CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
KOLKATA

REGIONAL BENCH- COURT NO. 2

Service Tax Appeal No. 77012 of 2018

[Arising out of Order-in-Appeal No. 02/DIV/TEZ/S.TAX/2016-17 dated 31.10.2017 passed by the Assistant Commissioner, Central Goods and Service Tax, Tezpur Division.]

M/s Kusum Enterprises **Appellant**
N.T. Road, Hatipilkhana, Tezpur,
Tezpur HO,
Sonitpur,
Assam-784 001

Versus

Commissioner of Central Excise And Service Tax, Guwahati **Respondent**
Tezpur Division, L.B. Road, P.O.
Tezpur-784001 (Assam)

Appearance

Shri M P Bagaria, Advocate for the appellant.
Shri H S Abedin, Authorised Representative for the Respondent.

CORAM:

HON'BLE MR. P K CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

DATE OF HEARING: 08.12.2021
DATE OF DECISION: 28 March 2022

FINAL ORDER NO.75173/2022

P. ANJANI KUMAR

1. The appellant M/s Kusum Enterprises rendered services, on the basis of work orders, to M/s Assam Power Distribution Company Limited (APDL)/ M/s Central Assam Electricity Distribution Company Limited (CAEDCL), such as "shifting, construction, dismantling, erecting and commissioning of power lines, power station with supply of materials etc," on going through the records of the appellants, Revenue opined that the appellants are liable to pay service for works undertaken by them. A show cause notice dated 15.02.2017 was issued; was confirmed by the adjudication order

dated 31.10.2017 and was upheld by the appellate authority vide the impugned order dated 31.10.2017.

2. Learned counsel for the appellant submits that from the perusal of the copy of the works order, it is evident that the same are works contract services in relation to distribution or transmission of electricity; M/s APDL and CAEDCL are owned by Government of Assam and both are incorporated on 23.10.2003. He submits that Section 65 B(23) of Finance Act, 1994 read with clause 67 of Section 2 of the Electricity Act, 2003 shows "electricity transmission or distribution utility" means the Central Electricity Authority; A State Electricity Board: the Central Transmission Utility or a State Transmission Utility notified under the Electricity Act, 2003 (36 of 2003); or a distribution or transmission licensee under the said Act, or any other entity entrusted with such function by the Central Government or, as the case may be, by the State Government". Learned Counsel further submits that the services rendered by M/s APDCL / CAEDCL are covered under negative list of services under clause (k) of Section 66D of the Finance Act, 1994. He submits further that the appellant being a sub-contractor, provided the impugned works contract services to M/s APDCL/CAEDCL for the ultimate services of "transmission or distribution of electricity" which is also exempt under entry Serial No. 29 clause (h) of Mega exemption Notification 25/2012-ST, dated 20.06.2012 as per which; (h) sub-contractor providing services by way of "works contract, the another contractor providing works contract services which are exempt.

3. Learned Counsel for the appellants submits also that without prejudice to the above and without accepting, the appellant, for argument sake, submits that that the appellant's impugned works contract services were taxable, under the reversed charged mechanism to APDCL/ CAEDCL were also being liable to 50% service tax on impugned work contract under section 66B read with Notification 30/2012-ST dated 20.06.2012 and as far as they are aware no service tax under reverse charge mechanism was

recovered from the above entities. Learned counsel submits that even though it is a general rule that exemptions are to be strictly interpreted, when the exemption in question is promotional one, resort needs to be made to a liberal construction so as to give effect to the beneficial objectives underlying such exemptions; to this extent, the two rules of interpretation go well together as they relate to different sets of circumstances. He lays reliance on the following case laws:

(i). Commissioner of Customs (Prev), Mumbai- Vs M. Ambalal & Co.., 2010 (260) ELT 487 (SC).
(iii). Bajaj Tempo Ltd., Bombay Vs CIT, Bombay City-II, Bombay, AIR 1992 SC 1662.
(iv). State of Jharkhand Vs Tata Cummins Ltd. (2006) 4 SCC 57.
(v). CCE Vs Abdos Lamitubes Pvt. Ltd., 2013 (297) ELT 117 (Tri.-Kolkata)

4. Learned Counsel for the appellant also submits that the impugned order is defective in as much as it does not consider the value of services involved in execution of impugned contract and amount of abatement allowed to arrive at applicable service tax to be paid. In the impugned case the material cost is as high as 90% in some of the contracts and these facts have been ignored by the adjudicating authority and the appellate authority.

5. Learned Counsel further submits that the show cause notice is time barred as show cause notice, covering period 01.07.2012 to 31.03.2014, has been issue on 15.02.2017; the appellants have correctly claimed the exemption under Notification No. 25/2012-ST dated 20.06.2012 read with Section 66 D (k) of Finance Act, 1994 and mere claiming of such exemption will not amount to suppression of facts with intent to evade the payment of duty. He relied upon the following case laws:

(i). Collector of Central Excise, Hyderabad V. Chemphar Drugs and Liniments, 1989 (40) ELT 276 (SC).
(ii).Padmini Products V. Collector of Central Excise, Bangalore, 1989 (43) ELT 195 (SC).
(iii). Gopal Zarda Udyog V. Commissioner of Central Excise, New Delhi, 2005 (188) ELT 251 (SC).
(iv). Anand Nishikawa Co. Ltd. V. Commissioner of Central Excise, Meerut, 2005 (188) ELT 149 (SC).

(v). Lubri-Chem Industries Ltd. V. Collector of Central Excise, Bombay, 1994 (73) ELT 257 (SC).
(vi). Cosmic Dye Chemical V. Collector of Central Excise, Bombay, 1995 (75) ELT 721 (SC).
(vii) Pushpam Pharmaceuticals Company V. Collector of Central Excise, Bombay, 1995 (78) ELT 401 (SC).
(viii). Aban Loyd Offshore Ltd. V. Commissioner of Customs, 2006 (200) ELT 370 (SC).

6. Learned Counsel further submits that the appellants had a bona fide belief that they were correctly availed the exemption notification. In view of the bona fide belief suppression cannot be alleged and benefits of the appellants cannot be questioned and extended period cannot be invoked. He relied upon:

(i). CCE V. Vineet Electrical Industries Pvt. Ltd. 2002 (144) ELT A292.
(ii). CCE V. Raptakos Brett & Co. 2006 (194) ELT 101 (Tri. Mum.).
(iii).CCE V. Rishabh Velveleen (P) Ltd. 199 (114) ELT 839 (Tri.)
(iv). Pee Jay Apparels (P) Ltd. V. CCE 2001 (135) ELT 842 (Tri. Del.).
(v).Cosmic Dye Chemical V. CCE 1995 (75) ELT 721 (SC).
(vi).Ispat Industries Ltd. V. CCE 2006 (199) ELT 509 (T).
(vii).NIRC Ltd. V. CCE 2007 (209) ELT 22 (T).
(viii). Chemicals & Fibres of India Ltd. V. CCE 1988 (33) ELT 551 (T).

7. Learned Counsel further submits that section 78 cannot be invoked as there are no sufficient grounds for the same; when duty itself is not demandable, the question of penalties does not arise; moreover, the issue relates to interpretation hence penalty cannot be imposed. He relies upon the following case laws:

(i). UOI V. Rajashtan Spinning and Weaving Mills Ltd.- 2009 (238) ELT 3 (SC) Continental Foundation Joint Venture V. CCE reported in 2007 (216) ELT 177 (SC).
(ii). CCE V. H.M.M. Limited, 1995 (76) ELT 497 (SC).
(iii). CCE, Aurangabad V. Balakrishna Industries, 2006 (201) ELT 325 (SC).
(iv). CCE & C V. Nakoda Textile Industries Ltd., 2009 (240) ELT 199 (Bom.).
(v). Auro Textile V. CCE, Chandigarh [2010 (253) ELT 35 (Tri.-Del.].
(vi). Hindustan Lever Ltd. V. CCE, Lucknow [2010 (250) ELT 251 (Tri.-Del.).
(vii). Prem Fabricators V. CCE, Ahmedabad-II [2010 (250) ELT 260 (Tri.-Ahmd.)].
(viii). White line Chemicals V. CCE, Surat [2009 (229) ELT 95 (Tri. Ahmd.)].
(ix). Delphi Automotive Systems V. CCE, Noida [2004 (163) ELT 47 (Tri.-Del.)].

8. Learned Authorised Representative for the Department reiterates the findings of Order-in-Appeal. Learned Authorised representative further submits that in order to fall under negative list terms of Section 60 D of Finance Act, 1994 Clause (k) the unit providing service must satisfy the condition as per definition; the words used in definition and give a clear meaning are very simple that the service must be that of transmission or distribution of electricity and it must be provided by electricity transmission or distribution utility; it is not applicable to someone who is not a utility as per clause 23. Learned AR further submits that that the services rendered by the appellant do not fall under Serial No. 12 of Mega Exemption Notification No. 25/2012-ST dated 20.06.2012 APDCL cannot be considered to be to a Government Authority as under the said Notification. Government Authority means an authority to evolve or any other body;

(i) set up by the Act of Parliament or State Legislature or;

(ii) established by Government

with 90% or more participation by way of equity are control, to carry out any function entrusted to municipality under Article 243 of Constitution of India.

9. Services carried out by M/s APDCL do not fall under the above list as they are public limited company wholly owned by Government of Assam which was incorporated on 23rd October, 2009 and has been registered under the Companies Act, 1956 and does not carry out any function entrusted to municipality under Article 243W of Constitution of India. For that reason the services rendered by the appellant do not also covered by Serial No. 12 A of Notification 25/2012-ST. Learned AR submits that the appellant's claim that the adjudicating authority categorised them as a sub-contractor is incorrect. Going by the nature of the services provided by APDCL i.e. transmission or distribution of electricity, the appellants have provided services like erection, commissioning and installation services in erection of LT lines; construction of sub-

stations etc., to carry out the business of APDCL. He submits that in terms of Section 66 F(1) unless otherwise specified, reference to a service “herein refer to as the main service” shall not include reference but service which is used for providing main service.

10. Regarding the limitation issue learned AR submits that the appellants are registered themselves for service tax on 31.08.2009 claiming to provider of erection, commissioning and installation service and they have not paid any service tax; they have not filed any returns and have declared the value of service provided to be nil for the period July, 2010 to March, 2012 if not for investigation. The vision of the appellant could not remain undetected. Learned AR further submits that reliance placed by the appellants on the case of **Torrent India** and **M/s Arvindra Electricals** is not correct as the case are not applicable to the facts of the impugned case. The issue dealt with in M/s Torrent Power is about all services rendered by the appellant and the taxability of related/ ancillary services and the issue in the Arvindra Electricals was about classification of service and the service provided to Government organisation that are not in any commercial different entry or any other business etc.,

11. Heard both sides and perused the records of the case the main argument of the appellant appeared to be that the services undertaken by them are covered by the Serial No. 29 (h) of Exemption Notification 24/2012-ST dated 20.06.2012 and M/s APDCL and CAEDCL are covered under the definition of electricity transmission or distribution utility in terms of Clause 48 of Section 65 B (23) of Finance Act, 1994 and also that the services covered under the negative list of Clause 66B of the Finance Act, 1994; if they are liable to pay service tax M/s APDCL and CAEDCL would also be liable to pay 50% service tax on reversed charged mechanism in terms of Section 66B read with Notification 30/2012-ST dated 20.06.2012. Lastly, he claimed that in terms of Serial No.

29 (h) of Notification 25/2012-ST dated 20.06.2012 is squarely applicable. Learned Appellate Commissioner has contends as follows and denies the exemption.

- In terms of para 29(h) of Notification No 25/2012-ST dated 20.06.2012 service provided by a sub-contractor by way of works contract to another contractor providing works contract services which are exempt, shall also be exempted. That means if the sub- contractor are helping the main contractors in providing exempted services falling under works contract services, they are also exempted from service tax. Such exemption should also be considered for this service.
- Now in the services of Construction and shifting/ Erection/ Testing/ Charging/ Commissioning of 11KV Line and 63 KVA S/S including augmentation etc. provided by M/s Kusum Enterprises to APDCL, components mentioned in Sec. 66D(k) are not available. Such construction is not a transmission or distribution service and secondly, it is not provided by transmission or distribution utility as defined in the Act. Section 66F(1) of the Finance Ac, 1994, very specifically provides that unless otherwise specified, reference to a service(herein referred to as main service) shall not include reference to a service which is used for providing main service. This section also gives an illustration to understand this concept, which is as under;

  "The service by RBI, being the main service within the meaning of clause (b) of Section 66D, does not include any agency service provide or agreed to be provided by any bank to RBI. Such agency service, being input service, used by RBI for providing the main service, for which the consideration by way of fee or commission or any other amount is received by the agent bank, does not get excluded from the levy of service tax by virtue of inclusion of main service in clause (b) of negative list in section 66D and hence, such service is leviable to service tax.

12. We find that the appellant has submitted that the adjudicating authority treated the appellant as a "Contractor" but in fact he is not a "Contractor "but a Sub-Contractor of APDCL; learned commissioner observes that the nature of services provided by the APDCL is "Transmission or distribution of electricity to various customers" whereas the appellant had provided the Erection, Commissioning and installation Services by way of shifting and installation of LT lines, construction of sub- station etc. provided by the appellant to APDCL, components mentioned in Sec 66D (k) are not available; such construction is not transmission or distribution service and the appellant was not a transmission or distribution utility as defined in the act. We find that the argument of the

learned commissioner is not correct. The department fails to appreciate that the works undertaken by the appellants under contract from APDCL and CAEDCL are not in relation to exempted services provided by them. The word Sub-Contractor is not defined under Service Tax Law. Under the circumstances, one has to take the general meaning assigned to the same. In common understanding, the word ‘sub-Contractor’, refers to a person who performs a sub function of the main function of the Contractor. Indian Contract Act 1872 too does not define the sub-contractor. Section 2(h) of the Indian Contract Act 1872, defines a contract as an agreement which is enforceable by law. Thus when an agreement is not against the provisions of law it is a contract. All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void. When a notification exempts service by sub-contractor, it is to be understood in common parlance. We find that Hon’ble Supreme Court of India in the case between CCE, Meerut Vs Modi Rubber Ltd; 2001(133) ELT 515 (SC) clearly stated that “Exemption Notification cannot be unduly stressed to produce unintended results in derogation of the plain language employed therein”.

13. We find that there is force in the contention of the appellants that the Transmission and Distribution of Electricity” in the hands of “APDCL/CAEDCL vis-a vis such specific customers” is covered under negative list u/s 66D (k) being naturally bundled as per provisions of section 66F (3) of the Finance Act 1994.; all these impugned works contract activities of appellant are essential activities having direct and close nexus with transmission and distribution of electricity would be covered by the exemption and distribution of electricity extended under various notifications; therefore, the taxability of the related/ ancillary services are required to be given same treatment as is given to the single service, which gives such bundle its essential character, namely, transmission and distribution of electricity; moreover, one cannot think of

transmission and distribution of electricity without impugned work contract services by the appellant. As long as the appellants are undertaking the activities in relation to the exempted services be as a contractor or a sub-contractor, the service provided by the appellant is not exigible to service tax.

14. We find that the appellant claimed that their case can be considered as bundled service to arrive at the conclusion that it is in relation to the transmission and distribution of electricity. This issue of nexus between other works and the main activity (or say bundling of services) in relation to the transmission and distribution of Electricity was dealt by Hon'ble High Court of Gujarat in the case of 2020 (34) GSTL 385 (Guj.). Hon'ble Court observed that:

> **"18.** Insofar as sub-section (1) of Section 66F is concerned, from the illustration provided thereunder, it is evident that while service by the Reserve Bank of India finds place in the negative list, by virtue of the illustration to sub-section (1) of Section 66F, it is provided that any agency service provided by any bank to the Reserve Bank of India would not stand included in the main service, as such agency service is used by the Reserve Bank of India by way of input service for providing main service and in respect of such service the concerned bank receives consideration and would not get excluded from the levy of service tax by inclusion of the main service in the negative list. Thus, in terms of the illustration, an input service would not be exempt from the levy of service tax merely because the main service is exempt. According to the respondents, this case at best would fall under sub-section (1) of Section 66F of the Finance Act and would not be exempted from levy of service tax. It has also been contended that as services in the negative list are not chargeable to tax, Section 66F would not apply to services falling in the negative list and, consequently, the benefit of bundling under Section 66F(3) would not be available.
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> **19.** Sub-section (3) of Section 66F of the Finance Act provides for the manner in which a bundled service is to be determined. Clause (a) thereof, which is relevant for the present purpose provides that if various elements of such service are naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which gives such bundle its essential character. The explanation thereof defines "bundled service" to mean a bundle of provision of various services wherein an element of provision of one service is combined with an

element or elements of provision of any other service or services.

20. The facts of this case are required to be examined in the light of the above statutory provisions. In this case, we are concerned with transmission and distribution of electricity being the main services and application fee for releasing the connection for electricity; rental charges against metering equipment; testing fee for meters/transformers, capacitors etc.; labour charges from customers for shifting of meters or shifting of service lines; charges for duplicate bills provided by DISCOMS to consumers being related services. The question is whether an element of provision of these services is combined with an element or elements of provision of the main service of transmission and distribution of electricity. As noticed earlier, the respondents have themselves treated such related/ancillary services as part of the main service of transmission and distribution of electricity for the pre-negative list regime. Apart, therefrom, considering this issue independently, reference may be made to certain provisions of the Electricity Act. Sections 43 and 45 of the Electricity Act, which are relevant for the present purpose, read as under :-

> ***"43. Duty to supply on request.*** *- (1) Save as otherwise provided in this Act, every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply :*
>
> *Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission :*
>
> *Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.*
>
> *Explanation. - For the purposes of this sub-section, "application" means the application complete in all respects in the appropriate form, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances.*
> *(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line forgiving electric supply to the premises specified in sub-section (1).*

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.
(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.

45. Power to recover charges. *- (1) Subject to the provisions of this section, the prices to be charged by a distribution licensee for the supply of electricity by him in pursuance of section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his licence.*

(2) The charges for electricity supplied by a distribution licensee shall be –

(a) fixed in accordance with the methods and the principles as may be specified by the concerned State Commission;

(b) published in such manner so as to give adequate publicity for such charges and prices.

(3) The charges for electricity supplied by a distribution licensee may include –

(a) a fixed charge in addition to the charge for the actual electricity supplied;

(b) a rent or other charges in respect of any electric meter or electrical plant provided by the distribution licensee.

(4) Subject to the provisions of section 62, in fixing charges under this section a distribution licensee shall not show undue preference to any person or class of persons or discrimination against any person or class of persons.

(5) The charges fixed by the distribution licensee shall be in accordance with the provisions of this Act and the regulations made in this behalf by the concerned State Commission.”

21. On a plain reading of Section 43 of the Electricity Act, it is evident that a licensee, on an application by the owner or occupier of any premises, is required to supply electricity to such premises. For the purpose of supplying electricity, it is the duty of the distribution licensee to provide electric plant or electric line for giving electric supply to the premises of the consumer. In case the distribution licensee fails to supply the electricity, it is liable to penalty under sub-section (3) of Section 43. Thus, a statutory duty has been cast upon the licensee to provide electric plant or electric line for giving electric supply to the premises of the applicant. Electric line has been defined under sub-section (20) of Section 2 of the Electricity Act to mean any line which is used for carrying electricity for any purpose and includes - (a) any support for any such line, that is to say, any structure, tower, pole or other thing in, on, by or from which any such line is, or may be, supported, carried or suspended; and (b) any apparatus connected to any such line for the purpose of carrying electricity. Electric plant has been defined under sub-section (22) of Section 2 of the Electricity Act to mean any plant, equipment, apparatus or appliance or any part thereof used for, or connected with, the generation, transmission, distribution or supply of electricity but does not include - (a) an electric line; or (b) a meter used for ascertaining the quantity of electricity supplied to any premises; or (c) an electrical equipment, apparatus or appliance under the control of a consumer.

22. Thus, any line which is used for carrying electricity for any purpose as well as any apparatus connected to any such line for the purpose of carrying electricity is mandatorily required to be provided to the consumer by the licensee. Moreover, any plant, equipment, apparatus or appliance or any part thereof used for, or connected with, the generation, transmission, distribution or supply of electricity, except for electric meter and any electrical equipment, apparatus or appliance under the control of a consumer fall within the ambit of electrical plant as defined under Section 2(22) of the Electricity Act. Sub-section (2) of Section 43 of the Electricity Act casts a duty upon the licensee to provide if required electric plant or electric line for giving electric supply to the premises. Therefore, providing electric line and electric plant are elements of service which are naturally bundled in the ordinary course of business, with the single service of transmission and distribution of electricity which gives the bundle its essential character. The only related service which does not fall within the ambit of the definitions of electric line and electric plant is the meter used for ascertaining the quantity of electricity supplied to any premises. However, insofar as installation of electricity meter and hire charges collected in respect of electricity meters are concerned, by the circular dated 7th December, 2010, the Government of India has clarified that supply of electricity meters for hire to the consumers is an essential activity having direct and close nexus with transmission and distribution of electricity and therefore, is covered by the exemption for transmission and distribution of electricity extended under the relevant notifications. Evidently therefore, all the services related to transmission and distribution of electricity are naturally bundled in the ordinary course of business of the petitioner and are required to be treated as provision of the single service of transmission and distribution of electricity which gives the bundle its essential character.

23. Besides, a perusal of the GERC Regulations indicates that the services which are sought to be taxed now are the services, which the petitioner is required to mandatorily provide at the rate prescribed by GERC, a statutory authority constituted under the provisions of the Electricity Act. In the opinion of this Court, all these services are essential activities which have a direct and close nexus with transmission and distribution of electricity. In terms of the earlier clarification dated 7-12-2010 issued vide Circular No. 131/13-2010-S.T., the Government of India had clarified that an activity, which is an essential activity having direct and close nexus with transmission and distribution of electricity would be covered by the exemption for transmission and distribution of electricity extended under the relevant notifications. Therefore, the taxability of the related/ancillary services are required to be given same treatment as is given to the single service, which gives such bundle its essential character, namely, transmission and distribution of electricity.

24. It has been contended on behalf of the respondents that sub-section (3) of Section 66F of the Finance Act would not apply where the single service which gives the bundle of services its essential character is exempt from the levy of service tax. In the opinion of this Court, there is nothing in the language employed in sub-section (3) to Section 66F to read into it a requirement that such service should not be exempt from tax. All that the sub-section provides is that taxability of bundled services shall be determined in the manner provided therein. The term taxability means liability to taxation. Thus the term taxability would take within its sweep not being taxable also inasmuch as liability to taxation would also mean not being liable to any tax. Thus, the liability to tax of a bundled service has to be determined in the manner provided under sub-section (3) of Section 66F of the Finance Act. If the services are naturally bundled in the ordinary course of business, the bundle of services shall be treated as provision of the single service which gives the bundle its essential character and where the services are not naturally bundled in the ordinary course of business, the same is required to be treated as provision

> of the single service which results in highest liability of service tax. Accordingly, where the services are naturally bundled in the ordinary course of business and the single service which gives such bundle its essential character is exempt from tax, the entire bundle will have to be treated as provision of such single service.
>
> **25.** Thus, insofar as the phase relating to the negative list regime is concerned, the services in question would fall within the ambit of bundled services as contemplated under sub-section (3) of Section 66F of the Finance Act, and would have to be treated in the same manner as the service which gives the bundle its essential character, namely, transmission and distribution of electricity and, would therefore, be exempt from payment of service tax.

In view of the above, we are inclined to accept the contentions of the appellant in this regard.

15. We find that the appellants also claimed benefit under Entry No 12 of Mega Exemption Notification 25/2012-ST dated 20.06.12 and Entry No 12A substituted by NN.09/2016-ST dated 01.03.2016 claiming that the services provided by them were to the Government, a local authority or a governmental authority. Learned Commissioner finds that

> *The appellant has also challenged the proceedings for denying them the benefit of exemption under Sr. No. 12 of the Notification No. 25/2012-ST dated 20.06.2012. They have argued that M/s APDCL should be deemed as a Governmental Authority. I find that the adjudicating authority in its findings at para 16.16.1 of impugned order has held as under:-*
>
> > *"M/s Assam Power Distribution Company Limited (APDCL) is a public limited company wholly owned by the Government of Assam. It was incorporated on the 23rd day of October, 2009 and has been registered under Indian Companies Act, 1956 and it does not carry out any function entrusted to a municipality under article 243 W of the Constitution. The ultimate aim of the company is to undertaken the electricity distribution, trading, supply in the state of Assam or outside in accordance with provisions of applicable law an all activities ancillary or appurtenant thereto."*

16. We find that learned adjudicating authority and appellate authority have convincingly brought out the fact that M/s APDCL/ CAEDCL are not Governmental authority in view of the definition and have rightly concluded that it is a company registered under the companies act and not Governmental Authority. We find that the learned commissioner has correctly evaluated the status of the

appellants and the activities undertaken by them and concluded correctly that the exemption under Entry No 12 of Mega Exemption Notification 25/2012-ST dated 20.06.12 and Entry No 12A substituted by NN.09/2016-ST dated 01.03.2016 is not available to the appellants. However, as we find that the appellants are eligible for exemption under Serial No. 29 (h) of Notification 25/2012-ST dated 20.06.2012, the acceptability or otherwise of other claims becomes superfluous.

17. Coming to the issue of limitation, we find that the appellants have registered themselves and they have not paid any service tax and moreover have been showing nil returns. Therefore, the Department had no occasion to consider the taxability of the service rendered by the appellants. Having suppressed / not disclosed material facts to the Department the appellants cannot take a plea that extended period cannot be invoked. Therefore, we find that extended period has been rightly invoked. Coming to the penalties, we find that penalty has been imposed correctly for the commission and omission on the part of the appellants. Therefore, we hold that extended period is rightly invoked. However, as we find that on merits, the appellants are eligible for exemption under Serial No. 29 (h) of Notification 25/2012-ST dated 20.06.2012, the issue of limitation does not affect the outcome of the case.

18. In the result, the appeal is partly allowed by way of remand.

(Pronounced in Court on 28 March 2022.)

Sd/

(P K CHOUDHARY)
MEMBER (JUDICIAL)

Sd/

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Tejo