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

REGIONAL BENCH - COURT NO.1

Service Tax Appeal No.77354 of 2018

(Arising out of Order-in-Original No.01/S.Tax/commr/2018 dated 19.01.2018 passed by Commissioner, CGST & CX, Jamshedpur Commissionerate.)

M/s. Tata Steel Utilities And Infrastructure Services Ltd.
[Formerly known as Jamshedpur Utilities And Service Co.Ltd.]
(Sakchi Boulevard Road, Northern Town, Bistupur, Jamshedpur-831001.)
...Appellant

VERSUS

Commissioner of CGST & CX, Jamshedpur Commissionerate
.....Respondent
(Outer Circle Road, Bistupur, Jamshedpur-831001, Jharkhand.)

WITH

Service Tax Appeal No.76838 of 2019

(Arising out of Order-in-Original No.02/S.Tax/commr/2019 dated 27.03.2019 passed by Commissioner, CGST & CX, Jamshedpur Commissionerate.)

M/s. Tata Steel Utilities And Infrastructure Services Ltd.
[Formerly known as Jamshedpur Utilities And Service Co.Ltd.]
(Sakchi Boulevard Road, Northern Town, Bistupur, Jamshedpur-831001.)
...Appellant

VERSUS

Commissioner of CGST & CX, Jamshedpur Commissionerate
.....Respondent
(Outer Circle Road, Bistupur, Jamshedpur-831001, Jharkhand.)

APPEARANCE

S/Shri B.L. Narsimhan, Rahul Tangri, Deepro Sen & Shovit Betal, all Advocates for the Appellant (s)
Shri P.K.Ghosh, Authorized Representative for the Revenue

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

FINAL ORDER NO. 77543-77544/2024

DATE OF HEARING : 11.11.2024
DATE OF DECISION : 11.11.2024

Per : ASHOK JINDAL :

As both the appeals are having common issue, therefore, both are disposed of by a common order.

1. The Appellant is an urban infrastructure service provider and is *inter alia* engaged in providing various services to the township of Jamshedpur, relating to water, power, infrastructure, public health and horticulture service.
2. The Appellant had entered into an agreement with Tata Steel Ltd. (**'TSL'**) for supply and distribution of electricity of power to all consumers on behalf of TSL in Jamshedpur area, management of connections in the licensed area under the Jharkhand State Electricity Regulatory Commission, meter readings and energy accounting, management of providing permanent as well temporary electric connections in Jamshedpur Licensed Area etc.
3. In furtherance of the said agreement, the Appellant procured and installed transformers, cables and equipment for sub-station. Such equipment was subsequently transferred to TSL in terms of the agreement.
4. Under the agreement, as amended, from time to time, the Appellant was entitled to receive Rs. 1835.25 lakhs for FY 2007-08.
5. Since the Appellant is authorized to distribute electricity on behalf of TSL in terms of Electricity Act, 2003, therefore, during the period 23.06.2010 to 30.06.2012, the Appellant was claiming exemption from payment of the service tax leviable under Notification No. 32/2010-ST dated 22.06.2010 i.e. exemption from payment of taxable services provided for distribution of electricity. With effect from 01.07.2012, the Appellant has classified such activity as 'Works Contract Service' and discharged service tax in terms of Rule 2A(ii)(c) of the Service Tax (Determination of Value) Rules, 2006 (**'Valuation rules'**).

6. In view of the above, SCN dated 14.10.2015 was issued by the Ld. Commissioner of Central Excise and Service Tax proposing service tax demand amounting to Rs.11,87,98,491/- along with appropriate interest and equivalent penalty.
7. The above mentioned SCN alleged that the Appellant did not qualify as distribution licensee and hence they were not eligible to claim exemption under Notification No. 32/2010-ST during the period from June 2010 to June 2012. It was the allegation of the department that only the distribution licensee is responsible for distribution of electricity and not the person through whom the distribution licensee undertakes the distribution.
8. The SCN further contended that for the period post June 2012, the underlying transaction of distribution and transmission of electricity do not qualify as Works Contract Service inasmuch as no VAT has been charged in the invoices raised on or after 01.07.2012.Hence, abatement claimed in terms of Rule 2A(ii)(c) of the Valuation Rules is not admissible to the Appellant.
9. Further, the SCN also alleged that the Appellant had availed irregular CENAVT Credit as following for the period involving 2010-11 to 2012-13:

Table-A

Sl.No.	Particulars	Allegation	Amt. (Rs.)
1.	CCR on works contract service	Abatement under Rule 3(1) and Rule 3(2) of Works Contract (Composition Scheme) claimed erroneously.	26,70,050/-
2.	Renting of Immovable property	Renting of property to event management and JEM Foundation Trust.	5,181/-
3.	Repair and Maintenance	Services under exclusion clause of input service definition.	1,20,861/-
4.	Catering Services	Services used primarily for personal use or consumption of the	2,89,107/-

		employee's of the Appellant.	
5.	Rent a Cab	Same as above	4,14,960/-
5.	Insurance of motor vehicle	Same as above	92,123/-
		Total	**35,92,282/-**

10. The above SCN was adjudicated by the Ld. Commissioner of CGST and CX, wherein the proposed demand was confirmed upon the Appellant along with applicable interest and equivalent penalty. Vide the impugned order, it was inter-alia held as following:

For the period April 2009 to June 2012:

- Only the distribution licensee (being Tata Steel Ltd. in the instant case) remains responsible for distribution of electricity and not the person through whom the electricity is distributed. It is merely a convenience provided to the distribution licensee for distribution of electricity work. Hence, another person cannot be treated as authorized person;
- The Appellant has failed to prove that TSL had procured prior approval from the appropriate commission for distribution of electricity on behalf of TSL as envisaged in Section 17(3) and 17(4) of the Electricity Act;
- That the Appellant are silent regarding fulfillment of conditions envisaged under Sl. No. 5.6 and 5.7 of the Distribution licence issued by Jharkhand State Electricity Regulatory Commission Ranchi;
- The Appellant is not authorized as distribution licensee or a distribution franchise to distribute power under Electricity Act, 2003 and hence, the Appellant is not eligible claim benefit under Notification No. 32/2010-ST.

For the period post July 2012 to March 2015:

- For the period post June 2012, it has been observed that since the underlying contract does not fall under works contract as there is no transfer of property in goods involved in the

execution of contract, therefore such contract is not leviable to sales tax.

- That the Appellant is engaged in provision of management and upkeeping of entire electricity distribution network in the township of Jamshedpur and hence such service does not fall under Section 66D(k) as transmission or distribution of electricity.
- That the Appellant is not an electricity transmission or distribution utility and hence such service does not fall under Section 66D(k) of the Finance Act.

Demand with respect to irregular availment of CENVAT Credit

- With respect to demand for irregular CENVAT Credit, following are the observations given by the Ld. Commissioner:

Table-B

Particulars	Observation	Demand Confirmed	Demand appropriated	Outstanding Demand
CCR on works contract service	If the Appellant had opted to pay under Works Contract Composition Scheme, then the Appellant is barred from availing CENVAT Credit on inputs.	26,70,050/-	25,36,068/-	1,33,982/-
Renting of Immovable property	Not contested by the Appellant	5,181/-	5,181/-	--
Insurance of motor vehicle	Services under exclusion clause of input service definition.	92,123/-	20,635/-	71,488/-
Repair and Maintenance	Same as above	1,20,861/-		1,20,861/-
Catering	Services	2,89,107/-		2,89,107/-

Services	used primarily for personal use or consumption of the employee's of the Appellant.			
Rent a Cab	Same as above	4,14,960/-	2,56,134/-	1,58,826/-
	Total	**35,92,282/-**	**28,18,018/-**	**7,74,264/-**

11. With respect to the period April 2015 to March 2017, an SCN dated 16.04.2018 was issued upon the Appellant proposing service tax demand of Rs.4,81,24,952/- under Section 73(1A) of the Finance Act along with applicable interest and equivalent penalty. The said SCN was based on facts and circumstances mentioned in SCN dated 14.10.2015 pertaining to prior period. Under SCN 16.04.2018, it has been alleged that the Appellant had misclassified the underlying transaction as works contract service and thus wrongly claimed abatement of service tax under Rule 2A(ii)(c) of the Valuation Rules.
12. The Ld. Commissioner vide Order-in-Original dated 27.03.2019 similar to the observation made in the impugned order dated 28.03.2018, pertaining to the period July 2012 to March 2015, held that services rendered by the Appellant viz., management and upkeeping of electricity distribution network do not qualify as works contract and thus Appellant is not entitled for abatement as per Rule 2(A)(ii) of the Service Tax Valuation Rules.
13. Being aggrieved with the aforesaid impugned order dated 28.03.2018 and 27.03.2019, the present appeals have been filed by the Appellant.

14. Today, when the matter was called, the Ld.Counsel, appearing on behalf of the appellant submits that the appellant is engaged in activity of providing transmission or distribution service for and on behalf of distribution licencee i.e. TSL, therefore the said service is not taxable

for the period prior to June 2012 as they are entitled to claim exemption Notification No.32/2010-ST dated 22.06.2010. To support this contention, he relies on the decision of the Tribunal in the case of Agarwal Traders vs. CCE & ST, Rohtak [2018-TIOL-2058-CESTAT-CHD]. He further submitted that the activity of distribution of electricity is covered under negative list vide Section 66D(K) of the Finance Act. Hence, no service tax is payable in respect of such service. Therefore, he prayed that the impugned orders are to be set aside with regard to demand of service tax on distribution of electricity.

15. He further submitted that cenvat credit has been denied alleging that they are not entitled to the cenvat credit on 'rent a cab', 'outdoor catering' and 'insurance' service. It is his submission that the appellant has already paid a sum of Rs.5,000/- towards 'renting of immovable property' and also paid Rs.2,76,769/- towards 'insurance' and 'rent a cab' service. In that regard he submits that a sum of Rs.2,34,098/- are covered under the means clause as well as inclusive part of the definition of input services under Rule 2(l) of Cenvat Credit Rules, 2004 and as these services are used for rendering output services, therefore, such credit cannot be denied. To support this contention, he relied on the decisions of the Tribunal in the cases of –

- Intimate Fashions (I) Pvt.Ltd. v. Commissioner of GST & CX, Chennai
  [2023 (69) GSTL 396 (Tri.Chennai)]
- Roca Bathroom Products Pvt.Ltd. v. Commissioner of GST & CX, Chennai
  [2023 (69) GSTL 187 (Tri-Chennai)]
- Commissioner of GST & CX, Chennai v. Flextronics Technologies Pvt.Ltd.
  [2019 (366) ELT 340 (Tri-Chennai)]
- CCE, Bangalore-III v. Stanzen Toyotesu India Pvt.Ltd.
  [2011 (23) STR 444 (Kar.)]
- International Flavors & Fragrance India Pvt.Ltd. v. Commr. of GST & CT, Chennai South
  [(2022) 1 Centax 212 (Tri-Mad.)]

16. Further, with regard to demand for the period post 01.04.2011 of Rs.4,06,184/-, it is his submission that the definition was amended w.e.f. 01.04.2011, wherein inclusive clause was amended and even an exclusion was added to definition. However, the means clause of the definition was retained, which stipulates that any services used by a provider of taxable service for providing an output service, will quality as input services. It is his submission that the outdoor catering service amounting to Rs.2,38,555/- was used for rendering of the very same service on which service tax was being discharged by the appellant under 'Business Auxiliary Services' and these services are not for personal use or consumption of employees but were directly used for providing output services. Therefore, Cenvat credit cannot be denied. For an amount of Rs.1,20,861/- with regard to 'Repair and Maintenance Services', it was used only for rendering the very same repair and maintenance services to Tata Steel Ltd. and not for repair or maintenance of any car belonging to the appellant. Therefore, these services are not covered under the exclusion clause of the definition of input services.

17. Further, a sum of Rs.46,768/- on account of 'insurance services' was used for taking general insurance under Contingent Policy, Fire Policy and Project Insurance. These are not related to employee medical insurance, therefore these services are not covered under exclusion clause of the definition of input services and the appellants have rightly taken the Cenvat credit. To support this contention, he relied on the decision of RMZ Infotech Pvt.Ltd. v. Commissioner of Central Tax, Bengaluru East [2022 (64) GSTL 599 (Tri.-Bang.)].

18. It is further submitted that without prejudice to the above submission, since service tax stands discharged by the appellant in respect of service component of the transaction from 01.07.2012, therefore, no further service tax is recoverable from the appellant.

19. He also submitted that extended period of limitation is not invocable.

20. On the other hand, the Ld.AR for the department supported the impugned order.

21. Heard the parties, considered the submissions.

22. We find that in this case the main ground for denial of benefit of Notification No.32/2010-ST dated 22.06.2010 and benefit under section 66D(K) of the Finance Act only that the appellant is not a distribution licencee, but was distributing electricity on behalf of distribution licencee. The issue whether the appellant is providing activity of distribution of electricity on behalf of the distribution licencee is entitled for benefit of the said Notification or not?

23. The issue has been examined by this Tribunal in the case of Agarwal Traders (supra), wherein the facts of the case are that –

> *"2. The facts of the case are that the appellants are engaged in the activity of erection, commissioning and installation services/work contract services to Dakshin Haryana Bijli Vitran Nigam (DHBVN in short) and Uttar Haryana Bijli Vitran Nigam (UHBVN in short). During the period 2009-2010 to 2012-2013 without obtaining the service tax registration and without payment of service tax. On the basis of information received that DHBVN received various services from the appellant of whose details were provided by the appellants. The appellant submitted copy of the balance sheet and form 26AS. On scrutiny of the documents, it was alleged that the appellants were engaged in providing erection, commissioning, installation services/work contract services upto 30/06/2012 and thereafter having the contracts for supply and erection of works. On the basis of documents submitted, two show-cause notices were issued to the appellants to demand service tax on the services provided by them and consequently the adjudication took place. The adjudicating authority found that the appellants provided the services are in nature of in relation to distribution of electricity, therefore, in terms of Notification No.45/2010-ST dated 20/07/2010 upto 31/06/2010, the appellant was not liable to pay service tax but for the subsequent period, in terms of negative list regime, started the benefit of said notification shall not available to the appellant. Consequently, for the rest of the period the demand of service tax was confirmed along with interest and various*

penalties were imposed. Aggrieved by the said order, the appellant is before us."

And this Tribunal observed as under:-

"6. We find that in this case, the facts of the case are not in dispute that the appellant is providing services in relation to distribution of electricity to DHBVN & UHBVN and upto 21/06/2010, the benefit of Notification No.45/2010-ST dated 20/07/2010 has already been granted to the appellants. The sole ground for denial of benefit of exemption Notification No.32/2010-ST dated 22.06.2010 is that the appellant is not a distribution licensee or distribution franchisee or any other person authorized under the Electricity Act for distribution of electricity. For better appreciation Notification No.32/2010-ST dated 22.06.2010 is extracted below :

> *Exemption to taxable service provided for distribution of electricity*
>
> *In exercise of this powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as 'the said Finance Act'), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service provided to any person, by a distribution licencee, a distribution franchisee, or any other person by whatever name called, authorized to distribute power under the Electricity Act, 2003 (36 of 2003), for distribution of electricity, from the whole of service tax leviable thereon under section 66 of the said Finance Act.*
>
> *2. This notification shall come into force on the date of its publication in the Official Gazette.*

7. The ground for denial of exemption to the appellants is that the appellant is not a distribution licensee. Admittedly, the appellant is providing the service of distribution of electricity on behalf of DHBVN & UNBVN, who are the distribution licensees. Therefore, it is to be seen that whether the appellant got the right for transmission of electricity from their principals. Admittedly, the appellant has provided these services on behalf of the distribution licensee, who are having license to distribute the electricity. Therefore, it is to be seen that whether the appellant is entitled to the benefit of Notfication or not. In the case of Canara Bank (supra) this Tribunal got an occasion to examine the issue whether a person, who is providing services on behalf of the principal is entitled to the benefit of

notification or not, the same is being examined by this Tribunal and observed as under:

> ***"12.*** *From the above it can be seen that RBI have the right to transact Government business and allow an agent to perform its function. ……*
>
> *5. The first question that we have to consider is whether an agent of a principal who is also a dealer under the Act is entitled to the same rights as his principal has under the Act. Under the general law the agent merely represents his principal. Therefore, while functioning within the scope of the agency he can exercise all the rights which his principal could have exercised. In fact, in the case of an ordinary agency, the agent merely acts for his principal. This provision must hold good even under the Madras General Sales Tax Act unless otherwise provided therein. The fact that for the purpose of that Act an agent is considered as a dealer does not alter the legal position in other respects. Excepting to the extent otherwise provided in the Madras General Sales Tax Act the agent must be held to represent his principal while dealing with the goods of his principal; he merely steps into the shoes of his principal. He is entitled to the same exemptions as his principal would have got had he dealt with the concerned goods himself. Agents are considered as dealers under the tax so as to effectively enforce the provisions of the Act. But that provision does not convert an agent into a principal for all purposes under the Act."*
>
> ***13.*** *The above observations of the Hon'ble Supreme Court make it clear that exemption to the principal would be available to the agent also. For this purpose, since the agent is eligible for the exemption which is available to the principal in terms of the relationship with the principal of the agent and not because of exemption granted specifically to the agent or principal, we have to hold that the appellant is eligible for exemption. If RBI were to undertake the activity there would have been no question of levy of service tax. It was also brought to our notice that RBI is not paying service tax. Same functions being carried out by RBI are exempted. Therefore, we hold that the benefit of exemption available to RBI would be available to the agent i.e. Canara Bank.*
>
> *III. The services are in the nature of statutory/sovereign functions and hence not liable to service tax.*

8. As this Tribunal held that an exemption to the principal would be available to agent also and further in the case of State Bank of Patiala (supra), this Tribunal followed the same principle and allow the benefit of exemption notification.

9. In view of the above discussion, we hold that as the appellant is providing services on behalf of the principal, who is having a license as distribution licensee to distribute electricity under the Electricity Act. Therefore, the benefit exemption Notification NO.32/2010-ST dated 22/06/2010 cannot be denied to the appellant."

24. As the issue has already been settled holding that an exemption to the principal would be available to the agent also, therefore, following the decision of Agarwal Traders (supra), we hold that the appellant is entitled for the benefit of Notification No.32/2010-ST dated 22.06.2010 for the period prior to 01.07.2012 and therefore, their activity of distribution of electricity was exempt from payment of service tax in terms of section 66D(K) of the Finance Act, which is as under :

*"**Negative list of services.** 66D. The negative list shall comprise of the following services, namely :-*

(k) transmission or distribution of electricity by an electricity transmission or distribution utility"

***Interpretations.** 65B. In this Chapter, unless the context otherwise requires :*

(23) "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, the State Government"

25. Therefore, we hold that no demand against the appellant is sustainable on account of distribution of electricity on behalf of M/s.Tata Steel Ltd. being its franchise.

26. In view of this, in both the cases, the demand of Service Tax on account of distribution of electricity is set aside.

27. With regard to the issue of denial of Cenvat credit on the services namely 'Outdoor Catering Service', 'Repair and Maintenance Service' and 'Insurance Service', we find that the Cenvat credit on 'Outdoor Catering Services' has been availed by the appellant for providing the same service on which the appellant has discharged their service tax under 'Business Auxiliary Service'. As these facts are not in dispute, in that circumstances, Cenvat credit on Rs.2,33,555/- cannot be denied to the appellant.

28. With regard to 'Repair and Maintenance Service' which has been used by the appellant for providing the said service to M/s. Tata Steel Ltd. and not for 'Repair and Maintenance' in car used by the appellant, therefore, the said activity does not cover under exclusion clause of amended definition of Rule 2(l) of Cenvat Credit Rules, 2004, therefore, the said Cenvat credit cannot be denied.

29. We further take note of the fact that 'Insurance Services' are not related to the employees medical service, but they are general insurance under contingent policy , fire policy or project insurance which are very much related to the activity of the appellant for providing output services, therefore, the appellant rightly taken the Cenvat credit for the said service which are not out of the purview of exclusion clause of Rule 2(l) of Cenvat Credit Rules of amended definition.

30. In that circumstances, we hold that the appellant is entitled to take Cenvat credit of Rs.4,06,184/-.

31. Further, we hold that prior to 01.04.2011, Cenvat credit of Rs.2,34,098/- cannot be denied to the appellant as the said services have been used by the appellant for providing output service.

Therefore, the Cenvat credit which has been denied by the impugned order is not sustainable in the eyes of law.

32. In view of this, we set aside the impugned orders and allow the appeals 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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