

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO. I**

Appeal No. ST/86332/2015

(Arising out of Order-in-Original No. KLH-EXUS-000-COM-015-14-15 dated 27.03.2015 passed by the Commissioner of Central Excise & Service Tax, Kolhapur).
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M/s S.K. Shah	Appellant
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Vs.

Commissioner of Central Excise & Service Tax, Kolhapur	Respondent
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Appearance:

Shri R.B. Pardeshi, Advocate	for Appellant
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Shri S.B. Mane, AC (AR)	for Respondent
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CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL) HON'BLE MR. P ANJANI KUMAR, MEMBER (TECHNICAL)

Date of Hearing: 20.12.2018

Date of Decision: 20.12.2018

ORDER NO. **A/88250 / 2018**

Per: Dr. D.M. Misra

Heard both sides.

2. This is an appeal filed against Order-in-Original No. KLH-EXUS-000-COM-015-14-15 dated 27.03.2015 passed by the Commissioner of Central Excise & Service Tax, Kolhapur.

3. Briefly stated the facts of the case are that the appellant during the relevant period rendered various taxable services namely, construction service, maintenance and repair service etc. to M/s Maharashtra State Electricity Distribution Company Ltd. (MSEDCL in short) during the period 01.4.2007 to 31.3.2012. Alleging that they have not paid the appropriate Service Tax, a show-cause notice was issued to them for recovery of the Service Tax not paid along with interest and penalty. On adjudication, the demand was confirmed with interest and penalty. Hence, the present appeal.

3. Learned Advocate Shri R.B. Pardeshi for the appellant submits that during the period in question, services were provided to MSEDCL in relation to transmission and distribution of electricity, hence covered by the Notification No. 45/2010-ST dated 20.7.2010, 11/2010-ST dated 27.2.2010 and 32/2010-ST dated 22.6.2010. Further, he submits that interpreting the aforesaid notifications, this Tribunal in the case of *Kedar Constructions Vs. Commissioner of Central Excise, Kolhapur – 2015 (37) STR 631 (Tri-Mum)* decided the issue in favour of the appellant.

4. Learned AR for the Revenue reiterates the findings of the learned Commissioner.

5. We find that by virtue of Notification No. 45/2010-ST dated 20.7.2010, transmission and distribution of electricity for the period upto February, 2010 has been retrospectively held to be not leviable to Service Tax in exercise of powers conferred by Section 11C of the Central Excise Act, 1944 read with Section 83

of the Finance Act, 1994. Subsequently, the transmission of electricity has been held exempted vide Notification No. 11/2010-ST dated 27.2.2010 and distribution of electricity under Notification No. 32/2010-ST dated 22.6.2010. The Notifications are reproduced as follows: -

“Notification No. 11/2010-ST

Exemption to services provided for transmission of electricity

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 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, by any other person for transmission of electricity, from the whole of service tax leviable thereon under section 66 of the said Finance Act.”

“Notification No. 32/2010-ST

Exemption to taxable service provided for distribution of electricity

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, by a distribution licensee, a distribution franchisee, or any other person by whatever name called, authorized to distribute power under the Electricity Act, 2003 (36 of 2003), for distribution of electricity, from the whole of service tax leviable thereon under section 66 of the said Finance Act.

2. This notification shall come into force on the date of its publication in the Official Gazette.”

“Notification No. 45/2010-ST

Electricity — Exemption to all taxable services relating to transmission of electricity till 26-2-2010 and distribution of electricity till 21-6-2010

Whereas, the Central Government is satisfied that a practice was generally prevalent regarding levy of service tax (including non-levy thereof), under section 66 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as ‘the Finance Act’), on all taxable services relating to transmission and distribution of electricity provided by a person (hereinafter called ‘the service provider’) to any other person (hereinafter called ‘the service receiver’), and that all such services were liable to service tax under the said Finance Act, which were not being

levied according to the said practice during the period up to 26th day of February, 2010 for all taxable services relating to transmission of electricity, and the period up to 21st day of June, 2010 for all taxable services relating to distribution of electricity;

Now, therefore, in exercise of the powers conferred by section 11C of the Central Excise Act, 1944 (1 of 1944), read with section 83 of the said Finance Act, the Central Government hereby directs that the service tax payable on said taxable services relating to transmission and distribution of electricity provided by the service provider to the service receiver, which was not being levied in accordance with the said practice, shall not be required to be paid in respect of the said taxable services relating to transmission and distribution of electricity during the aforesaid period.”

These notifications have been interpreted by this Tribunal in the case of *Kedar Constructions (supra)*. This Tribunal observed as follows: -

“6. As regards the demand for the period w.e.f. 27-2-2010, the said exemption is available if the taxable services are rendered for transmission of electricity. As held by the Hon’ble Apex Court in the case cited supra the expression “for” means ‘for the purpose of’. As per the definition of transmission (given in the Electricity Act, 2003), it covers a very wide gamut of activities including sub-station and equipments. Therefore, the various activities undertaken by the appellant, though classifiable under Commercial or Industrial Construction prior to 1-6-2007 or under works contract service on or after 1-6-2007, would be eligible for the benefit of exemption as held by this Tribunal in the case of *Noida Power Co. Ltd., Pashchimanchal Vidyut Vitran Nigam, Purvanchal Vidyut Vitran Nigam* and *Shri Ganesh Enterprises* cited supra. Therefore, the confirmation of Service Tax demand in respect of the construction, maintenance or repair activities undertaken by the appellant so far as it relates to the transmission/distribution of electricity cannot be sustained in law. As regards the other demands which has been confirmed in respect of construction of transformer station for the sugar factory or GTA service etc. the appellant is not disputing the tax liability and therefore, in respect of the other activities of the appellant which are not related to either transmission or distribution of electricity, the demands confirmed are upheld along with interest.”

6. In the result, we set aside the impugned order and allow the appeal with consequential relief, if any, as per law.

(Dictated and pronounced in Court)

(P. Anjani Kumar)
Member (Technical)

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