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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75933 of 2024

(Arising out of Order-in-Appeal No. 64/SLG-ST/2024-25 dated 17.05.2024 passed by the Commissioner (Appeals), C.G.S.T. & C.X., Siliguri (Appeal) Commissionerate, G.S.T. Bhawan, H.M. Road, Hakimpara, Siliguri – 734 001)

M/s. Sinhal Infrastructure Private Limited **: Appellant**
Singtam Bazar, Singtam,
East Sikkim, PIN – 737 134

VERSUS

Commissioner of C.G.S.T. and Central Excise **: Respondent**
Siliguri Commissionerate,
Central Revenue Building, Haren Mukherjee Road, Hakimpara,
Siliguri – 734 001

APPEARANCE:

Shri Narayan Kumar Agrawal, Chartered Accountant,
Shri Navin Kumar Agrawal, Chartered Accountant,
For the Appellant

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

CORAM:

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

FINAL ORDER NO. 76058 / 2025

DATE OF HEARING: 30.04.2025
DATE OF DECISION: 01.05.2025

ORDER: [PER SHRI ASHOK JINDAL]

The appellant is in appeal against the impugned order demanding Service Tax amounting to Rs.1,52,97,320/-, along with interest and imposing equivalent amount of tax as penalty under Section 78(1) of the Finance Act, 1994, along with imposition of penalties under Sections 69 and 70 of the said Act of Rs.10,000/- each.

2. The facts of the case are that the appellant is engaged in Electrical Contractor Services i.e., Restructured Accelerated Power Development and Reforms Programme (R-APDRP), a programme initiated by the Government of India for reducing AT & C losses in the State owned electricity distribution utilities in India.

2.1. In the course of verification of the TDS Statements of the appellant for the Financial Year 2016-17, it was noticed that the appellant has received an amount of Rs.10,19,82,144/- under the head of "revenue from operations" as declared in the audited books of accounts for the material period against services provided to Energy and Power Department, Government of Sikkim. Since the amount was considered to be without inclusion of Service Tax and cesses, the taxable value of services was considered for calculating the Service Tax liability of the appellant. As the appellant was not registered, it was alleged that the appellant had violated the provisions of Section 69 of the Finance Act, 1994 and Section 66B of the Finance Act, 1994 as they had failed to levy due Service Tax from the recipient of services by way of issuance of proper invoices / bills.

2.2. Since it was found that as the appellant had not discharged their Service Tax liability, a Show Cause Notice dated 28.04.2021 was issued to the appellant, by invoking the extended period of limitation.

3. The matter was contested by the appellant, but the authorities below confirmed the demands against the appellant.

4. Aggrieved from the said order, the appellant is before us.

5. The Ld. Consultant appearing on behalf of the appellant submits that the appellant is engaged in Electrical Contractor Services i.e., Restructured Accelerated Power Development and Reforms Programme (R-APDRP), a programme initiated by the Government of India for reducing AT & C losses in the State owned electricity distribution utilities in India. It is his submission that as per Explanation (1)(a) to Rule 2A of the Service Tax (Determination of Value) Rules, 2006, dated 20.06.2012, defines "original works" as: -

> *"(i) all new constructions;*
>
> *(ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;*
>
> *(iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise"*

5.1. It is the further submission of the Ld. Consultant for the appellant that the appellant falls under the said Explanation and Sl. No. 12A of the Mega Exemption Notification No. 25/2012-S.T. dated 20.06.2012, as amended, has exempted the said services from levy of Service Tax. Therefore, it is contended that the appellant is not liable to pay Service Tax.

5.2. To support this contention, he relied on the decision of this Tribunal in the case of *M/s. Arvindra Electricals v. Commissioner of Central Excise and Service Tax, Chandigarh [Final Order No. 62732 of 2018 dated 31.08.2018 in Excise Appeal No. 60611 of 2017-DB – CESTAT, Chandigarh].*

5.3. In view of the above submissions, he prayed that the impugned order be set aside.

6. On the other hand, the Ld. Authorized Representative of the Revenue supported the impugned order.

7. Heard the parties and considered their submissions.

8. We find that the appellant is engaged in the activity of erection, commissioning and installation of plant and machinery or equipment or structures under the Restructured Accelerated Power Development and Reforms Programme (R-APDRP), a programme initiated by the Government of India for reducing AT & C losses in the State owned electricity distribution utilities in India.

8.1. Notification No. 25/2012-C.E. dated 20.06.2012 (Sl. No. 12A) exempts the services provided by the appellant. For better appreciation of the facts, the said Notification is extracted hereinbelow: -

> *"Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -*
>
> *(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;*
>
> *(b) a structure meant predominantly for use as*

(i) an educational,

(ii) a clinical, or

(iii) an art or cultural establishment; or

(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause (44) of section 65 B of the said Act;

under a contract which had been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date."

8.2. Admittedly, the services have been provided by the appellant to Government authorities by way of construction, erection, commissioning, installation or completion of structures predominantly used other than for commerce or industry. In these circumstances, the said services are not liable to Service Tax.

8.3. The same view was taken by this Tribunal in the case of *M/s. Arvindra Electricals (supra)* wherein this Tribunal has observed as under: -

"5. Heard the parties and considered the submissions. On careful consideration of the submissions made by both sides, we find that in this case, demand is sought to be confirmed under the category of 'Erection, Commissioning and Installation Services'. It is fact on record that the appellant has provided the services in question along with material. Therefore, the classification of the services is Works Contract as per the decision of Hon'ble Apex Court in the case of Larsen & Toubro (supra) wherein the Hon'ble Apex Court held that any service provided along with material falls under

> *the category of Works Contract, therefore, prior to 01.07.2012, the service tax liability is not sustainable against the appellant under the category of 'Erection, Commissioning and Installation Services'. For the period post 01.07.2012, in terms of exemption Notification No. 25/2012-ST dated 20.06.2012, the services provided to government organisations or a local authority, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession was exempt from payment of duty. Admittedly, the appellant is providing the said services to government organisation namely M/s. Uttar Haryana Bijli Vitran Nigam, Shri Guru Granth Sahib World University, M/s. Greater Mohali Area Development Authority, M/s. Punjab Small Scale Industries & Export Corporation Limited are not engaged in any commerce, industry or any other business or profession. In that circumstance, in terms of Notification No. 25/2012-ST dated 20.06.2012, the services provided to these organisations under contracts mentioned at Serial No 1 to 12 (except serial No. 2 and 3) are exempted from payment of duty.*
>
> *With regard to services provided to Guru Granth Sahib University and M/s. HP Singh and others, we find that work was completed before the negative list regime and the service has been provided by the appellant along with goods. In that circumstance, in the light of the decision of Hon'ble Apex Court in the case of Larsen & Toubro (supra), merit classification of the said services under Works Contract, therefore, demand of service tax is not sustainable under 'Erection, Commissioning and Installation Services'."*

9. In view of the above discussion and following the decision of this Tribunal in the case of *M/s. Arvindra Electricals (supra)*, we find that the appellant is not liable to pay Service Tax on the said services provided by them to the Government of Sikkim. In these circumstances, we hold that no Service Tax is payable.

9.1. Consequently, no penalty is imposable on the appellant.

10. In these terms, we set aside the impugned order and allow the appeal filed by the appellant, with consequential relief, if any, as per law.

(Order pronounced in the open court on **01.05.2025**)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd