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

REGIONAL BENCH – COURT NO. 2

Service Tax Appeal No. 75749 of 2014

(Arising out of Order-In-Original No. 09/Comm/ST/SLG/13-14 dated 27.02.2014 Passed by Commissioner of Central Excise, Customs& Service Tax Siliguri Commissionerate Central Revenue Building 4th Floor Haren Mukherjee Road Hakimpara Siliguri-734 001)

M/s. Bijan Kumar Dutta, : **Appellant**
3, Subhas Pally, P.O.- Siliguri,
Darjeeling-734 401

VERSUS

Commissioner of Central Excise, Customs & Service Tax, Siliguri Commissionerate : **Respondent**
Central Revenue Building 4th Floor Haren Mukherjee Road
Hakimpara Siliguri-734 001

APPEARANCE:

Shri H. K. Pandey, Advocate for the Appellant

Shri P. K. Ghosh, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.77898/2025

DATE OF HEARING / DECISION:18.12.2024

ORDER: [PER SHRI K. ANPAZHAKAN]

M/s. Bijan Kumar Dutta (herein after referred as the appellant) is a proprietorship concern, registered as a Service Tax assessee having STC No.AACFB8333PST001. During the material period i.e.2007-08 to 2011-12, the appellant claimed that he had rendered works contract services to various Govt. agencies / Local bodies / PSUs. Based on audit objection conducted by the Departmental officers, a SCN dated 13.03.2013 was issued to the appellant alleging short payment of service tax amounting to Rs 56,46,244/-, under the category of 'maintenance or repair service' by invoking extended period of limitation.

The said Notice was adjudicated vide the Order-in-Original No.09/Comm/ST/SLG/13-14 dated 27.02.2014, wherein the Ld. Commissioner has confirmed the demand of service tax of Rs.56,46,244/- along with interest, under the category of 'maintenance or repair service' and imposed equal amount of tax as penalty under section 78 of the finance Act, 1994. Aggrieved against the confirmation of the demands, the appellant has filed this appeal.

2. The appellant submits that the Show cause cum Demand Notice has been issued based on incorrect classification of the service. The counsel for the appellant submits that the appellant is an Electrical Engineer, provided almost all the services to various Government Departments, Government undertaking. Local statutory bodies like CPWD, PWD, WBSEDCL, PHD and BSNL. The services provided by him included supply of goods/machineries, equipment, parts and installation thereof. Post installation maintenance was also included in the contract. With the introduction of Works Contract Service in the Finance Act, 1994, the said services rendered by them with material is appropriately classifiable under the category of 'Works Contract Service'. The law is now settled by the Hon'ble Apex Court in the case of *Larsen & Toubro Ltd.* (supra) wherein it has been specifically held that works contract remains the works contract prior to and post-1-6-2007 and it cannot be vivisected prior to 1-6-2007 and taxed under other category of different services. Reliance is placed on 2017 (51) S.T.R. 428 (Tri. - Mumbai) SANDEEP VILAS KOTNIS Versus COMMISSIONER OF CENTRAL EXCISE, KOLHAPUR. CBEC has also issued Instruction Letter F.No. B1/16/2007-TRU dated 22.05.2007 and clarified that the contracts which are treated as works contract for the purpose of levy of VAT/sales tax shall also be treated as works contract for the purpose of levy of service tax. It is a fact on record that the appellant paid Sales Tax/Vat wherever

applicable and that circulars/instructions issued by the Government is binding on the Departmental Officers. Since the demand in this case not been raised under 'Works Contract Service', the demand confirmed under the category of 'maintenance or repair service' is not sustainable. In support of this claim, the appellant relied on the decision of the Tribunal in the case of URC CONSTRUCTION (P) LTD. Versus COMMISSIONER OF CENTRAL EXCISE, SALEM 2017 (50) S.T.R. 147 (Tri. - Chennai), wherein it has been categorically held that the demand confirmed on the basis of incorrect classification of the service is not sustainable.

2.1. The appellant further submits that most of the services rendered by them are in connection with transmission and distribution of electricity with materials to West Bengal State Electricity Distribution Company Limited (WBSEDCL), Siliguri Zone, a state- owned electricity Distribution Company during the material period. They cited the Notification No. 45/2010-ST dated 20.07.2010, which provides exemption to all taxable services rendered relating to transmission and distribution of electricity including the period up to the date of Notification. Thus, the instant services rendered by the appellant are exempted from payment of service tax. They have raised the issue before the Ld. Adjudicating Authority, but he has passed the order without addressing this issue.

2.2. The appellant submits that the demand confirmed in the impugned order is barred by limitation as it is based on the records and accounts produced by the appellant at the time of audit and no entry therein is disputed. It is also on record that he has submitted periodical returns regularly. He also submitted that suppression of fact with intention to evade the tax is not alleged in the impugned order. It is also pertinent to mention that the appellant did not collect any service tax from his clients who were Government bodies. There being no intent to evade tax, extended period of limitation is not invocable. Reliance in this regard is placed on the following judgments:-

i) ARYA LOGISTICS versus COMMISSIONER OF C. EX. & S.T., RAJKOT [2024 (80) G.S.T.L. 108 (Tri. - Ahmd.)]

ii) PARUL ASSOCIATES INTERIORS PVT. LTD. Versus COMMR. OF S.T., BANGALORE [2016 (46) S.T.R. 373 (Tri. - Bang.)]

2.3. In view of the above submissions, the appellant prayed for setting aside the impugned order and allow their appeal.

3. The Ld. A.R. reiterated the findings in the impugned order. He submits that the appellant has not produced any evidence to substantiate their claim that the services were rendered with materials. Accordingly, he submits that the claim of the appellant that the services rendered by them are classifiable under the category of 'Works Contract Service' is not substantiated.

4. Heard both sides and perused the appeal documents.

5. We observe that the appellant claimed that most of the services rendered by them are in connection with transmission and distribution of electricity with materials to West Bengal State Electricity Distribution Company Limited (WBSEDCL), Siliguri Zone, a state- owned electricity distribution company during the material period. They cited the Notification No. 45/2010-ST dated 20.07.2010, which provides exemption to all taxable services rendered relating to transmission and distribution of electricity. For the sake of ready reference, the said notification is extracted below:

> *"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;*
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> *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."*

5.1. A perusal of the Notification reveals that the said notification exempts all services rendered in connection with transmission and distribution of electricity. A perusal of the work orders received by the appellant indicates that the appellant has received the work orders from the West Bengal State Electricity Distribution Company Limited (WBSEDCL), Siliguri Zone, a state- owned electricity Distribution Company. Thus, we observe that the instant services rendered by the appellant which are in connection with the transmission and distribution of electricity are exempted from payment of service tax. Accordingly, we hold that the portion of the demand pertaining to transmission and distribution of electricity is not sustainable.

6. We also observe that the appellant has rendered construction services to various Government

Departments, Government undertakings, and local statutory bodies like CPWD, PWD, WBSEDCL, PHD and BSNL. The services provided by him included supply of goods/machineries, equipment, parts and installation thereof. Post installation maintenance was also included in the contract. We observe that with the introduction of Works Contract Service in the Finance Act, 1994, the said services rendered by them with material is appropriately classifiable under the category of 'Works Contract Service'. The law is now settled by the Hon'ble Apex Court in the case of *Larsen & Toubro Ltd. From the impugned order, we observe that the Ld. Adjudicating authority has rejected this claim of the appellant on the ground that they have not produced any evidence regarding supply of materials. From the documents provided by the appellant, we observe that* the appellant has paid Sales Tax/Vat wherever applicable. The balance sheet and profit and loss account of the appellant during the relevant period also indicates purchase and supply of materials by the appellant towards rendering of their taxable services. We observe that the contracts which were treated as works contract for the purpose of levy of VAT/sales tax shall also be treated as works contract for the purpose of levy of service tax. As the contracts in these cases were already trated as 'Works Contract service' for the purpose of levy of VAT, for the materials supplied, we hold that the services rendered by the appellant are appropriately classifiable as 'Works Contract Service' for the purpose of levy of Service Tax. However, we observe that no demand has been raised/confirmed under the category of 'Works Contract Service' in the Notice/impugned order. Accordingly, we hold that the demand confirmed under the category of 'Maintenance or repair service' is not sustainable and hence, we set aside the demand of service tax confirmed under this category in the impugned order.

6.1. Since, the demand itself is not sustainable, the question of demanding interest or imposing penalty does not arise.

7. In view of the above discussions, we set aside the impugned order and allow the appeal filed by the appellant with consequential relief, if any, as per law.

(Operative part of the order was pronounced in open court)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP