

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
REGIONAL BENCH AT HYDERABAD**

Division Bench  
Court – I

**Service Tax Appeal No. 25356 of 2013**

(Arising out of OIA No.32/2012 (G) ST dt.06.07.2012 passed by Commissioner of Central Excise, Customs & Service Tax (Appeals), Guntur)

**Sri Venkateswara Electrical and  
Power Equipment Co.**

Piduguralla PO, Guntur,  
Andhra Pradesh – 522 413

**.....Appellant**

*VERSUS*

**Commissioner of Central Tax,  
Guntur**

Kannavarithota, Guntur,  
Andhra Pradesh – 522 004

**.....Respondent**

**Appearance**

Shri Y. Sreenivasa Reddy, Advocate for the Appellant.  
Shri A. Rangadham, AR for the Respondent.

**Coram:**

**HON'BLE MR. ANIL CHOUDHARY (JUDICIAL)  
HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)**

**FINAL ORDER No. A/30174/2023**

**Date of Hearing: 10.07.2023**

**Date of Decision: 10.07.2023**

**[Order per: ANIL CHOUDHARY]**

The Appellant is a small contractor undertaking various works in the nature of erection and commissioning, repair jobs of transformers, cables, etc., providing services to Andhra Pradesh State Power Distribution Company Ltd (APSPDCL). The service receiver is a distribution company under the Electricity Act, 2003 and is authorized to distribute electricity and also undertakes transmission from transformers to consumers. However, fact is that the Appellant executed certain projects and paid service tax on the labour component under the Manpower Supply services.

2. On the basis of intelligence, Revenue came across that several similarly situated service providers have not paid Service Tax including this Appellant who is actually liable to pay Service Tax under the head Erection, Commissioning and Installation services (ECIS). Accordingly, the Revenue directed the Appellant to get themselves registered.

3. The officers visited the premises of the Appellant and saw that repair work of various types of Distribution Transformers belonging to Superintending

Engineer (Operation), APSPDCL, Guntur was in progress. The officers ascertained the amount being received for the repair and maintenance work. The Appellant informed that they have filed ST3 Returns and are registered with the Department. The officers made endorsements in their records and directed them to discharge the Service Tax liability under the head ECIS for the Contract No.40/2005 dated 14.10.2005 for Rs.86,60,437/- for electrification works in Vijayawada and for transformer repairs. Subsequently, SCN dated 13.10.2010 was issued proposing to demand an amount of Rs.2,31,819/- being amount payable on the gross value received by the Appellant under the category of ECIS for the period 01.04.2005 to 31.03.2007. It is further proposed to demand an amount of Rs.7,68,390/- for the period 01.04.2005 to 31.03.2010 under the head Management, Maintenance & Repair services along with interest and further penalty was proposed under section 76, 77 & 78. The SCN was adjudicated vide OIO dated 30.09.2011 on contest and proposed demands were confirmed. Further penalty was also imposed under section 76, 77 and an equal penalty under section 78 of the Act. Another penalty of Rs.20,000/- was imposed for non filing/late filing of ST3 Returns for the period 2005-06 to 2009-10.

4. Being aggrieved, the Appellant preferred an Appeal before the Commissioner (Appeals) who vide the impugned OIA was pleased to allow the Appeal in part and allowed the abatement for the material component under the head ECIS. It was also observed that prior to 16.06.2005 there can be no demand under ECIS as on the said service tax was applicable after 16.06.2005. He was further pleased to set aside the penalty under section 76.

5. Being aggrieved, the Appellant is before this Tribunal.

6. Learned Counsel for the Appellant urges that the issue is no longer *res integra* and the same has been decided in favour of the Appellant by the Coordinate Bench of this Tribunal in the case of Shri Ganesh Enterprises vs CCE [2014 (2) TMI 436] wherein, this Tribunal was considering similar issue of services having been provided to the same principal APSPDCL under the heads Management, Maintenance & Repair service, ECIS and others. This Tribunal held that the services provided to transmission and distribution company are exempt under Notification No. 45/2010-ST dated 20.07.2010 observing as follows:

"3. *It is however brought to our notice today that the Central Government by Notification No. 45/2010-ST dt. 20/07/2010, in exercise of powers conferred by Section 11C of the Central Excise Act, 1944 read with*

(3)

*Section 83 of the Finance Act, 1994, granted immunity from the liability to remit service tax in respect of any taxable service provided in relation to transmission and distribution of electricity, during the period upto 26/02/2010. As consequence of this immunity Notification, the service tax liability of the petitioner for the several taxable services provided to electricity distribution companies of Andhra Pradesh during 01/04/2004 to 30/11/2009, stands eclipsed. On this premise, the appeal requires to be allowed and is accordingly allowed. The impugned adjudication order dt. 20/04/2011 is declared inoperative in the light of Notification No. 45/2010-ST dt. 20/07/2010. No Costs."*

7. We find that the issue is wholly covered by the judgment of the Coordinate Bench in the case of Shri Ganesh Enterprises (supra). Accordingly, we set aside the Impugned Order and allow this Appeal. The Appellant shall be entitled to consequential benefits in accordance with law.

(Dictated and pronounced in the Open Court)

**(ANIL CHOUDHARY)**  
**MEMBER (JUDICIAL)**

**(A.K. JYOTISHI)**  
**MEMBER (TECHNICAL)**