

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.75962 of 2017

(Arising out of Order-in-Original No.154/Pr.Commr./ST-I/Kol/2016 dated 22.02.2017 passed by Principal Commissioner of CGST & Central Excise, Kolkata)

M/s S.Chatterjee & Sons (India) Pvt. Ltd.

(33, Chittaranjan Avenue, 2nd Floor, Kolkata-700012)

Appellant

VERSUS

Commissioner of CGST & Central Excise, Kolkata

(180, Shantipally, Rajdanga Main Road, Kolkata-700107)

Respondent

APPEARANCE :

Shri Arun Kumar Agarwal & Ms.Pinky Khemka, both Chartered Accountants for the Appellant

Shri D.Sue, Authorized Representative for the Respondent

CORAM:

HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.77931/2025

DATE OF HEARING : 10 DECEMBER 2025

DATE OF PRONOUNCEMENT : 16 DECEMBER 2025

Per Ashok Jindal :

This is an appeal filed by the appellant against the impugned order wherein demand of service tax has been confirmed against the appellant.

2. The facts of the case are that the appellant is engaged in the business of laying and repair of electric cables along with or under roadside for and on behalf of Calcutta Electricity Supply Corporation (CESE). The CESE is a power production as well as a power transmission and distribution Company. In executing the said work, the appellant is required to carry out various allied works i.e. High Tension

Service Tax Appeal No.75962 of 2017

Construction, laying of pipes and shifting of cables drums and materials, cable joining works and posting of watchmen. These allied works and activities are incidental to the main activity of laying cables.

2.1 An investigation was initiated against the appellant by the Departmental Officers by issuance of summons dated 13.11.2015. On 08.01.2016, one Shri Abhas Kumar Chatterjee, appeared before the Department and his statement was recorded. He also submitted various details and documents.

2.2 Suddenly, the show-cause notice was issued to the appellant seeking demand of service tax on the almost entire income of the appellant as well as on the amount received from CESE on account of PF reimbursement.

2.3 The matter was adjudicated. The demand of service tax was confirmed.

2.4 Being aggrieved with the said order, the appellant is before us.

3. The Id.Counsel for the appellant submits that the transmission or distribution of electricity by an electricity transmission or distribution utility falls under Clause (k) of Section 66D of the Finance Act, 1994 (Negative List of Services) is, therefore, not liable to pay service tax. It is further submitted by the Id.Counsel that whatever tax they have recovered from the service recipient, the appellant has paid more than that to the Department. It is further submitted that the excess payment of tax paid by the appellant does not liable to be taxed as the service tax is under negative regime as per Clause (k) of Section 66D of

Service Tax Appeal No.75962 of 2017

the Finance Act, 1994 under Notification No.45/2010-ST dated 20.07.2010.

4. On the other hand, the Id.A.R. for the Revenue reiterated the findings of the impugned order.

5. Heard both the parties and considered the submissions.

6. We find that a short issue involved in this case is that the works contract service provided by the appellant to CESE for transmission or distribution of electricity is liable to service tax or not ?

7. We find that the transmission or distribution of electricity is exempted by way of Notification No.45/2010-ST dated 20.07.2010 and Sl.No.29 (h) of Notification No.25/2012-ST dated 20.06.2012, wherein exemption for works contract service provided by the appellant by the sub-contractor, is allowed as the transmission or distribution of electricity by an electricity transmission or distribution utility falls under Clause (k) of Section 66D of the Finance Act, 1994.

8. In view of this, we hold that whole of the activity undertaken by the appellant was not taxable service. Accordingly, the service tax is not liable to be paid by the appellant.

9. We further take note of the fact that the appellant has collected service tax from the service recipient but the same have deposited to the department and the same is not required to be refunded to the appellant. Further, the appellant has paid excess service tax to the Department. The same is required to be refunded to the appellant.

10. In view of this, we hold that as the appellant is not liable to pay service tax, therefore, the appellant is entitled to get refund of the

Service Tax Appeal No.75962 of 2017

excess payment of service tax paid by them, over and above recovered from the service recipient.

11. In view of the above, the appeal is disposed off.

(Pronounced in the open court on **16.12.2025**)

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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