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

Division Bench
Court – I

Application No. ST/CROSS/30644/2016
in Service Tax Appeal No. 30258 of 2016

(Arising out of OIO No.HYD-SVTAX-000-COM-21-15-16 dt.27.11.2015 passed by Commissioner of Service Tax, Hyderabad)

Commissioner of Central Tax
Hyderabad **......Appellant**
LB Stadium Road, Basheerbagh,
Hyderabad, Telangana – 500 004

VERSUS

Sri Gopikrishna Infrastructure Pvt Ltd
Vengal Rao Nagar, Hyderabad,
Telangana – 500 039 **......Respondent**

Appearance
Shri V.R. Pavan Kumar, AR for the Appellant.
Shri S. Sunil & Shri Ch. Nageswara Rao, Advocates for the Respondent.
Coram:
HON'BLE MR. ANIL CHOUDHARY (JUDICIAL)
HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30293/2023

Date of Hearing: 06.09.2023
Date of Decision: 06.09.2023

[Order per: ANIL CHOUDHARY]

Heard the parties. This is second round of litigation.

2. The period of dispute is April, 2006 to March, 2011 as per the SCN. In the first round, vide OIO dated 31.10.2012, demand of Rs.9,08,67,712/- was confirmed under the category of "Erection, Commissioning & Installation service" (ECIS) in respect of work executed as sub-contractor, on back to back basis, allotted by the main contractor – M/s Nagarjuna Construction Company. The work was in respect of services being strengthening and improvement of sub-transmission and distribution of network, erection of line materials, testing and commissioning of 33/11 KV lines for new sub-stations, revamping 33/11 KV sub-station, replacing and conversion of existing LT power lines to 11 KV line, erection of 16/25 KVA 3 Phase etc.

3. As regards this demand, the learned Commissioner in the Impugned Order have dropped the demand extending the benefit of Notification No. 45/2010-ST dated 20.07.2010. It has been observed that the said notification makes it clear that the taxable services in respect of transmission and

distribution of electricity are exempt from payment of service tax, where service recipient is either transmission company or distribution company.

4. The second demand was for Rs.10,30,000/- for the same period under the category of "Commercial or Industrial Construction service" (CICS) in respect of work being – earth work, laying of concrete, shuttering & rod bending, executed by the Appellant.

5. In the earlier round, this Tribunal had enquired from the learned AR for Revenue and it was submitted that the main contractor – M/s Nagarjuna Construction Company, have deposited the service tax including on the turnover achieved by this Respondent. This Tribunal has also taken notice of the ruling of the Larger Bench of the Tribunal in <u>Vijay Sharma & Compay vs CCE, Chandigarh [2010 (20) STR 309]</u>, wherein, it was held that there is no provision to charge service tax twice. The Tribunal had remanded for the limited purpose that the Adjudicating Authority should verify as to the entitlement of Notification No. 45/2010-ST to the Appellant.

6. As regards the second demand of Rs.10,30,000/-, learned Counsel informs that the said demand is no longer contested and the issue has been settled pursuant to the confirmation by the Commissioner in the Impugned Order. They have settled the said demand under SVLDR Scheme on 13.01.2020 and they have also been issued the discharge certificate in Form SVLDRS-4.

7. As regards the demand under ECIS, in respect to service of transmission and distribution company, the ground taken by Revenue is that learned Commissioner has erred in dropping the demand by extending the benefit of Notification No. 45/2010-ST. According to Revenue, the exemption is in relation to transmission and distribution of electricity from payment of tax and not to the providers of the service to the transmission and distribution company. Revenue has also relied on the clarification issued by the Board vide TRU letter F.No.334/3/2010 dated 01.07.2010, wherein, it appears that exemption is only for taxable service of transmission provided by the transmission company. Further on reading Notification No. 45/2010-ST with Notification No. 11/2010-ST, it becomes explicit that exemption is for taxable services of transmission, provided by the transmission company.

8. Learned Counsel for the Respondent, opposing the Appeal states that there is apparent error on the understanding of the Revenue, in interpreting the exemption Notification No. 45/2010-ST. The said notification in very clear words

provides that – All such services which were liable to service tax under the Finance Act, which were being levied according to the 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 services relating to distribution of electricity have been exempted by the Government, under the exercise of powers vested by Sec 11C of Central Excise Act read with Sec 83 of the Finance Act. The Central Government have categorically directed – that the service tax payable on said taxable services relating to transmission and distribution of electricity provided by the service provider to the service recipient, which was not being levied in accordance with the said practice, shall not be required to be paid in respect of the said taxable service relating to transmission and distribution of electricity, during the aforesaid period. Learned Counsel further relied on the ruling of Coordinate Bench of the Tribunal in the case of Shri Ganesh Enterprises vs CCE, C & ST, Hyderabad [2014 (35) STR 348], wherein, also in the case of similarly situated Assessee, this Tribunal held that taxable service provided to 'Central Power Distribution Company of Andhra Pradesh' and other such distribution companies is exempt, in view of the immunity granted vide Notification No. 45/2010-ST. The Tribunal had observed that the tax liability stands eclipsed, in view of the said notification. The said ruling of the Tribunal has been accepted by the Revenue. Learned Counsel also relies on the other rulings as follows:

(a) CCE, Nagpur vs HT Associates [2016 (45) STR 305 (Tri-Mumbai)]
(b) K. Shanmugavelu vs CCE, Madurai [2015 (39) STR 704 (Tri-Mad)]
(c) Hyderabad Power Installation P Ltd vs CCE, C & ST, Hyderabad-II [2016 (45) STR 217 (Tri-Hyd)]
(d) Icomm Tele Ltd vs CCE, C & ST, Hyderabad-III [2020 (43) GSTL 408 (Tri-Hyd)]
(e) CC, CE & ST, Hyderabad-III vs Sri Rajyalakshmi Cement Products [2017 (52) STR 309 (Tri-Hyd)]
(f) MD Aub Khan vs CC, CE & ST, Guntur [2015 (40) STR 267 (Tri-Bang)]

9. Having considered the rival contentions, we find that the learned Commissioner in the Impugned Order have given categorical finding with respect to eligibility of exemption under the said notification as follows:

> *"17.4 The assessee is neither electricity distribution licensee, nor an electricity distribution franchisee, and not a person authorized to distribute the power under Electricity Act, 2003, for distribution of electricity as he does not hold any license issued under Electricity Act, 2003 for transmission*

and distribution of electricity. Hence, they are not eligible for exemption from payment of service tax under the Notification No. 32/2010-ST dated 22.6.2010, for the services rendered by them under the category of "Erection, Commissioning and Installation" service in relation to the distribution of electricity w.e.f. 22.6.2010. However, the assessee is eligible for exemption in terms of Notification No. 45/2010-ST dated 20.7.2010 for the period up to 21.6.2010, as discussed in para 15.2 above, and for the services rendered by them beyond the period covered by Notification No. 45/2010-ST i.e., w.e.f. 22.6.2010 the tax liability will be on them. Since the invoice-wise and date-wise break up is not available in the show-cause-notice, the assessee has given the invoice-wise details for the period from April 2006 to March 2011 in respect of the service provided by them. The jurisdictional Range Officer has verified the same and reported that all the work orders during the relevant period are related to 'transmission and distribution' companies of various State Governments and all the work orders and invoices pertain to the period prior to 21.6.2010, which are ineligible for the exemption under the Notification No. 45/2010-ST. Inasmuch as no service was provided by them on or after 22.6.2010 in respect of the contracts covered in the present show cause notice, service tax liability on them would be Nil in the present proceedings. Further in the case of M/s Shri Ganesh Enterprises vs The Commissioner of Customs, Central Excise and Service Tax – Hyderabad-III, the Hon'ble CESTAT, Bangalore, vide Final Order No. 27138/2013 dated 18.12.2013 allowed the appeal filed by the appellant relying on the Notification No. 45/2010-ST dated 20.7.2010, and the said Final Order No. 27138/2013 has been accepted by the Department."

10. We further find that there is no ambiguity in the exemption granted for services provided to distribution and transmission companies vide Notification No. 45/2010-ST, and the reliance placed by the Revenue on the clarificatory Circular dated 01.07.2010 is misplaced. Further, we find that there is no reference of earlier Notification No. 11/2010-ST in the Notification No. 45/2010-ST and hence, attempt by the Revenue to read the exemption notification with the previous notification, is also misplaced.

11. In view of the aforementioned findings and observations, we find there is no error in the Impugned Order and accordingly, we uphold the same. The Cross Objection Application is disposed of and we dismiss the Appeal by Revenue. The Respondent/Assessee 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)

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