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

Regional Bench - Court No. – I

Service Tax Appeal No. 198 of 2012
(Arising out of Order-in-Appeal No.32/2011 (V-I) ST dt.22.11.2011 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam)

M/s Eldi Tech
D.No.10-36-3/2, Flat No.1, Dasaradh Enclave,
Ram Nagar, Visakhapatnam, AP – 530 013
......Appellant

VERSUS

Commissioner of Central Tax
Visakhapatnam - I
4th Floor, Customs House, Port Area,
Visakhapatnam, Andhra Pradesh – 530 035
......Respondent

and

Service Tax Appeal No. 30676 of 2017
(Arising out of Order-in-Original No.VSP-EXCUS-001-COM-30-16-17 dt.06.02.2017 passed by Commissioner of Customs, Central Excise & Service Tax, Visakhapatnam-I)

Commissioner of Central Tax
Visakhapatnam - I
4th Floor, Customs House, Port Area,
Visakhapatnam, Andhra Pradesh – 530 035
......Appellant

VERSUS

M/s Eldi Tech
D.No.10-36-3/2, Flat No.1, Dasaradh Enclave,
Ram Nagar, Visakhapatnam, AP – 530 013
......Respondent

Appearance:-
Ms. Radhika Shriranjini MD, Advocate for the Appellant/Assessee.
Shri Sandeep Payal, Authorized Representative for the Respondent/Revenue.

Coram: HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30043-30044/2025

Date of Hearing: 28.01.2025
Date of Decision: 28.01.2025

[Order per: A.K. JYOTISHI]

M/s Eldi Tech (hereinafter referred to as the appellant) are in appeal against OIA dt.22.11.2011 (impugned order), whereby, the Commissioner (Appeals) has upheld the OIO dt.29.03.2011 based on SCN dt.21.10.2009. The said SCN was primarily issued to the appellant for recovery of Service

Tax under two categories viz., 'Construction of Complex Service' (CCS) for the period 01.04.2008 to 31.03.2009 amounting to Rs.4,29,716/- and 'Management, Maintenance or Repair Service' (MMRS) for the period 01.04.2008 to 31.03.2009 amounting to Rs.22,63,101/-. The Original Adjudicating Authority has confirmed the classifications as proposed in the SCN and confirmed the demand in full, which has also been upheld by the Commissioner (Appeals) vide impugned order dt.22.11.2011. The appellants are in appeal against the said impugned order vide Appeal No. ST/198/2012.

2. Similarly, the Department is also in appeal in respect of OIO dt.06.02.2017 (impugned order) emanating from SCN dt.22.10.2008, wherein, the Service Tax was demanded under the category of MMRS for the period 01.07.2003 to 31.03.2008. In this impugned order, the entire proceedings initiated in terms of said SCN has been dropped by the Original Adjudicating Authority against which the department is in appeal vide Appeal No. ST/30676/2017, however, only to the extent of dropping of demand on the MMRS relating to transmission or distribution of electricity by extending the benefit of exemption provided under Notification No.45/2010-ST dt.20.07.2010. The main contention of the department is that Commissioner has wrongly extended the benefit of notification 45/2010-ST in the facts of the case.

3. Both the appeals are more or less identical except for the fact that appeal filed by the appellant involves both the services i.e., CCS & MMRS, whereas, the appeal filed by the department only involves MMRS and that too, only relating to services provided by way of electricity transmission and distribution, etc. Since both these appeals are interrelated, we intend to take up both these appeals together for disposal.

4. In appeal ST/198/2012, insofar as the issue of leviability of Service Tax on CCS is concerned, it is an undisputed fact that demand is for the period prior to 01.07.2010 and therefore, in view of the settled legal position in this regard, the matter is no longer res integra and therefore, the demand under this category for the period 01.04.2008 to 31.03.2009 will not sustain.

5. Coming to the issue of Service Tax on MMRS, the argument taken by the learned Advocate for the appellant is that the entire service of MMRS has been provided to defence establishments and they were under the impression that any activity or service provided to defence establishments is exempt, especially, in view of the specific clarification received by them vide letter dt.20.02.2008 issued by Ministry of Defence. We find that admittedly, there is no dispute that these services were awarded by defence establishments and were performed also to them only. The only dispute is about proper classification as well as eligibility of exemption. As far as MMRS is concerned, learned Advocate has pointed out that in terms of amendment in the Finance Act, 2012, vide section 98, no Service Tax is required to be levied or collected in respect of MMRS of non-commercial Government buildings, during the period on and from the 16^{th} day of June, 2005 till the date on which section 66B comes into force. Admittedly, the period covered in the demand is for the period prior to section 66B coming into force.

6. On the other hand, learned AR points out that this exemption for the said period is only in relation to MMRS of non-commercial Government buildings, whereas, on the perusal of the original SCN dt.22.10.2008, it is very clear that it has not been provided only in relation to non-commercial Government building but also in relation to equipments, diesel generator sets, panels, etc., as held by the Original Adjudicating Authority while adjudicating the said SCN. Therefore, as such, this would not help in getting the demand dropped for this period by relying on this amendment in the Finance Act,2012, i.e., section 98. Moreover, he also points out that MMRS covers not only buildings but also certain equipments, etc.

7. At this juncture, we have also perused the SCN referred to and OIO passed by the Commissioner, where the department is in appeal to the extent of Adjudicating Authority extending the benefit of notification 45/2010-ST. It is obvious that in the course of adjudication, they were able to exclude certain activities not covered within the MMRS to building, etc., for which the feasibility under the exemption notification 45/2010-ST was also examined. It is also obvious that while examining the same, the Adjudicating Authority felt that they will fall either in the category of transmission or distribution of electricity and by considering that 'in relation to' is an expression which includes varied nature of activities and therefore,

granted them the benefit of exemption notification in relation to such activities, which were not covered by virtue of section 98 of the Finance Act, 2012.

8. In respect of non-commercial MMRS to buildings, after the amendment in Finance Act, 2012, vide section 98, no demand will survive. For the MMRS to others, the exemption notification 45/2010-ST needs to be examined and we have examined the same. We find that there was Notification No. 11/2010-ST dt.27.02.2010, which exempted the services provided for transmission of electricity. Similarly, in terms of Notification No. 32/2010-ST dt.22.06.2010, the services provided for distribution of electricity were exempt. We further find that Government again came out with another Notification No. 45/2010-ST dt20.07.2010, where reference has been made to these two notifications and thereafter, in exercise of power under section 11C of Central Excise Act, 1944, read with section 83 of the Finance Act, the Government directed that the Service Tax payable on the said taxable services relating to transmission and distribution of electricity provided by service provider to service receiver, which was not being levied in accordance with the said practice, shall not be required to be paid in respect of said taxable service relating to transmission and distribution of electricity during the aforesaid period. We find that the Adjudicating Authority has considered this notification 45/2010-ST to cover that entire activity of MMRS as falling in the category of transmission and distribution of electricity. Learned AR has tried to distinguish that in the case of distribution, there is a very specific category to which this exemption is available as is apparent from reading of notification 32/2010-ST dt.22.06.2010. We find that notification 45/2010-ST does not provide for such expression and it merely covers services in relation to transmission and distribution of electricity. The Adjudicating Authority has clearly brought out these facts in the impugned order and has categorically held that these activities are squarely covered within the ambit of transmission or distribution of electricity. In view of the same, we find that there is nothing wrong in the order of the Commissioner extending the benefit of notification 45/2010-ST for MMRS provided in relation to transmission and distribution of electricity to defence establishments.

9. Thus, we find that in respect of appellant's appeal i.e., ST/198/2012, there is no demand sustainable under the category of CCS for the period prior to 01.07.2010. Insofar as demand under the category of MMRS is concerned, we find that the MMRS of the nature discussed in the original SCN, the notification 45/2010-ST would be applicable in the present appeal also. For the MMRS provided to buildings, etc., of defence establishments, which are clearly of non-commercial nature, amendment in the Finance Act, 2012, vide section 98 clearly exempted such services for the period covered in the SCN. Therefore, no demand will be sustainable as far as this appeal is concerned.

10. Insofar as the departmental appeal i.e., ST/30676/2017 is concerned, we find that in the facts of the case, notification 45/2010-ST is applicable as rightly held by Commissioner and therefore, we do not find any infirmity in the order passed by the Commissioner.

11. Accordingly, Order of the Commissioner dt.22.11.2011 is set aside and Appeal No. ST/198/2012 is allowed.

12. Departmental appeal i.e., ST/30676/2017 is dismissed.

(Dictated and pronounced in the Open Court)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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