CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT NO. – I

Service Tax Appeal No. 2239 of 2012
(Arising out of **Order-in-Appeal** No.108/2012 (H-IV) S.TAX dated 30.04.2012 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals-II), Hyderabad)

M/s Vijai Eletricals Ltd., .. **APPELLANT**
D.No.6-3-648/1 & 2,
Rajbhavan Road,
Somajiguda,
Hyderabad,
Telangana – 500 082.

VERSUS

Commissioner of Central Excise .. **RESPONDENT**
& Service Tax
Hyderabad - IV
Posnett Bhawan,
Tilak Road, Ramkoti,
Hyderabad,
Telangana – 500 001.

APPEARANCE:
Shri B. Venugopal, Advocate for the Appellant.
Shri V. Srikanth Rao, Authorized Representative for the Respondent.

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

FINAL ORDER No. A/30501/2026

Date of Hearing: 11.08.2026
Date of Decision: 03.09.2026

[ORDER PER: ANGAD PRASAD]

The present appeal is directed against Order-in-Appeal No. 108/2012 (H-IV) S.TAX dated 30.04.2012, whereby, the Commissioner (Appeals), upheld Order-in-Original No. 120/2011-S.Tax dated 30.12.2011 rejecting the appellant's claim for refund of Service Tax amounting to Rs. 65,10,617/- and interest amounting to Rs. 2,50,436/-.

2. The appellant is engaged in the manufacture of electrical transformers and is also registered under the Service Tax law for providing various taxable

services. The appellant entered into Contract Agreement no. 149 dated 23.10.2009 with Transmission Corporation of Andhra Pradesh Ltd., ("AP TRANSCO") for laying, jointing, termination, testing and commissioning of 220KV and 132KV XLPE insulated underground cables with accessories.

3. The total contract price was Rs. 77,57,44,809/-, of which 10% was payable as advance. The appellant received an advance of Rs. 7,75,74,481/- during November, 2009 and discharged Service Tax of Rs. 65,10,617/- thereon under the category of "Erection Commissioning or Installation Service". Interest of Rs. 2,50,436/- was also paid on account of delayed payment of said tax. Subsequently, relying upon CBEC Circular No. 123/5/2010-TRU dated 24.05.2010, the appellant claimed that the activity of laying electrical cables between grids, sub-stations and transformer stations was not taxable. Accordingly, on 07.03.2011, it filed a claim for refund of Service Tax of Rs. 65,10,617/- and interest of Rs. 2,50,436/-.

4. A Show Cause Notice dated 23.05.2011 was issued proposing rejection of the refund on the grounds, inter alia, that;

i) a part of the claim was barred by limitation under Section 11B of the Central Excise Act, 1944, as made applicable to the Service Tax matters;

ii) the contract price was inclusive of Works Contract Tax and Service Tax and, therefore, the incidence of the Service Tax had been passed on to AP TRANSCO;

iii) The appellant had not furnished sufficient documentary evidence to rebut the statutory presumption of unjust enrichment; and

iv) In view of Notification No. 45/2010-ST dated 20.07.2010, issued under Section 11C of the Central Excise Act, 1944, the tax already collected and paid was not liable to be refunded.

5. The Adjudicating Authority rejected the refund claim. The Commissioner (Appeals), upheld such rejection. Hence, the present appeal.

6. Learned Counsel for the appellant submits the CBEC Circular No. 123/5/2010-TRU dated 24.05.2010 clarified that laying of electrical cables between grids, sub-stations and transformer stations was not a taxable service. The tax paid by the appellant was, therefore, a payment made without authority of law and was liable to be refunded.

7. It is further submitted that the contractual stipulation stating that the price was inclusive of duties and taxes would apply only to duties and taxes legally payable. As no Service Tax was payable on the activity in question, it could not be presumed that its incidence had been passed on to AP TRANSCO.

8. On limitation, it is submitted that the payment of Rs. 14,28,161/- through Cenvat Credit and Rs. 13,53,698/- in cash, relied upon by the Department, related to other projects and not to the advance received under the subject contract. The refund claim was, therefore, stated to be within limitation. Reliance is also placed upon Notification No. 45/2010-ST dated 20.07.2010 and the decision of the Hon'ble Supreme Court in M/s Suchitra Components Vs Commissioner of Central Excise, Guntur.

9. Learned Authorized Representative reiterates the findings of the authorities below. It is submitted that the agreement expressly stipulated that the erection of price were inclusive of Works Contract Tax and Service

Tax. The appellant consequently received Service Tax component as part of the agreed consideration. It is submitted that no invoices ledgers, balance sheets, books of account or other primary documents were produced to establish that the incidence of Service Tax had not been passed on to AP TRANSCO. The refund was, therefore, barred by unjust enrichment. Reliance is placed on M/s Shoppers Stop Ltd., Vs CC (Exports), reported in 2017 (7) TMI 11 – Madras High Court. The Authorized Representative further relies upon M. Chadacharam Vs CCE, Madurai, reported in 2015(37) S.T.R. 268 (Tri.-Chennai), to contend that Notification No. 45/2010-ST does not entitle the appellant to refund of the Service Tax already collected and paid.

10. We have heard and considered the submissions made by both sides and perused the records.

11. The following issues arise for consideration;

i) Whether Notification No. 45/2012-ST or Circular No. 123/5/2010-TRU confers a right to refund of the Service Tax already collected and paid;

ii) Whether the refund claim is barred by unjust enrichment; and

iii) Whether any part of the claim is barred by limitation.

12. It is not disputed that the work undertaken by the appellant related to laying, jointing, termination, testing and commissioning of underground electrical cables for AP TRANSCO. Circular No. 123/5/2010-TRU dated 24.05.2010 clarified the taxability of activities relating to laying cables. Further, Notification No. 45/2010-ST dated 20.07.2010 was issued under Section 11C of the Central Excise Act, 1944, as made applicable to Service Tax, in respect of taxable services relating to transmission and distribution of electricity for the periods specified therein.

13. The notification recognized the prevalent practice of non-levy of Service Tax and provided that the Service Tax not levied during the specified period would not be required to be paid. The Notification, however, cannot be read as conferring an unconditional right for refund of every amount of Service Tax already collected and disputed. In the case of M. Chadacharam, supra, the Tribunal, while considering Notification No. 45/2010-ST held that the benefit of non-recovery under the Notification does not automatically result in refund of tax already collected and paid. The notification accepts the prevalent practice of levy as well as non-levy for the relevant period; it cannot be construed as authorizing a service provider to recovery the tax from the recipient and thereafter obtain its refund from the Government. Even otherwise, every refund claim filed under Section 11B is subject to the doctrine of unjust enrichment. The claimant is required to establish that the incidence of the tax, refund of which is sought, has not been passed on to any other person. The burden in this regard squarely rests upon the claimant.

14. In the present case the contract specifically records that the erection prices were inclusive of Works Contract Tax and Service Tax. The agreement was entitled into on 23.10.2009, when the parties proceeded on the basis that Service Tax was payable. The advance of Rs. 7,75,74,481/- was received under that composite contractual arrangement. Service Tax amounting to Rs. 65,10,617/- was calculated on the said advance and deposited by the appellant.

15. The substantial clarification regarding non-taxability does not, by itself, establish that the tax component had not form part of the consideration received from AP TRANSCO. On the contrary, the express stipulation that the

contract price was inclusive of Service Tax supports the findings that the contractual consideration included the tax burden. The contention that the words "inclusive of all tax" would cover only those taxes which were legally payable does not answer the issue of unjust enrichment. Even if the tax was ultimately found not to be payable, the appellant must independently establish, through its invoices and books of account, that the amount claimed as refund had been borne by it and had not been recovered from the service recipient. No evidence has been placed before us to show that the contract price was substantially reduced, that a credit note was issued to AP TRANSCO, that the tax component was returned to AP TRANSCO or that AP TRANSCO otherwise did not bear the incidence of the amount. The relevant invoices, ledgers, balance sheets and accounting records necessary to trace the treatment of the service amount have also not been produced. The Hon'ble Madras High Court in the case of M/s Shoppers Stop Ltd., supra, held that the statutory presumption regarding passing on the incidence of duty cannot be rebutted merely by making an assertion. The claimant must produce the relevant primary documents, including invoices and accounting records, to establish that the incidence was not passed on. The Constitution Bench of the Hon'ble Supreme Court in the case of Mafatlal Industries Ltd., Vs Union of India, 1997 (89) E.L.T 247 (SC), has held that a person who has passed on the burden of tax cannot obtain refund thereof and retain the amount, and that would result in unjust enrichment. The principle applies even where the levy is subsequently found to be unauthorized or inapplicable.

16. Therefore, although the appellant may be correct in contending that the subject activity was covered by the clarification relating to cable-laying

or by the provisions concerning transmission of electricity, that finding alone is insufficient to sanction the refund. The appellant was additionally required to cross the statutory bar of unjust enrichment, which it has failed to do.

17. We accordingly find no infirmity in the concurrent finding of the authorities below that the incidence of Service Tax had not been included in the contractual consideration and that the appellant failed to establish that it had borne the burden of such tax.

18. As regards limitation, the refund application was filed on 07.03.2011. The ST-3 Return and payment particulars relied upon by the authorities below indicate that substantial payments towards the tax liability for November, 2009 were made in December, 2009. The appellant has disputed the correlation of certain payments with the subject contract. However, no complete documentary reconciliation has been placed before us to establish the precise dates on which the amount of Rs. 65,10,617/- relating to the subject advance was discharged. In any event, as the entire refund claim fails on the independent and substantive ground of unjust enrichment, it is unnecessary to conclusively determine the disputed correlation of individual payments for the purpose of limitation. Even if any portion of the claim were within time, the same could not be paid to the appellant without proof that the incidence of tax had not been passed on.

19. The claim for refund of interest amounting to Rs. 2,50,436/- is consequential to the claim for refund of Service Tax. In the absence of entitlement to receive the principal amount and having regard to the failure to establish that the underlying tax burden was not passed on, no interference with the rejection of the interest claim is warranted.

20. In view of the forgoing discussion, we hold that the appellant has failed to discharge the statutory burden of proving that the incidence of Service Tax had not been passed on to AP TRANSCO. The refund claim is consequently hit by the bar of unjust enrichment. Notification No. 45/2010-ST dated 20.07.2010 does not confer an unconditional right to refund of the tax already collected and deposited by the appellant.

21. The impugned Order-in-Appeal dated 30.04.2012 is upheld. The appeal filed by the appellant is dismissed.

(Pronounced in the open court on 03.09.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

Shirisha