

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI**

APPEAL NO: ST/86939/2015

[Arising out of Order-in-Appeal No: KLH-EXCUS-000-APP-022-2015-16 dated 25th June 2015 passed by the Commissioner of Central Excise (Appeals), Pune – II at Goa.]

Sai Kedar Service *... Appellant*

versus

Commissioner of Central Excise, Customs & Service Tax
Goa *...Respondent*

Appearance:

Shri Sachin Chitnis, Advocate for appellant

Shri Dilip Shinde, Assistant Commissioner (AR) for respondent

CORAM:

Hon'ble Dr. D. M. Misra, Member (Judicial)

Hon'ble Shri C. J. Mathew, Member (Technical)

Date of hearing: 12/12/2018

Date of decision: 12/12/2018

ORDER NO: A/88104 / 2018

Per: Dr. D.M. Misra

This is an appeal filed against order-in-appeal no. KLH-EXCUS-000-APP-022-2015-16 dated 25th June 2015 passed by the Commissioner of Central Excise (Appeals), Pune – II at Goa.

2. Briefly stated that the facts of the case are that the appellant are registered with the service tax department for providing 'erection and commissioning or installation services' and 'maintenance or repair service' to M/s Maharashtra State Electricity Distribution and Supply Company Limited. On scrutiny of their ST-3 returns it was found that during the relevant period 2008-09 and 2009-10 service tax was not paid for the services rendered to M/s MSEDCL. Consequently, show cause notice was issued on 24/02/2011 for recovery of service tax of ₹ 4,73,581/- with interest and penalty. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order they filed an appeal before the Learned Commissioner (Appeals) who in turn rejected their appeal. Hence, the present appeal.

3. Learned Advocate for the appellant submits that during the relevant period they have provided services against works-contract to M/s MSEDCL, Ratnagiri Circle, MSECL, Chiplun Division, MSETCL, Chiplun. It is his contention that the entire service relates to transmission and distribution of electricity. It is his plea that even though, before the authorities below, they have claimed abatement under Notification No. 1/2006-ST dated 01/03/2006 and benefit under Notification No. 12/2003-ST dated 10/06/2003, however, they could not advance the argument that by virtue of Notification No. 45/2010-ST dated 20th July 2010, retrospective exemption, was allowed from payment of service tax for the period up to 26th February 2010. It is

his contention that since the provision of services rendered by them during the relevant period relate to distribution of electricity and, therefore, service tax demand confirmed against them is not sustainable, hence they may be given an opportunity to place the said plea before the adjudicating authority.

4. Learned Authorised Representative for Revenue reiterated the findings of the Learned Commissioner (Appeals). He submits that since the appellant has not raised the issue of eligibility under Notification No. 45/2010-ST dated 20th July 2010 before the authorities below, therefore the same could not be examined, hence, he has no objection in remanding the case.

5. Heard both the sides and perused the records.

6. *Prima facie* we find from the work-contract enclosed along with the appeal paper-book that the appellant are engaged in providing various services to Maharashtra State Electricity Distribution Company Ltd (MSEDCL), Ratnagiri and other places relating to distribution of electricity during the period 2008-09 and 2009-10. The said services are held to be not leviable to service tax by virtue of Notification No. 45/2010-ST dated 20th July 2010 in exercise of powers conferred by Section 11C of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994. Whether the appellant are eligible to the benefit of the said Notification or otherwise was not

raised before the authorities below and, therefore, the same was not examined. We are of the view, in the interest of justice, this issue needs to be analysed. Consequently, we set aside the impugned order and remand the matter to the adjudicating authority to examine whether the appellant are eligible to the benefit of the said Notification No. 45/2010-ST dated 20/07/2010.

7. The appeal is allowed by way of remand to the adjudicating authority.

(Pronounced in Court)

(C J Mathew)
Member (Technical)

(Dr. D.M. Misra)
Member (Judicial)

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