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

REGIONAL BENCH – COURT NO. 2

Service Tax Appeal No. 75359 of 2014

(Arising out of Order-in-Original No. 09/Commr/ST/GHY/13-14 dated 02.12.2013 passed by the Commissioner of Central Excise and Service Tax, Guwahati, Sethi Trust Building, G.S. Road, Bhangagarh, Guwahati – 781 005)

M/s. G.B. Construction **: Appellant**
H. No. 47, 1st Floor, Bishnu Rabha Path,
Noonmati, Guwahati – 781 009 (Assam)

VERSUS

Commissioner of Central Excise and Service Tax **: Respondent**
Guwahati Commissionerate,
Sethi Trust Building, G.S. Road, Bhangagarh,
Guwahati – 781 005 (Assam)

APPEARANCE:

Shri Soumyadipta Das, Chartered Accountant for the Appellant

Shri S.K. Dikshit, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 75253 / 2025

DATE OF HEARING: 19.12.2024

DATE OF DECISION: 06.02.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed by M/s. G.B. Construction, H. No. 47, 1st Floor, Bishnu Rabha Path, Noonmati, Guwahati – 781 009, Assam (hereinafter referred to as the "Appellant") against the Order-in-Original No. 09/Commr/ST/GHY/13-14 dated 02.12.2013 wherein the Ld. Commissioner of Central Excise and Service Tax, Guwahati Commissionerate has upheld the demand of Service Tax of Rs.1,09,53,461/- (inclusive of cess) and imposed equal amount of tax confirmed as penalty. The different categories under which the demands of service tax confirmed in the impugned order are as under: -

Category of Service	Service Tax payable			
	ST	EC	SHEC	Total
Erection, Commissioning or Installation Services	1064351	21176	10092	1095619
Commercial and Industrial Construction Services	7403301	148067	72218	7623586
Manpower Recruitment and Supply Agency Services	595510	11910	5891	613311
Site Formation and Clearance, Excavation and Earth Moving and Demolition Services	638340	12767	6383	657490
Supply of Tangible Goods Services	790425	15808	7904	814137
Business Auxiliary Services	120212	2404	1202	123818
Construction of Residential Complex Services	7150	143	35	7328
Rent-a-Cab Services	10295	206	103	10604
Goods Transport Agency Services	7348	147	73	7568
TOTAL	1,06,36,932	2,12,628	1,03,901	1,09,53,461

1.1. Aggrieved against the confirmation of the above demands, the Appellant has filed this appeal.

2. In respect of the demand of Service Tax confirmed under the categories of 'erection, commissioning or installation service', 'commercial or industrial construction service', 'site formation, clearance, excavation and earth moving and demolition service' etc. the appellant submits that these services were rendered in connection with the transmission and distribution of electricity. Notification No. 45/2010-S.T. dated 20.07.2010 exempts all services rendered in connection with transmission and distribution of electricity. Accordingly, the Appellant submits that the demands confirmed under these categories are not legally sustainable.

2.1. Regarding the demand of Service Tax under the categories of 'business auxiliary service' and 'supply of tangible goods service' etc., it is their submission that their main contractors, namely, M/s. IVRCL Infrastructure & Project Limited and others have paid the Service Tax on the entire amount and they were the sub-contractors engaged by them; they were of the view that when the main contractor pays the Service Tax, the sub-contractor is not liable to pay Service Tax and therefore they did not discharge their Service Tax liability. It is also submitted that they have not collected any amount of Service Tax from the main contractor. In view of the above submissions, the Appellant prayed that the demand of Service Tax confirmed in the impugned order on this ground are liable be set aside as the same is not sustainable.

2.2. The Appellant also submitted that the entire exercise is revenue neutral and there is no loss of revenue to the exchequer. Thus, extended period of limitation cannot be invoked to demand Service Tax and accordingly, they prayed for setting aside the demand confirmed by invoking the extended period of limitation against them.

3. The Ld. Authorized Representative of the Revenue reiterated the findings in the impugned order. He submitted that as per the clarification issued by the Board vide Circular No. 96/7/2007-S.T. dated 23.08.2007, even if the main contractor pays Service Tax, the sub-contractor is still liable to pay Service Tax on the services rendered by them to the main contractor. Regarding the claim of the appellant that the services rendered by them under the categories of 'erection, commissioning or installation service', 'commercial or industrial construction service', 'site formation, clearance, excavation and earth moving and demolition service' etc, which are in connection with the transmission and distribution of electricity, the Ld. Departmental Representative submits that the appellant has not produced any evidence to substantiate this claim. Accordingly, he supported the impugned order confirming the demands.

4. Heard both sides and perused the appeal records.

5. We observe that the Appellant has claimed that they have rendered the services such as 'erection, commissioning or installation service', 'commercial or industrial construction service', 'site formation, clearance, excavation and earth moving and demolition service', etc., in connection with the transmission and distribution of electricity. Notification No. 45/2010-S.T. dated 20.07.2010 exempts all services rendered in connection with transmission and distribution of electricity. We find

that the impugned order has listed the work orders relating to Transmission of electricity and the benefit of the notification 45/2010-ST dated 20.07.2010 has been allowed in respect of some of the work orders and the benefit of the said notification has been denied in respect of some work orders.

5.1. We observe that Notification No. 45/2010-S.T dated 20.07.2010 exempts all services rendered in connection with transmission of electricity. For the sake of ready reference, the said Circular is reproduced 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."*

5.2. From the above, we find that Notification No. 45/2010-S.T. exempts all services rendered in relation to transmission / distribution of electricity from payment of service tax. However, we observe that the Ld. adjudicating authority has not considered the services rendered by the appellant such as 'Commercial or Industrial Construction Service' as related to transmission and distribution of electricity on the ground that they are mainly related to works such as painting/plumbing/sanitary works at electric sub-stations and thus the same could not be considered as services related to transmission and distribution of electricity. We do not agree with this finding of the ld. adjudicating authority. A perusal of the Notification No. 45/2010-S.T. indicates that all services related to transmission and distribution of electricity are exempted. We therefore find that the eligibility of the exemption of the notification 45/2010-S.T. has not been examined properly by the ld. adjudicating authority. During the course of hearing, the appellant was asked to produce the copy of work orders for which they claim the benefit of Notification No. 45/2010-S.T. as related to transmission and distribution of electricity. However, the appellant could not produce the work orders at the time of hearing before this Tribunal as they were voluminous in nature, but expressed their willingness to produce the same before the adjudicating authority for re-examining the eligibility of the said notification along with the respective work orders. Thus, we are of the opinion that this issue needs to be re-examined by the adjudicating authority afresh, after verification of the work orders related to transmission and distribution of electricity.

6. Regarding part of the demand of Service Tax under the categories of 'Commercial or Industrial Construction Service and 'supply of tangible goods service' etc, we observe that the Appellant have rendered services to main contractors like M/s. IVRCL Infrastructure & Project Limited, as a sub-contractor. In this regard, the Appellant submitted that the main contractors such as M/s. IVRCL Infrastructure & Project Ltd. have paid Service Tax on the entire amount and hence they are not be liable to pay Service Tax as a sub-contractor. We do not agree with the submission made by the Appellant as the said issue has already been clarified by the Board vide Circular No. 96/7/2007-S.T. dated 23.08.2007 at Point No. 999.03/23-8-07. For the sake of ready reference, the relevant clarification is reproduced below: -

999.03/ 23-8-07	A taxable service provider outsources a part of the work by engaging another service provider, generally known as sub-contractor. Service tax is paid by the service provider for the total work. In such cases, whether service tax is liable to be paid by the service provider known as sub-contractor who undertakes only part of the whole work.	A sub-contractor is essentially a taxable service provider. The fact that services provided by such sub-contractors are used by the main service provider for completion of his work does not in any way alter the fact of provision of taxable service by the sub-contractor. Services provided by sub-contractors are in the nature of input services. Service tax is, therefore, leviable on any taxable services provided, whether or not the services are provided by a person in his

		capacity as a sub-contractor and whether or not such services are used as input services. The fact that a given taxable service is intended for use as an input service by another service provider does not alter the taxability of the service provided.

6.1. From the above, it is clear that even if the main contractor pays Service Tax on the full amount, the sub-contractor shall be liable to pay Service Tax for the services rendered by them to the main contractor. The appellant has not produced the work orders wherein they have rendered the service as a sub-contractor. If the services are rendered after issue of the clarification by the Board, then the appellant is liable to pay service tax as a sub-contractor, even if the main contractor pays the service tax. However, at the time of hearing before this Tribunal, the appellant could not produce the work orders wherein they have rendered the services as a sub-contractor. Thus, we are of the opinion that this issue needs to be re-examined by the adjudicating authority afresh on the basis of our observations supra, after verification of the work orders where the appellant rendered the services as a sub-contractor. The adjudicating authority needs to examine the issue on the basis of the documentary evidences produced by the appellant in this regard.

6.2. We observe that the same view has been held by the Larger Bench of the Tribunal in the case of *Commissioner of Service Tax, New Delhi v. M/s. Melange Developers Pvt. Ltd. [2020 (33) G.S.T.L. 116 (Tri. – LB)]*, wherein it has been held that a sub-contractor is liable to pay Service Tax even if the main contractor pays service tax on the entire value. However, the issue regarding applicability of extended period of limitation has to be examined with respect to the facts and circumstances of each case separately. In this case, the adjudicating authority is required to examine whether the appellant has actually rendered the services in the capacity of a sub-contractor or not and the period involved to take a decision as to whether extended period of limitation can be invoked or not. For the above purposes of verification, the issue needs to be remanded back to the adjudicating authority.

6.3 In respect of the demands confirmed under the categories such as 'site formation, clearance, excavation and earth moving and demolition service', 'Goods Transport Agency Service', 'Rent-a-cab service', 'construction of residential complex service', etc., it is observed that the appellant has not offered any specific explanation regarding the nature of service rendered by them and their service tax liability on such services. Considering the fact that the work orders relating to these services are overlapping with other services in the work orders, we are of the opinion that this issue needs to be re-examined by the adjudicating authority afresh, after verification of the work orders.

7. In view of the above, we pass the following order: -

(i) The demands of Service Tax confirmed in the impugned order in respect of the categories of 'erection, commissioning or installation service', 'commercial or industrial construction service', 'site formation, clearance, excavation and earth moving and demolition service'., etc., where the appellant claims that they are eligible for the benefit of Notification No. 45/2010-S.T. dated 20.07.2010, are set aside and the issue is remanded back to the adjudicating authority for re-examining the eligibility of the said notification in the light of the respective work orders.

(ii) In respect of the demand under the category of 'supply of tangible goods service' and other services, where the appellant claimed that they have worked as sub-contractor, the appellant is liable to pay Service Tax as a sub-contractor, even if the main contractor has paid the Service Tax. However, the demands confirmed on this issue are set aside and the issue is remanded back to the adjudicating authority, for examining the issue afresh on the basis of our observations in paragraphs 6.1 and 6.2 of this Order (supra), after verification of the work orders where the appellant rendered the services as a sub-contractor.

(iii) The demands confirmed under the remaining categories of service are also set aside and all these issues are remanded back to the adjudicating authority for examining the same afresh, after verification of the work orders as the demands pertaining to these services are overlapped.

8. The appeal stands disposed of on the above terms.

(Order pronounced in the open court on **06.02.2025**)

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd