IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH – COURT NO. 1
Service Tax Appeal No. 75998 of 2017

(Arising out of Order-in-Original No.155/PR.COMMR/ST-I/KOL/2016-17 dated 28.02.2017 passed by Commissioner of CGST & C EX, Kolkata)

M/s. Conelect Engineers and Contractors, **: Appellant**
33,Chittaranjan Avenue, 2nd Floor, Kolkata-700012

VERSUS

Commissioner of Service Tax, Kolkata **: Respondent**
180, Shantipally, Rajdanga Main Road, Kolkata-700107.

APPEARANCE:

Shri Arun Kr. Agarwal & Ms. Pinky Khemka, C.A. for the Appellant

Shri P.Das, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 75386/ 2026

DATE OF HEARING :05.02.2026

DATE OF DECISION:05.02.2026

Order : [Per Shri Ashok Jindal]

The appellant is in appeal against the demand of Service Tax for the period 2011-12 to 2014-15 of Service Tax of Rs. 1,51,21,364/-.

2. The facts of the case are that the appellant is engaged in business of laying and repair of electric cables along with or under the roadside for and on behalf of Calcutta Electricity Supply Corporation ('CESC' hereafter). CESC is an electricity transmission & distribution utility falls under clause (k) of Section 66D of the Finance Act, 1994 are not liable to Service Tax.

3. Revenue is of the view that as appellant is not a transmission and distribution entity and engaged in the work of repairs and installation. Therefore, they

are not entitled for benefit of Sec. 66 (D) (K) of the Finance Act, 1994.

4. We find that the said issue has been settled by this Tribunal in the case of Kusum Enterprises Vs. Commissioner of Central Excise and Service Tax, Guwahati-2022 (4) TMI 135 –CESTAT Kolkata wherein this Tribunal observed as under:

"*11. Heard both sides and perused the records of the case the main argument of the appellant appeared to be that the services undertaken by them are covered by the Serial No. 29 (h) of Exemption Notification 24/2012-ST dated 20.06.2012 and M/s APDCL and CAEDCL are covered under the definition of electricity transmission or distribution utility in terms of Clause 48 of Section 65 B (23) of Finance Act, 1994 and also that the services covered under the negative list of Clause 668 of the Finance Act, 1994, if they are liable to pay service tax M/s APDCL and CAEDCL would also be liable to pay 50% service tax on reversed charged mechanism in terms of Section 66B read with Notification 30/2012- ST dated 20.06.2012. Lastly, he claimed that in terms of Serial No. 29 (h) of Notification 25/2012-ST dated 20.06.2012 is squarely applicable. Leamed Appellate Commissioner has contends as follows and denies the exemption.*

In terms of para 29(h) of Notification No 25/2012-ST dated 20.06.2012 service provided by a sub-contractor by way of works contract to another contractor providing works contract services which are exempt, shall also be exempted. That means if the sub- contractor are helping the main contractors in providing exempted services falling under works *contract services, they are also exempted from service tax. Such exemption should also be considered for this service.*

Now in the services of Construction and shifting/ Erection/ Testing/Charging/ Commissioning of 11KV Line and 63 KVA S/S including augmentation etc. provided by M/s Kusum Enterprises to APDCL, components mentioned in Sec. 66D(k) are not available. Such construction is not a transmission or distribution service and secondly, it is not provided by transmission or distribution utility as defined in the Act. Section 66F(1) of the Finance Ac, 1994, very specifically provides that unless otherwise specified, reference to a service(herein referred to as main service) shall not include reference to a service which is used for providing main service. This section also gives an illustration to understand this concept, which is as under,

"The service by RBI, being the main service within the meaning of clause (b) of Section 66D, does not include any agency service provide or agreed to be provided by any bank to RBI. Such agency service, being input service, used by RBI for providing the main service, for which the consideration by way of fee or commission or any other amount is received by the agent bank, does not get excluded from the levy of service tax by virtue of inclusion of main service in clause (b) of negative list in section 660 and hence, such service is leviable to service tax.

12. We find that the appellant has submitted that the adjudicating authority treated the appellant as a "Contractor" but in fact he is not a "Contractor "but a

Sub-Contractor of APDCL; learned commissioner observes that the nature of services provided by the APDCL is "Transmission or distribution of electricity to various customers" whereas the appellant had provided the Erection, Commissioning and installation Services by way of shifting and installation of LT lines, construction of sub- station etc. provided by the appellant to APDCL, components mentioned in Sec 66D (k) are not available, such construction is not transmission or distribution service and the appellant was not a transmission or distribution utility as defined in the act. We find that the argument of the learned commissioner is not correct. The department fails to appreciate that the works undertaken by the appellants under contract from APDCL and CAEDCL are not in relation to exempted services provided by them. The word Sub-Contractor is not defined under Service Tax Law. Under the circumstances, one has to take the general meaning assigned to the same. In common understanding, the word 'sub-Contractor', refers to a person who performs a sub function of the main function of the Contractor. Indian Contract Act 1872 too does not define the sub-contractor. Section 2(h) of the Indian Contract Act 1872, defines a contract as an agreement which is enforceable by law. Thus when an agreement is not against the provisions of law it is a contract. All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void. When a notification exempts service by sub-contractor, it is to be understood in common parlance. We find that Hon'ble Supreme Court of India in the case between CCE, Meerut Vs

Modi Rubber Ltd, 2001(133) ELT 515 (SC) clearly stated that "Exemption Notification cannot be unduly stressed to produce unintended results in derogation of the plain language employed therein".

13. We find that there is force in the contention of the appellants that the Transmission and Distribution of Electricity in the hands of "APDCL/CAEDCL vis-a vis such specific customers" is covered under negative list u/s 66D (k) being naturally bundled as per provisions of section 66F (3) of the Finance Act 1994., all these impugned works contract activities of appellant are essential activities having direct and close nexus with transmission and distribution of electricity would be covered by the exemption and distribution of electricity extended under various notifications; therefore, the taxability of the related/ ancillary services are required to be given same treatment as is given to the single service, which gives such bundle its essential character, namely, transmission and distribution of electricity, moreover, one cannot think of transmission and distribution of electricity without impugned work contract services by the appellant. As long as the appellants are undertaking the activities in relation to the exempted services be as a contractor or a sub-contractor, the service provided by the appellant is not exigible to service tax

14. We find that the appellant claimed that their case can be considered as bundled service to arrive at the conclusion that it is in relation to the transmission and distribution of electricity. This issue of nexus between other works and the main activity (or say burndling of services) in relation to the transmission *and distribution of Electricity was dealt by Hon'ble High Court of Gujarat in the case of 2020 (34) GSTL 385 (Guj). Hon'ble Court observed that:*

18. Insofar as sub-section (1) of Section 66F is concerned, from the illustration provided thereunder, it is evident that while service by the Reserve Bank of India finds place in the negative list, by virtue of the illustration to sub-section (1) of Section 66F, it is provided that any agency service provided by any bank to the Reserve Bank of India would not stand included in the main service, as such agency service is used by the Reserve Bank of India by way of input service for providing main service and in respect of such service the concerned bank receives consideration and would not get excluded from the levy of service tax by inclusion of the main service in the negative list. Thus, in terms of the illustration, an input service would not be exempt from the levy of service tax merely because the main service is exempt. According to the respondents, this case at best would fall under subsection (1) of Section 66F of the Finance Act and would not be exempted. from levy of service tax. It has also been contended that as services in the negative list are not chargeable to tax, Section 66F would not apply to services falling in the negative list and, consequently, the benefit of bundling under Section 66F(3) would not be available.

19. Sub-section (3) of Section 66F of the Finance Act provides for the manner in which a bundled service is to be determined. Clause (a) thereof, which is relevant for the present purpose provides that if various elements of such service are naturally *bundled in the ordinary course of business, if shall be treated as provision of the single service which gives such bundle its essential character. The explanation thereof defines "bundled service to mean a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services.*

20. The facts of this case are required to be examined in the light of the above statutory provisions. In this case, we are concerned with transmission and distribution of electricity being the main services and application fee for releasing the connection for electricity; rental charges against metering equipment, testing fee for meters/transformers, capacitors etc., labour charges from customers for shifting of meters or shifting of service lines, charges for duplicate bills provided by DISCOMS to consumers being related services. The question is whether an element of provision of these services is combined with an element or elements of provision of the main service of transmission and distribution of electricity. As noticed earlier, the respondents have themselves treated such related/ancillary services as part of the main service of transmission and distribution of electricity for the pre-negative list regime. Apart, therefrom, considering this issue independently, reference may be made to certain provisions of the Electricity Act. Sections 43 and 45 of the Electricity Act, which are relevant for the present purpose, read as under :-

"43. Duty to supply on request (1) Save as otherwise provided in this Act, every

distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission: electricity. Electric plant has been defined under sub-section (22) of Section 2 of the Electricity Act to mean any plant, equipment, apparatus or appliance or any part thereof used for, or connected with, the generation, transmission, distribution or supply of electricity but does not include - (a) an electric line; or (b) a meter used for ascertaining the quantity of electricity supplied to any premises, or (c) an electrical equipment, apparatus or appliance under the control of a consumer.

22. Thus, any line which is used for carrying electricity for any purpose as well as any apparatus connected to any such line for the purpose of carrying electricity is mandatorily required to be provided to the consumer by the licensee. Moreover, any plant, equipment, apparatus or appliance or any part thereof used for, or connected with, the generation, transmission, distribution or supply of electricity, except for electric meter and any electrical equipment, apparatus or appliance under the control of a consumer fall within the ambit of electrical plant as defined under Section 2(22) of the

Electricity Act. Subsection (2) of Section 43 of the Electricity Act casts a duty upon the licensee to provide if required electric plant or electric line for giving electric supply to the premises. Therefore, providing electric line and electric plant are elements of service which are naturally bundled in the ordinary course of business, with the single service of transmission and distribution of electricity which gives the bundle its essential character. The only related service which does not fall within the ambit of the definitions of electric line and electric plant is the meter used for ascertaining the quantity of electricity supplied to any premises. However, insofar as installation of electricity meter and hire charges collected in respect of electricity meters are concemed, by the circular dated 7th December, 2010, the Government of India has clarified that supply of electricity meters for hire to the consumers is an essential activity having direct and close nexus with transmission and distribution of electricity and therefore, is covered by the exemption for transmission and distribution of electricity extended under the relevant notifications. Evidently therefore, all the services related to transmission and distribution of electricity are naturally bundled in the ordinary course of business of the petitioner and are required to be treated as provision of the single service of transmission and distribution of electricity which gives the bundle its essential character.

23. Besides, a perusal of the GERC Regulations indicates that the services which are sought to be taxed now are the services, which the petitioner is required to mandatorily provide at the rate prescribed by GERC, a statutory authority *constituted under the provisions of the Electricity Act. In the opinion of this Court, all these services are essential activities which have a direct and close nexus with transmission and distribution of electricity. In terms of the earlier clarification dated 7-12-2010 issued vide Circular No. 131/13-2010-S.T., the Government of India had clarified that an activity, which is an essential activity having direct and close nexus with transmission and distribution of electricity would be covered by the exemption for transmission and distribution of electricity extended under the relevant notifications. Therefore, the taxability of the related/ancillary services are required to be given same treatment as is given to the single service, which gives such bundle its essential character, namely, transmission and distribution of electricity.*

24. It has been contended on behalf of the respondents that sub-section (3) of Section 66F of the Finance Act would not apply where the single service which gives the bundle of services its essential character is exempt from the levy of service tax. In the opinion of this Court, there is nothing in the language employed in sub-section (3) to Section 66F to read into it a requirement that such service should not be exempt from tax. All that the subsection provides is that taxability of bundled services shall be determined in the manner provided therein. The term taxability means liability to taxation. Thus the term taxability would take within its sweep not being taxable also inasmuch as liability to taxation would also mean not being liable to any tax. Thus, the liability to tax of a bundled service has to be determined in the manner provided under sub-

section (3) of Section 66F of the Finance Act. If the services are naturally bundled in the ordinary course of business, the bundle of services shall be treated as provision of the single service which gives the bundle its essential character and where the services are not naturally bundled in the ordinary course of business, the same is required to be treated as provision of the single service which results in highest liability of service tax. Accordingly, where the services are naturally bundled in the ordinary course of business and the single service which gives such bundle its essential character is exempt from tax, the entire bundle will have to be treated as provision of such single service.

question would fall within the ambit of bundled services as contemplated under sub-section (3) of 25. Thus, insofar as the phase relating to the negative list regime is concemed, the services in which gives the bundle its essential character, namely, transmission and distribution of electricity Section 66F of the Finance Act, and would have to be treated in the same manner as the service and, would therefore, be exempt from payment of service tax.

In view of the above, we are inclined to accept the contentions of the appellant in this regard

15. We find that the appellants also claimed benefit under Entry No 12 of Mega Exemption Notification that the services provided by them were to the Government, a local authority or a governmental authority. 25/2012-ST dated 20.06.12 and Entry No 12A substituted by NN.09/2016-ST dated

01.03.2016 claiming Leamed Commissioner finds that

The appellant has also challenged the proceedings for denying them the benefit of exemption under Sr. No. 12 of the Notification No. 25/2012-ST dated 20.06.2012 They have argued that Mis APDCL should be deemed as a Governmental Authority. I find that the adiudicating authonty in its findings at para 16.16.1 of impugned order has held as under-

wholly owned by the Government of Assam. It was incorporated on the 23rd day of October, "M/s Assam Power Distribution Company Limited (APDCL) is a public limited company 2009 and has been registered under Indian Companies Act 1956 and it does not carry out ultimate aim of the company is to undertaken the electricity distribution, trading, supply in any function entrusted to a municipality under article 243 W of the Constitution. The the state of Assam or outside in accordance with provisions of applicable law an all activities ancillary or appurtenant thereto"

16. We find that learned adjudicating authority and appellate authority have convincingly brought out the concluded that it is a company registered under the companies act and not Governmental Authority, We fact that M/s APDCL/CAEDCL are not Governmental authority in view of the definition and have rightly find that the learned commissioner has correctly evaluated the status of the appellants and the activities undertaken by them and concluded correctly that the exemption under Entry No 12 of Mega Exemption Notification 25/2012-ST dated

20.06.12 and Entry No 12A substituted by NN.09/2016-ST dated 01.03.2016 is not available to the appellants. However, as we find that the appellants are eligible for exemption under Serial No. 29 (h) of Notification 25/2012-ST dated 20.06.2012, the acceptability or otherwise of other claims becomes superfluous.

17. Coming to the issue of limitation, we find that the appellants have registered themselves and they have not paid any service tax and moreover have been showing nil retums. Therefore, the Department had no occasion to consider the taxability of the service rendered by the appellants. Having suppressed / not disclosed material facts to the Department the appellants cannot take a plea that extended period cannot be invoked. Therefore, we find that extended period has been rightly invoked. Coming to the penalties, we find that penalty has been imposed correctly for the commission and omission on the part of the appellants. Therefore, we hold that extended period is rightly invoked. However, as we find that on merits, the appellants are eligible for exemption under Serial No. 29 (h) of Notification 25/2012-ST dated 20.06.2012, the issue of limitation does not affect the outcome of the case.

18. In the result, the appeal is partly allowed by way of remand."

5. We find that the issue is squarely covered by the decision of this Tribunal in the case of Kusum Enterprises. Therefore, we hold that the activity undertaken by the appellant of laying and repair of electric cables alongwith or under the road side for

and on behalf of CESC is not liable to pay Service Tax. In view of this whole of the demand by way impugned order is set aside.

6. In result, appeal is allowed with consequential relief, if any.

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

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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