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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75785 of 2017

(Arising out of Order-in-Appeal No. 279/ST-II/KOL/16-17 dated 20.02.2017 passed by the Commissioner of Central Excise (Appeals-II), Kolkata, Bamboo Villa, 3rd Floor, 169, A.J.C. Bose Road, Kolkata – 700 014)

M/s. Abdul Electricals **: Appellant**
Hakim Manjil, 39, Rifle Range Road,
Kolkata – 700 019

VERSUS

Commissioner of Service Tax **: Respondent**
Kendriya Utpad Shulk Bhawan, 3rd Floor,
180, Shantipally, Rajdanga Main Road,
Kolkata – 700 107

APPEARANCE:

Ms. Hemlata Modi, Advocate, for the Appellant

Shri Debapriya Sue, Authorized Representative, for the Respondent

CORAM:

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

FINAL ORDER NO. 75249 / 2026

DATE OF HEARING / DECISION: 05.02.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against the Order-in-Appeal No. 279/ST-II/KOL/16-17 dated 20.02.2017 whereby the demand of Service Tax of Rs.21,80,393/- (inclusive of cesses), for the periods 2007-08 and 2011-12, along with interest under Section 75 of the Finance Act, 1994 and penalties under Sections 77 and 78 of the said Act, as confirmed in the Order-in-Original No. 36/ADC/ST/KOL/2013-14 dated 21.03.2014, has been upheld.

2. During the course of hearing, the appellant submitted that during 2007-08, they were rendering services under the category of 'maintenance and repair service' and 'works contract service'.

2.1. It is the appellant's submission that they have paid Service Tax on the taxable value of Rs.3,55,671/- in respect of 'maintenance and repair service' for the second half of the Financial Year 2007-08. The appellant thus contends that they have appropriately discharged their Service Tax liability under the category of 'maintenance and repair service' for the period 2007-08.

2.1. Regarding the demand of Service Tax under the category of 'works contract service' for the Financial Year 2007-08, it has been submitted by the appellant that they have already discharged Service Tax @ 4% for the period from October, 2007 to November, 2008 and @ 2% for March, 2008, by availing the benefit of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 ['The Composition Scheme' for short]; however, the instant Show Cause Notice has demanded Service Tax @ 12.36% by denying the benefit available under the Composition Scheme, on the ground that the appellant had not exercised the option in terms of Notification No. 32/2007-S.T. dated 22.05.2007. In this regard, the appellant submits that if the benefit of the Composition Scheme is extended to them, then no Service Tax liability remains payable by them on the works contract service for the period 2007-08. They also argued that non-exercising the option to avail the composition scheme is merely a procedural irregularity, for which the substantive benefit of concessional rate of duty eligible for the appellant under the said scheme should not be denied for the works contract services rendered.

2.2. Regarding the demand of service tax for the period 2011-12, the appellant's submission is that they have already made payment to the tune of Rs.10,46,530/- as Service Tax, along with interest of Rs.1,83,313/- out of their total liability for the said period amounting to Rs.11,53,324/-, which has also been acknowledged by the lower authorities. In this regard, the appellant claimed that they have also made a payment of Rs.1,10,963/-, which was not taken cognizance of by the lower authorities while calculating the demand for the period 2011-12.

3. On the other hand, the Ld. Authorized Representative of the Revenue reiterated the findings in the impugned order. Accordingly, he justified the demands raised against the appellant.

4. Heard both sides and perused the records of the case.

5. We find that the demand of Service Tax in this case has been confirmed under the categories of 'maintenance and repair service' and 'works contract service', for the periods 2007-08 and 2011-12.

5.1. In respect of the 'maintenance and repair service' rendered during the period 2007-08, we observe that the appellant had quantified the taxable value for the second half of the said financial year as Rs.3,55,671/- whereas the Show Cause Notice had quantified the taxable value under the said category as Rs.3,83,671/-. We find that the Ld. Commissioner, in the adjudication order, has accepted the quantification of the appellant on this count and confirmed the liability of Service Tax under 'maintenance and repair services' for the period 2007-08 as Rs.3,55,671/-. The appellant claims that they have already discharged Service Tax on the taxable value of Rs.3,55,671/-. Thus, in view of the above submissions made, we find that there is no short payment of Service Tax under the category of 'maintenance and repair service' for the period 2007-08. However, the appellant has failed to produce any evidence in support of their above claim. Considering the above, we hold that the appellant has rightly paid Service Tax in respect of 'maintenance and repair services' for the period 2007-08 and no short payment of Service Tax can be alleged in this regard, subject to verification of payment of Service Tax on Rs.3,55,671/- as claimed by the appellant.

5.2. For the demand under the category of 'works contract service' for the period 2007-08, it is observed that the appellant have discharged their Service Tax liability under the said category at the rate of 4% for the period from October, 2007 to November, 2008 and at the rate of 2% for March, 2008 by availing the benefit of the Composition Scheme. However, the Show Cause Notice has been issued demanding Service Tax at the rate of 12.36% on the ground that the appellant was not entitled to avail the benefit of the Composition Scheme since they failed to exercise the option in terms of Notification No.32/2007-S.T. dated 22.05.2007. It is relevant to observe that during the period under dispute, 'works contract service' was a new service. The Composition Scheme was a facility which was extended to assesses as an option thereunder. Non-exercise of such an option could only be construed as a procedural irregularity. The substantial benefit of the said scheme cannot be denied to the appellant for not following the procedural requirement. It is well settled that the substantial benefit of a notification cannot be denied on account of procedural infractions, as has been held in a catena of decisions. Therefore, we are of the opinion that the appellant should not be denied the benefit of concessional rate of duty as provided under Notification No.32/2007-S.T. dated 22.05.2007, which is otherwise eligible for them. We take note of the fact that the appellant has already discharged Service Tax at the rate of 4% for the period from October, 2007 to November, 2008 and at the rate of 2% for March, 2008 under the said scheme. Thus, we do not find any short payment of Service by the appellant on this count. Accordingly, we hold that the appellant has rightly discharged their Service Tax liability in respect of the works contract services rendered under the Composition Scheme during the said period. Thus, we do not find any reason to sustain the demand confirmed in the impugned order on this score. Hence, the said demand is set aside.

6. As far as the demand confirmed for the period 2011-12 is concerned, we find that the appellant has not contested the said demand. In fact, from a perusal of the impugned order it can be seen that the appellant has already made a payment of Rs.10,46,530/- as Service Tax, along with interest of Rs.1,83,313/- against their total liability of Rs.11,53,324/- during the said period. The only claim of the appellant on this score, as per the records placed before us, is that they have made an additional payment of Rs.1,10,963/- for the period 2011-12, but the same has not been considered by the ld. adjudicating authority. Considering the above, we hold that there shall be no short payment of Service Tax for the period 2011-12 on the part of the

appellant, subject to verification of the above claim of additional payment by the appellant. The appellant is directed to produce evidence to substantiate their above claim before the adjudicating authority. Upon verification, if it is found that the said amount has already been paid by the assessee, then the same shall be appropriated towards their tax liability for the period 2011-12 and no further demand can be raised against the appellant on this count.

7. The appellant has also challenged the imposition of penalty under Section 78 of the Finance Act, 1994. In this context, we note that appellant has already paid a substantial amount of Service Tax towards their tax liability, along with interest, for the period under dispute. Further, as already observed in the preceding paragraphs of this Order, the demand raised under the category of 'works contract service' for the period 2007-08 does not survive. Therefore, taking a lenient view, we set aside the penalty imposed on the appellant under Section 78 ibid. However, considering the fact that the appellant failed to take registration during 2007-08 and/or submit their ST-3 Returns, we do not interfere with the penalty imposed under Section 77 of the Act.

8. The appeal is allowed on the above terms.

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

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

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

Sdd