IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Decision: 2.3.2017

Appeal No. ST/985/2010-DB

(Arising out of Order-in-Appeal No. 169(DK)ST/JPR-I/2010 dated 31.3.2010 passed by the Commissioner (Appeals), Central Excise, Jaipur)

M/s Kalpana Industries — Appellant

Vs.

CCE, Jaipur-I — Respondent

Appearance

Shri Kumar Vikram, Advocate - for the appellant

Shri Sanjay Jain, D.R. - for the respondent

CORAM: **Hon'ble Mr. Justice (Dr.) Satish Chandra, President**
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Final Order No. 52210/2017

Per Justice Dr. Satish Chandra:

The present appeal is filed against the Order-in-Appeal No. 169/2010 dated 31.3.2010.

2. The brief facts of the case are that during the period under consideration (31.3.2008 to 5.1.2009), the appellant was engaged in providing services to M/s Ajmer Vidyut Vitran Nigam Ltd., Jhunjhunu in the field of renovation of old electrical meters. For this purpose, the appellant has entered into an agreement on 10.9.2007 with M/s Vidyut Vitran Nigam Ltd. The department has brought the said

services under the service tax. Being aggrieved, the appellant has filed the present appeal.

3. With this background, Shri Kumar Vikram, ld. Counsel submits that the appellant has paid the service tax on the entire activity. The appellant came to know that the services provided by the appellant do not fall under the category of service tax. He has also drawn our attention to the agreement with the M/s Vidyut Vitran Nigam Ltd. where it is submitted that erection, commissioning and installation services will have to be provided. He submits that the major component of the service falls under this category which is subject to service tax. So, he submits that his refund application may kindly be allowed.

4. On the other hand, Shri Sanjay Jain, ld. DR submits that as per agreement, the appellant has charged the money including old taxes. When it is so then, the refund amount is subject to unjust enrichment. He also submits that the appellant has suo moto paid the service tax as composite agreement falls under the category of service tax.

5. After hearing both the sides and on perusal of record, we set aside the impugned order and remand the matter back to the

adjudicating authority to examine the contract in question and also the collection of the service tax by the appellant in depth, but by providing a reasonable opportunity to the appellant. Necessary evidence, if need be, may be admitted as per law.

6. In the result, the appeal filed by the appellant is allowed by way of remand.

(Dictated & pronounced in open Court)

(Ashok K. Arya)
Member (Technical)

(Justice Dr. Satish Chandra)
President

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