IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.75207 of 2015
(On behalf of Appellant)

(Arising out of Order-in-Appeal No.114/GHY/CE(A)/GHY/2014 dated 29.12.2014 passed by Commissioner of Customs,Central Excise & Service Tax, Guwahati)

M/s Upendra Nath Saha (JV)
Fancy Valley,Tura, West Garo Hills, Meghalaya-794001

Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Guwahati
Nilmoni Phukan Path, Christian Basti, Guwahati-781005

Respondent

APPERANCE :

Shri Devaraj Sahu, Advocate the Appellant
Shri J.Chattopadhyaay, Authorized Representative for the Respondent

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

FINAL ORDER NO.75229/2024

DATE OF HEARING : 08.02.2024
DATE OF DECISION : 08.02.2024

Per Ashok Jindal :

The appellant is in appeal against the impugned demanding service tax along with interest and imposing penalty under the Finance Act, 1994.

2. The facts of the case are that the appellant is engaged in providing services of erection, commissioning and installation services and a specific intelligence was collected to the effect that the appellant also engaged in providing taxable services on execution of agreements with Meghalaya State Electricity Board, Shillong for erection work on re-conductoring, feeder bifurcation and construction of new feeder and did not pay appropriate service tax on the amount received from the

said service recipient. Moreover, the appellant joined the investigation and produced the documents, but a show-cause notice was issued to the appellant as mentioned in Para 7 (c) of the Show-cause notice wherein on the following services provided by the appellant, the service tax was payable of Rs.23,31,723/-. For better appreciation, the said Paragraph is extracted below :

"

c) As per the letter of award dated 28.02.2006 the value of service as well as service tax for the said erection contract (i.e. second part of the said contract) was as below –

Sl. No	Price component	Amount	Remarks.
1	Value of service	22860026	LOA was issued on 28.02.2006 and service tax was indicated at per applicable rat @10.2% on the date of LOA.
2	Service tax	2331723	
	Total	2,51,91,749	

d) The said noticee had realized taxable value amounting to Rs. 2,28,60,026/- on 31.03.2010 as reflected in the TDS certificate (Form 26AS of the Income Tax Deptt.) with

2.1 On the basis of the said show-cause notice, investigation took place. During further investigation, the appellants were directed to pay service tax, which the appellant did not pay. But further persuasion by the respondent, the appellant was forced to pay the said amount of service tax.

2.2 Thereafter, the show-cause notice was issued to the appellants to demand service tax along with interest and to impose penalty on them.

2.3 The matte was adjudicated and the benefit of exemption Notification No.45/2010-ST dated 20.07.2010 was denied to the appellant. But the appellant claimed that they are engaged in the said services against State sponsored scheme for electrification, State Government of Meghalaya.

2.4 Against the said impugned order, the appellant is before us.

3. The ld.Counsel for the appellant submits that the activity undertaken by the appellant is exempted in terms of Notification No.45/2010-ST dated 20.07.2010, therefore, no service tax is payable by the appellant. Further, during investigation, the amount of service tax was forcefully collected by the respondent from the appellant. As the service tax has been borne by the appellant, in that circumstances, the amount recovered during investigation is to be refunded and the impugned order is to be set aside.

4. On the other hand, the ld.A.R. for the Revenue, supported the impugned order and submitted that as during investigation, the appellant has paid the amount of service tax and as per show-cause notice Para 7 (c) [extracted above], they were required to pay service tax on the said amount. Therefore, they have rightly paid the service tax.

5. Heard the parties and considered the submissions and we have also gone through the Work Order, which is placed on behalf of the appellant and for better appreciation of the facts and circumstances of the case, a part of the contract price here wherein the Revenue understood the service charge and service tax, is extracted herein below :

3.0 CONTRACT PRICE:

3.1 We agree to pay the Joint Venture a total sum of Rs. 2,51,91,749.00 (Rupees Two crores fifty-one lakhs ninety-one thousand seven hundred forty-nine) only, as the contract price for the entire scope of work under this contract. The break-up of the above contract price is as follows:

Sl. No.	Price component	Amount in Rupees
1	Erection charges including charges for civil works	22860026.00
2	Service Charges	2331723.00
3	**Total contract price**	**25191749.00**

As per the contract, the appellant was entitled for service charge on execution of work, which has been treated by Departmental Officers as service tax, this is the negligence on the part of the investigating officers for harassment of the appellant.

6. Moreover, the Notification No.45/2010-ST dated 20.07.2010 was available with the Department. Despite that, they issued a show-cause notice to the appellant to harass the appellant.

7. Further, during investigation, they recovered amount of service charge which is treated as service tax which is not permissible in law.

8. In that circumstances, we hold that the appellant has borne the service tax, which has been forcefully recovered by the respondent from the appellant and the service recipient has not borne any part of the service tax involved in this case.

9. As the services rendered by the appellant to Meghalaya State Electricity Board are exempted from service tax as per the Notification

No.45/2010-ST dated 20.07.2010, which is extracted herein below:

Electricity — Exemption to all taxable services relating to transmission of electricity till 26-2-2010 and distribution of electricity till 21-6-2010

Whereas, the Central Government is satisfied that a practice was generally prevalent regarding levy of service tax (including non-levy thereof), under section 66 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as 'the Finance Act'), on all taxable services relating to transmission and distribution of electricity provided by a person (hereinafter called 'the service provider') to any other person (hereinafter called 'the service receiver'), and that all such services were liable to service tax under the said Finance Act, which were not being levied according to the said 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 taxable services relating to distribution of electricity;

Now, therefore, in exercise of the powers conferred by section 11C of the Central Excise Act, 1944 (1 of 1944), read with section 83 of the said Finance Act, the Central Government hereby directs that the service tax payable on said taxable services relating to transmission and distribution of electricity provided by the service provider to the service receiver, which was not being levied in accordance with the said practice, shall not be required to be paid in respect of the said taxable services relating to transmission and distribution of electricity during the aforesaid period.

[Notification No. 45/2010-S.T., dated 20-7-2010]

10. In view of this, we hold that the appellant is not required to pay service tax on their activities in the impugned order and whatsoever, the service tax was forcefully collected by the respondent from the appellant, the same is to be refunded to the appellant along with interest.

11. In view of this, we set aside the impugned order and allow the appeal with consequential relief, if any.

(Dictated and pronounced in the open court)

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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