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

REGIONAL BENCH – COURT NO. 2

Service Tax Appeal No. 76343 of 2017

(Arising out of Order-in-Original No. 05/Commr/ST/GHY/2016-17 dated 29.03.2017 passed by the Commissioner of Central Excise And Service Tax, Sethi Trust Building G. S. Road, Bhangagarh Guwahati-781 005)

M/s. Durga Krishna Store Pvt. Ltd. **: Appellant**
House No. 41, R. G. Baruah Road,
Sundarpur Guwahati-781005, Assam

VERSUS

Commissioner of Central Excise and Service Tax **: Respondent**
Sethi Trust Building G. S. Road,
Bhangagarh Guwahati-781 005

APPEARANCE:

Shri Pulak Saha, FCA
Shri Bikash Gupta, FCA for the Appellant
Shri D. Sue , Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO.___________/ 2025

DATE OF HEARING: 02.09.2025
DATE OF PRONOUNCEMENT: 12.09.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

M/s. Durga Krishna Store Pvt. Ltd., having its registered office situated at Road No. – 41, R.G. Baruah Road, Sundarpur, Guwahati – 781005 (hereinafter referred to as the "appellant") are registered with the jurisdictional Service Tax Commissionerate having Service Tax Registration No. AACCD6023FSD002. The appellant has been regular in discharging their Service Tax liability and has also been regular in filing their periodical Service

Tax Returns with the jurisdictional service tax authority.

1.1. During the relevant period, the appellant was engaged in construction services / works contract services mainly for North Eastern Frontier Railways and a small portion for other Government Undertakings. The impugned demand in the present appeal is related to contracts which were awarded by M/s. Power Grid Corporation of India Limited (PGCIL) and M/s. RITES Limited (RITES) in respect of civil construction work rendered by the appellant.

1.2. The appellant states that PGCIL is a Public Sector Enterprise and a national electric power transmission utility. PGCIL had awarded various contracts during the material period for providing site levelling services including one contract for construction and repairing of existing approach road which is for general public use at large. Further, RITES had given one contract (on sub-contract basis) for construction of formation of Railway Embankment and Construction of Bridge in respect of Railway line / link from Salakati Railway Station to Bongaigaon Thermal Power Project.

1.3. A Show Cause Notice dated 17.04.2015 was issued to the appellant demanding Service Tax 1,63,79,265/- (including Education Cess and Secondary and Higher Education Cess) for the period from October, 2009 to September, 2014. In the Show Cause Notice, it has been alleged that during the aforesaid period, the appellant have rendered various services to their customers which were exigible to Service Tax, under the categories of "site formation and clearance, excavation, earth moving and demolition service" and "works contract service” and that the appellant had not paid the appropriate Service Tax thereon.

1.4. The said Notice was adjudicated vide the Order-in-Original No. 05/Commr/ST/GHY/16-17 dated 29.03.2017 (hereinafter referred to as the "impugned order") wherein the Ld. Commissioner of Central Excise and Service Tax, Guwahati has confirmed the demand of Service Tax totally amounting to Rs.1,63,79,265/- (inclusive of Cesses) along with interest and imposed an equal amount of tax as penalty.

2. The present appeal has been filed by the appellant challenging the above demands of service tax, along with interest and penalties, as confirmed in the impugned order.

3. The demands of Service Tax confirmed in the impugned order under the various categories have been summarized / tabulated by the appellant, as under: -

Category of Service	**Category of Service**	**Category of Service**	**Category of Service**	**Category of Service**
Site Formation	Transmission	44,22,505	-	44,22,505
Works Contract	Transmission	76,41,490	57,43,279	18,98,211
	Road Construction	7,85,219	-	7,85,219
	Railway Siding-NTPC	35,30,050	-	35,30,050

Total	**1,63,79,264**	**57,43,279**	**1,06,35,985**

4. Regarding the demand of Service Tax in respect of the Work relating to transmission of electricity amounting to Rs.1,20,63,995/- [Rs.44,22,505/- under 'site formation service' and Rs.76,51,490/- under 'works contract service'], the appellant submits that vide Notification No. 11/2010-ST dated 27.02.2010 exemption has been granted to services to be provided by any person to any other person for transmission of electricity from 27.02.2010 onwards. Further, it is pointed out that Notification No. 45/2010-ST dated 20.07.2010 provided exemption to services provided relating to transmission and distribution of electricity for the period prior to 27.02.2010 and 21.06.2010 respectively; that further, in terms of Notification No 32/2010-ST, dated 22.06.2010 service tax in relation to distribution of electricity has been exempted w.e.f. 22.06.2010. It is submitted that Notification No 11/2010-ST (supra) and 32/2010-ST (supra) got rescinded by Notification No 34/2012-ST dated 20.06.2012 w.e.f. 01.07.2012. Further, it is stated by the appellant that w.e.f. 01.07.2012, Section 66D(k) of the Finance Act, 1994 specifies Transmission or Distribution of electricity by an electricity transmission or distribution utility in the negative list on which no service tax is leviable. Thus, the appellant submits that the demand of Service Tax of Rs.44,22,505/- confirmed in the impugned order under the category of 'site formation' is not sustainable.

4.1. Regarding the demand of Service Tax amounting to Rs.76,41,490/- confirmed in the impugned order on this count, the appellant submits that immediately after obtaining legal opinion that services rendered to PGCIL in connection with site levelling and civil construction has become taxable w.e.f. 01.07.2012, the appellant *suo motu* quantified the service tax liability for the period from 01.07.2012 to 31.08.2014 in respect of services provided to PGCIL and intimated the same to the officials of DGCEI. Accordingly, the appellant discharged the Service Tax Liability of Rs. 57,43,279/-, along with applicable interest of Rs. 13,09,260/-. Accordingly, it is pointed out by the appellant that an amount of Rs.57,43,279/-, pertaining to 'works contract service' rendered to PGCIL for the period from 01.07.2012 to 31.08.2014, already stands paid by them and that they are not contesting this demand of Service Tax, confirmed in the impugned order.

4.2. Regarding the balance amount of Rs.18,98,211/- pertaining to works contract service rendered during the period prior to 01.07.2012, the plea of the appellant is that the said service is specifically exempted by virtue of Notification No. 11/2010 and Notification No. 45/2010 (*supra*). The appellant further submits in this regard that they never collected and discharged Service Tax on site preparation and civil construction services provide to PGCIL as the said services were used by PGCIL for transmission of electricity and exempted vide Notification Nos. 11/2010 and 45/2010 (*supra*).

4.3. In view of the above, the appellant prayed for setting aside the demands of Service Tax confirmed in the impugned order pertaining to transmission and distribution of electricity, as above.

5. As regards the demand of Service Tax of Rs.7,85,219/- confirmed in the impugned order in respect of works pertaining to Road Construction, the appellant has submitted that they were awarded the work of construction and repairing of approach road at 400/200/132 KV Rangpo GIS through LOA No ER-II/KOL/C&M/I-820/P-934/4849 dated 14.03.2014, which road is meant for general public at large; therefore, it is their contention that the said work was exempted by virtue of Notification No 25/2012-ST dated 20.06.2012; accordingly, they never collected and discharged Service Tax On the works performed under the said work order. It is also stated by them that in respect of contract for construction of roads for internal usages through Letter of Award No. NESH/CSM/2583/LOA/1750 dated 19.09.2011, although they were under bona fide belief that the same is also exempt from tax, later on after obtaining legal opinion they have discharged the applicable service tax along with interest. In view of the above submissions, the appellant contends that the demand of Service Tax confirmed in the impugned order on this count is not sustainable.

6. Regarding the demand of Service Tax confirmed in the impugned order on works pertaining to Railways amounting to Rs.35,30,050/-, it is the appellant's submission that construction, erection, commissioning or installation or original works pertaining to railways has been exempted from payment of service tax by virtue of Notification No 25/2012 (*supra*) w.e.f. 01.07.2012; they submit that

prior to 01.07.2012, the same has been excluded from the definition of works contract service as per Section 65(105)(zzzza) of the Finance Act, 1994. The appellant have stated that they never collected and discharged Service Tax on the contract / work undertaken in this regard under LOA No. 12/P/NTPC-Bg.TPP/Civil-PKG-II/Vol-II/2010/3062 awarded by RITES vide Contract dated 23.06.2010, since prior to 01.07.2012 services in respect of Railways have been excluded from the definition of works contract and the same has been exempted from payment of service tax w.e.f. 01.07.2012 by virtue of Sl. No 14(a) of the Notification No. 25/2012 (*supra*). In view of these submissions, the appellant argues that the demand confirmed on this score is also not sustainable.

7. The Ld. Authorized Representative of the Revenue reiterated the findings in the impugned order.

8. Heard both sides and perused the appeal records.

9. We observe that in the instant case, the Service Tax demand of Rs. 1,63,79,265/- has been confirmed, along with interest, under three broad categories in the impugned order. Out of the total demand of Rs. 1,63,79,265/- confirmed therein, the appellant is not contesting the demand of Rs.57,43,279/- pertaining to the Service Tax liability for the period from 01.07.2012 to 31.08.2014 in respect of services provided to PGCIL, which the appellant has already paid along with applicable interest of Rs. 13,09,260/- before the issuance of the impugned show cause notice. The said amount of service tax and interest has also been appropriated

in the impugned order. The remaining demands confirmed in the confirmed in the impugned order can be broadly categorized under three categories. The Service Tax liability in respect of each of the three categories is discussed below: -

10. **Issue 1: Demand of Service Tax on service provided relating to transmission of electricity [Disputed Demand Rs. 1,20,63,995/- (Rs. 44,22,505/- under Site Formation and Rs. 76,41,490/- under Works Contract Service)] .**

10.1. We observe that the above said demand has been confirmed on the services provided by the appellant to PGCIL under the category of site formation / works contract service and the service provided to RITES under the works contract service. We take note of the fact that PGCIL is the national electric transmission utility, and the services of civil construction and site levelling are used by PGCIL in relation to transmission of electricity. We find that the said services have been exempted by virtue of Notification No 11/2010 (*supra*) and Notification No 45/2010 (*supra*). It is a fact that transmission of electricity cannot be accomplished unless the site levelling and civil construction services are availed by PGCIL. Therefore, we hold that the said services, which have been availed by PGCIL in relation to transmission of electricity by PGCIL, are exempted by virtue of Notification No. 11/2010 (*supra*) and Notification No. 45/2010 (*supra*).

10.2. We find that on the identical issue various Courts have time and again held that all taxable services rendered in relation to transmission / distribution of electricity would be eligible for the benefit of exemption under Notification No. 11/2010 (*supra*) and Notification No. 45/2010 (*supra*). A similar matter has also been decided by the Tribunal in the matter of *M/s Kedar Constructions Versus Commissioner of Central Excise, Kolhapur, reported in 2014 (11) TMI 336 - CESTAT MUMBAI*. The decision in *M/s. Kedar Constructions (supra)* has also been followed in the following cases:–

(i) *Vraj Construction versus Commissioner of C.E. & S.T. -Surat-I [2024 (9) TMI 406 - CESTAT AHMEDABAD];*

(ii) *KEC International Ltd. versus Commissioner Of CGST, Gurgaon and Commissioner of S.T., Delhi [2022 (8) TMI 992 – CESTAT, CHANDIGARH];*

(iii) *M/S. Tamilnadu Electricity Board versus Commissioner of GST and Central Excise, Salem, [2023 (11) TMI 14 - CESTAT CHENNAI].*

10.3. In the impugned order, it has been recorded that there is no direct nexus between the scope of work and transmission / distribution of electricity. Further, it has also been observed in the impugned order that the work done was not for setting up of transformers, converters, switch gears, capacitors, condensers, structure cable and other appurtenant equipment or any building for the transmission of electricity. However, it is a fact that the various work orders have been awarded to the appellant by PGCIL for site levelling and civil construction work in connection with setting up of sub-station and smooth functioning of the same. Further, transmission of electricity cannot be accomplished unless the site levelling and construction services are availed by PGCIL.

10.4. In this regard, we refer Section 2(69) of the Electricity Act, 2003, wherein *"sub-station" means a station for transforming or converting electricity for the transmission or distribution thereof and includes transformers converters, switch-gears, capacitors, synchronous condensers, structures, cable and other appurtenant equipment and any buildings used for that purpose and the site thereof*. From the definition of "sub-station", it is clear that without a sub-station, transmission of electricity is not possible. Therefore, we find that in the instant case, the nexus between the site formation services and works contract services with transmission of electricity is very much evident and clear. Thus, we find that the observation in the impugned order, that works under the impugned work orders do not have any nexus with the transmission of electricity, is not sustainable.

10.5. From a perusal of the impugned order, it is seen that the Ld. Commissioner has also observed that the scope of work / services are not akin to the issues in the case of *Kedar Construction (supra)* and rather it is widely distinguishable. In this regard, we find that in the case of *Kedar Construction (supra)* the issue was whether the appellant therein was eligible to exemption under Notification Nos. 11/2010-ST and 45/2010-ST for construction of sub-station and repair and maintenance thereof. The Tribunal, in that case, held that the definition of transmission given in the Electricity Act, 2003 covers a wide gamut of activities including sub-station and equipment and therefore various activities undertaken by the appellant, though classifiable under Commercial or Industrial Construction Service or Works Contract Service, were eligible for exemption. In the instant case also, we find that the work rendered by the appellant involves site levelling activities and civil construction activities for the purpose of setting up sub-station and smooth functioning of the same and therefore, we find that the ratio of judgment in the case of *Kedar Construction (supra)* is squarely applicable to the facts and circumstances of this case. Accordingly, we hold that the appellant is eligible for exemption provided under the above said notifications.

10.6. We further observe that Notification No. 11/2010 was rescinded w.e.f. 01.07.2012 by Notification No. 34/2012 dated 20.06.2012 and exemption was restricted only to transmission of electricity by an electricity transmission or distribution utility and not to other contractors by virtue of Section 66D(k) of the Finance Act, 1994. In this regard, we find that as and when the appellant became aware that the exemption under Notification No 11/2010 (*supra*) was no longer available, they immediately *suo motu* calculated the Service Tax liability on the services provided to PGCIL and deposited the Service Tax liability, along with interest and intimated the same to the Department. Thus, in these facts and circumstances, we are of the view that there was no need to issue Show Cause Notice for this demand. As the demand of Service Tax of Rs. 57,43,279/- along with applicable interest of Rs. 13,09,260/-, has been paid before issue of the notice, we hold that no penalty is imposable in respect of this demand, which is not contested.

11. Issue 2: Demand of Service Tax on construction and repairing of approach road in Sikkim Project [Disputed Demand Rs. 7,85,219/- under Works Contract Service]

11.1. We observe that this issue pertains to Work Order LOA NO ER-II/KOL/C&M/I-820/P-934/4849, dated 14.03.2014 which was issued by PGCIL in respect of Construction and repairing of existing approach road in Sikkim, which is to be used by general public and the said fact has been certified by the Assistant General Manager, 400/220/132KV< Rangpo, PGCIL. In terms of Sl. No 13(a) of Notification No 25/2012-ST (*supra*) exemption is provided from payment of service tax for undertaking construction or repairing of road to be used by general public. Hence, we hold that the instant demand is not sustainable since specific exemption has been granted by way of Notification No. 25/2012. We observe that the Ld. Commissioner has not accepted the certificate issued by the official of a Public Sector Undertaking without giving any substantial point contrary to what is mentioned in the certificate with some cogent evidence. Therefore, we hold that the demand confirmed in the impugned order on this count is liable to be set aside. Accordingly, we set aside the same.

12. Issue 3: Demand of Service Tax on construction of railway line [Disputed Demand Rs. 35,30,050/- under Works Contract Service]

12.1. We observe that there is no dispute that the work as undertaken under LOA No 12/P/NTPC-Bg.TPP/Civil-PKG-II/Vol-II/2010/3062 dated 23.06.2010 was in relation to construction of railway line from Salakati Railway station to Bongaigaon

Thermal Power Project. It is clear that without the said railway line, Bongaigaon Thermal Power Project cannot be connected with NF Railway which would be used for transportation of coal, etc., within the project site. In this regard, it is worthwhile to note that the works contract in respect of railway is excluded from the definition of taxable service under Section 65(105)(zzzza) for the period prior to 01.07.2012. Thereafter, w.e.f. 01.07.2012, services by way of construction, erection, commissioning or installation of original works pertaining to railways is exempted from levy of service tax by virtue of Sl. No 14 of Notification No 25/2012 (*supra*). Hence, considering the above, we find that no Service Tax is payable on the construction of formation of railway embankment and construction of bridges under this work order dated 23.06.2010.

12.2. In the impugned order, we find that the Ld. Commissioner has cited the definition of the term 'railway' as per Section 2(31) of the Railways Act, 1989 and has observed that 'railways' can be of two types viz. 'Government railway' and 'non-Government railway' and for both of them to qualify as 'railway' it must be used for public carriage of passenger of goods. We do not agree with the said reasoning given by the Ld. Adjudicating authority in the impugned order. The definition of 'Railway' in the Railway Act, 1989 does not distinguish between 'Government railway' and 'non-Government railway'. For sake of clarity, the definition of the term 'railway' under the said Act is reproduced below: –

> *"(31) "railway" means a railway, or any portion of a railway, for the public carriage of passengers or goods, and includes—*

a. *all lands within the fences or other boundary marks indicating the limits of the land appurtenant to a railway;*

b. *all lines of rails, **sidings**, or yards, or branches used for the purposes of, or in connection with, a railway;*

c. *all electric traction equipments, power supply and distribution installations used for the purposes of, or in connection with, a railway;*

d. *all rolling stock, stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery, roads and streets, running rooms, rest houses, institutes, hospitals, water works and water supply installations, staff dwellings and any other works constructed for the purpose of, or in connection with, railway;*

e. *all vehicles which are used on any road for the purposes of traffic of a railway and owned, hired or worked by a railway; and*

f. *all ferries, ships, boats and rafts which are used on any canal, river, lake or other navigable inland waters for the purposes of the traffic of a railway and owned, hired or worked by a railway administration, but does not include—*

   (i) a tramway wholly within a municipal area; and

   (ii) lines of rails built in any exhibition ground, fair, park, or any other place solely for the purpose of recreation;"

(Emphasis supplied)

12.3. From the definition of 'railway' reproduced above, it is evident that the term 'railway' includes 'siding' at clause (b) and it is nowhere stated in the inclusive part of the definition that siding should be used for public carriage of passengers or goods. Therefore, we are of the considered view that the construction of private sidings for business entities is also covered within the ambit of the term 'railways' as per Railway Act, 1989.

12.4. In the impugned order, the Ld. Commissioner has observed that Railway Construction for NTPC failed to qualify for the term 'Government railway' since it has not been used for public utilities but rather used for private purposes. In this regard, we observe that in statute exemption from levy of service tax is granted to works in respect of railways and it is nowhere stated that it should be Government or non-Government railway. Thus, we hold that the exemption in the instant case is available to works in relation to private railway siding of NTPC.

12.5. Furthermore, from the impugned order, it is seen that the ld. adjudicating authority has relied on the decision in the case of *Afcons Infrastructure Ltd. vs Commissioner of C.Ex., Mumbai-II* reported in *2015 (38) STR 194 (Tri – Mumbai).* However, in fact, in the decision in *Afcons Infrastructure Ltd. (supra),* it has been held by the Tribunal that there is no distinction between a monorail and metro rail or any other kind of rail and therefore the term 'railways' used therein has to be given its widest meaning to include all types of railways and all types of railway lines. Rather, it may be observed that the definition of "railway" reproduced above does not specifically exclude 'private railway' from its purview. Therefore, we find the observation of the Ld. Commissioner on this count to be based on incorrect appreciation of the judgment in the case of *Afcons Infrastructure (supra)* and hence deserves to be set aside.

12.6. In this context, we refer to the decision of this Tribunal in the matter of *M/s. K.V. Mohana Rao &*

Company Private Limited, reported in 2024 (11) TMI 401, wherein exemption under Notification No. 25/2012 has been allowed for construction service provided to private entities also. Relevant extract of the decision of reproduced below –

> *"30.7.1 ………………. We observe that this demand has been confirmed in the impugned order on the ground that the services rendered by the appellant are related to private railway lines. We observe that Sl. No. 14(a) of Notification No. 25/2012-ST dated 20.06.2012 envisages that all original works by way of construction, erection, commissioning or installation in relation to 'Railways' are exempt from service tax. As per Section2(31)(b) of Indian Railways Act, 1989, "all lines of rails, sidings, or yards, or branches used for the purpose of, or in connection with a railway;" are considered as part of railways only.* ***<u>We observe that this definition clearly indicates that even private sidings / lines are deemed to be railway sidings / lines. Accordingly, we observe that this definition clearly confirms that the services rendered in relation to railway line / siding meant for the use of UAIL would qualify for the exemption in terms of Notification No. 25/2012-ST. Thus, upon a harmonious reading of the Finance Act, 1994 with the Indian Railways Act, 1989, we hold that the impugned works rendered by the appellant related to Railways are exempt from service tax</u>****."*
>
> (Emphasis supplied)

12.7. Thus, in view of the above discussion, we are of the opinion that the demand of service tax confirmed in the impugned order on this count is not sustainable and consequently, the same stands set aside.

13. In the result, we pass the following order: -

(I) We set aside the demand of Service Tax amounting to Rs. 1,06,35,985/- confirmed in the impugned order along with interest, as detailed in the table under paragraph 3 of this Order (supra).

(II) We uphold the demand of Service Tax Liability of Rs.57,43,279/-, along with applicable interest of Rs.13,09,260/-, pertaining to 'works contract service' rendered to PGCIL for the period from 01.07.2012 to 31.08.2014. As this amount of Service Tax, along with interest, has already been paid, we hold that no penalty is imposable in this regard.

(III) All the penalties imposed on the appellant in the impugned order are set aside.

14. The appeal stands disposed of in the above manner.

(Order Pronounced in Open court on 12.09.2025)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP