IN THE CUSTOMS, EXCISE AND SERVECE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI
COURT NO. IV

APPEAL NO. ST/87233/15
ST/CO-92432/16

(Arising out of Order-in-Original No. 22/ST/COMMR/2015 dated 09.06.2015 passed by the Commissioner of Customs, Central Excise & Service Tax, Aurangabad.)

CCE, Aurangabad **Appellant**

Vs.

M/s Veena Electricals Pvt. Ltd. **Respondent**

Appearance:

Shri M.P. Damle, Assistant Commissioner (A.R.) for Appellant
None for Respondent

CORAM:

HON'BLE SHRI RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE SHRI RAJU, MEMBER (TECHNICAL)

Date of Hearing: 21.03.2018
Date of Decision: 09.05.2018

ORDER NO. A/86304/2018

Per: Raju:

This appeal has been filed by the Revenue against order of Commissioner rejecting the show-cause notice issued for rejection VCES-1 declaration filed by the respondent. Cross objection have also been filed by respondents.

2. Learned AR pointed out that the Commissioner has allowed the benefit of Notification No. 32/2010-ST dated 22.06.2010 for the period of 01.07.2010 onwards. Notification No. 32/2010-ST grants exemption to the taxable service of distribution of electricity service to distribute the power under the Electricity Act, 2003, the exemption is not available to every service provider. He argued that the respondent had entered into a contract for supply, erection and commissioning of 33/11 KV sub-station with MSEDCL (Maharashtra State Electricity Distribution Co. Ltd.). He argued that creation of sub-station done by notice cannot be equated with distribution of electricity. He argues that the activity not being the activity of transmission of power is not exempted. He further argued that one condition for eligibility of Notification No. 32/2010-ST is that the person providing the distribution of electricity should be registered as distribution licencee, a distribution franchisee, or any other person by whatever name called, authorised to distribute power under the Electricity Act, 2003 for distribution of electricity. He argued that the impugned order does not deal with this respect. He further argued that the impugned order wrongly placed reliance in the case of *M/s Shri Ganesh Enterprises – 2014 (35) STR 348 (Tri)*. As the said case related Notification No. 45/2010-ST dated 20.07.2010 and not with the Notification No. 32/2010-ST involved in the present dispute. He argued that Notification No. 32/2010-ST required the service provider to be registered as distribution licencee, a distribution franchisee, or any other person by whatever name called, authorised to distribute power under the Electricity Act, 2003 whereas it was not required for

availing Notification No. 45/2010-ST. Moreover the word "for" has been used instead of "in relation to" in Notification No. 32/2010-ST. He further argued that the decision in the case of *M/s Kadar Construction -2014-TIOL-2138-CESTAT-MUM* is not applicable to the facts of the case as the said decision dealt only aspect of the notification and not qualification of the person, in terms of Electricity Act, 2003.

3. None appeared for the respondent.

4. On perusal of the impugned order shows that the said order holds that the respondent was entitled to exemption under Notification No. 32/2010-ST, 11/2010-ST, 45/2010-ST for the period up to 01.07.2012. It also makes notes that the respondent has not dispute the tax liability for the period 01.07.2012 to 31.12.2012. Notification No. 32/2010-ST reads as follows:-

> *"In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as 'the said Finance Act'), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service provided to any person, <u>by a distribution licencee, a distribution franchisee, or any other person by whatever name called, authorized to distribute power under the Electricity Act, 2003 (36 of 2003),</u> for distribution of electricity, from the whole of service tax leviable thereon under section 66 of the said Finance Act."*

It can be seen to avail the benefit of Notification No. 32/2010-ST, the provider of service should be either a distribution licencee, a distribution franchisee, or any other person by whatever name called, authorized to distribute power under the Electricity Act, 2003, for distribution of electricity. We find that this aspect of the notification has not been examined in the impugned order. It is not to clear as how the respondent falls under this category. Thus the impugned order is not comprehensive to the extent. It is seen that review order does not challenge benefit of Notification Nos. 45/2010 and 11/2010 granted by the impugned order. The review order also does not challenge the applicability of CBEC Circular No. 123/5/2010-TRU dated 24.05.2010, the benefit of which has been granted to the respondents.

5. In this context it needs to be seen that if without availability of the benefit of Notification No. 32/2010-ST, solely on the strength of Notification Nos. 11/2010-ST and 45/2010-ST the declaration made by respondents is proper or not. The impugned order is therefore set aside and matter remanded for re-verification on above lines. Cross objection is also disposed off.

(Pronounced in Court on 09.05.2018)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

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