the period post 01.07.2012, it is the submission of the ld. Counsel that the appellant has provided the services to M/s. Uttar Haryana Bijli Vitran Nigam, Shri Guru Granth Sahib World University, M/s. Greater Mohali Area Development Authority, M/s. Punjab Small Scale Industries & Export Corporation Limited etc. are the government authorities and the appellant is exempted from payment of service tax under Clause 12 of mega exemption Notification No. 25/2012-ST dated 20.06.2012. Therefore, they are not liable to pay service tax for the works executed for the above said organisations. It is further submitted that there is no allegation in the show cause notice that the said service recipients are not government authorities or the works contract was executed by appellant for electrical structures which were used for business and profession. With regard to two contracts executed for non-governmental organisations namely Guru Granth Sahib University and M/s. H P Singh and others, these contracts were completed before 01.07.2012, i.e. before amendment to negative list regime and completion certificates have also been issued to that effect that these works were completed before negative list regime. In that circumstance, the said contracts were not taxable under the heading of 'Erection, Commissioning and Installation Services'. It is further submitted that the show cause notice has been issued by invoking extended period of limitation.

As there is no specific allegation of fraud, collusion etc. against the appellant, therefore, demands are not sustainable against the appellant. In view of the above, it is prayed that impugned order is to be set-aside.

4. On the other hand ld. AR submitted that for the period post 01.07.2012, under negative list regime, the appellant was liable to pay service tax for the services provided by them. Furthermore, in the case of private or government organisation, the appellant has provided service and they are liable to pay service tax.

5. Heard the parties and considered the submissions. On careful consideration of the submissions made by both sides, we find that in this case, demand is sought to be confirmed under the category of 'Erection, Commissioning and Installation Services'. It is fact on record that the appellant has provided the services in question along with material. Therefore, the classification of the services is Works Contract as per the decision of Hon'ble Apex Court in the case of Larsen & Toubro (supra) wherein the Hon'ble Apex Court held that any service provided along with material falls under the category of Works Contract, therefore, prior to 01.07.2012, the service tax liability is not sustainable against the appellant under the category of 'Erection, Commissioning and Installation Services'. For the period post 01.07.2012, in terms of exemption Notification No. 25/2012-ST dated 20.06.2012, the services provided to government organisations or a local authority, by way of construction, erection, commissioning, installation,

completion, fitting out, repair, maintenance, renovation, or alteration of civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession was exempt from payment of duty. Admittedly, the appellant is providing the said services to government organisation namely M/s. Uttar Haryana Bijli Vitran Nigam, Shri Guru Granth Sahib World University, M/s. Greater Mohali Area Development Authority, M/s. Punjab Small Scale Industries & Export Corporation Limited are not engaged in any commerce, industry or any other business or profession. In that circumstance, in terms of Notification No. 25/2012-ST dated 20.06.2012, the services provided to these organisations under contracts mentioned at Serial No 1 to 12 (except serial No. 2 and 3) are exempted from payment of duty.

With regard to services provided to Guru Granth Sahib University and M/s. H P Singh and others, we find that work was completed before the negative list regime and the service has been provided by the appellant along with goods. In that circumstance, in the light of the decision of Hon'ble Apex Court in the case of Larsen & Toubro (supra), merit classification of the said services under Works Contract, therefore, demand of service tax is not sustainable under 'Erection, Commissioning and Installation Services'.

6. With regard to limitation, we find that there is no specific allegation against the appellant that they have not paid the service tax with intent to evade payment of service tax. In fact, the appellant was providing services to the organisations which are not engaged in any commerce, industry or any

other business or profession. Therefore, we hold that extended period of limitation is not invokable.

7. In view of the above analysis, we hold that the demands are not sustainable. Accordingly, the impugned order is set-aside. In result, the appeal is allowed with consequential relief, if any.

(Order dictated and pronounced in the open court)

Anil G. Shakkarwar
Member (Technical)

Ashok Jindal
Member (Judicial)

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