IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.1

Service Tax Appeal No.341 of 2010

(Arising out of Order-in-Original No.10/Jt Commr/ST/ADJ/DIB/08 dated 10.07.2008 passed by Commissioner, Central Excise, Dibrugarh.)

M/s. Petrotech
(Main Road, Nazira-785685, Dist: Sibsagar, Assam.)

...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Dibrugarh
.....Respondent
(Milan Nagar, Lane 'F', P.O. C.R. Building, Dibrugarh-786003.)

APPEARANCE

Shri Bhaskar Dwivedi, Advocate for the Appellant (s)
Shri K.Chowdhury, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

FINAL ORDER NO. 76286/2023

DATE OF HEARING : 2 August 2023
DATE OF DECISION : 2 August 2023

Per : ASHOK JINDAL :

This appeal is directed against the impugned order, wherein demand of service tax has been confirmed against the appellant under 'business auxiliary service'.

2. The facts of the case are that the appellant was engaged in mining work relating to excavation of oil & natural gas by M/s. ONGC pertaining to drilling exploration in oil field of upper Assam. The appellant entered into an agreement with M/s. ONGC to do the work on behalf of M/s. ONGC for generating stand-by and or substituted electricity for the operation of drilling field for exploration of petroleum oil gases and/or mining activities relating to such exploration. The

appellant installed 3 numbers of Diesel Generator sets for M/s. ONGC, Nazira at its drilling sites at Upper Assam. As per the agreement the minimum grarantee amount per month was Rs.18,000/-, lumsum charges for shifting of DG set from location to location was Rs.2,000/-, operation charges per hour per DG set was Rs.175/-. The appellant registered themselves under 'business auxiliary services' w.e.f. 16.11.2006. Certain investigation was conducted with the appellant as well as M/s. ONGC and documents were sought which were supplied. Thereafter on 30.05.2007, a show cause notice was issued to the appellant to demand service tax along with interest and to impose penalty stating that the appellant is not liable to pay service tax under 'business auxiliary services' as it is settled position that electricity is goods manufactured in the sense envisaged in clause (f) of section 2 of the Central Excise Act, 1944. To support this, he relied on the decision of Hon'ble High Court of Orissa in the case of Orient Paper & Industries Ltd. v. Orissa State Electricity Board. On the basis of that the adjudicating authority dropped the demand of service tax holding that electricity being manufactured goods. Generation and production of electricity is not liable to service tax under 'business auxiliary services'. Against the said order, revenue preferred appeal before the Ld.Commissioner(Appeals), who set aside the adjudication order. Therefore, the appellant is before us.

3. Heard the parties and gone through the records placed before us.

4. We find that the revenue is demanding service tax under the category of 'business auxiliary services' for generation of electricity through DG set by the appellant. Admittedly generation of electricity is an activity of manufacture, in that circumstances, no service tax is payable on the appellant on manufactured goods. Further we take note of the fact that the generation, distribution and transmission of electricity is out of the ambit of service tax as held by this Tribunal in the case of M.P. Power Transmission Co.Ltd. vs. Commissioner of Customs & Central Excise, Bhopal reported in 2011 (24) STR 67 (Tri.Delhi.). Therefore, we hold that appellant is not liable to pay

service tax under 'business auxiliary service'. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Operative part of the order was pronounced in the open Court.)

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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