CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 87231 of 2015

[Arising out of Order-in-Original No: 28/ST/Commr/2015 dated 12th June 2015 passed by the Commissioner of Customs, Central Excise & Service Tax, Aurangabad.]

Commissioner of Customs, Central Excise & Service Tax
N-5 Town Centre, Cidco, Aurangabad – 431 030 …***Appellant***

versus

R D Magar
19 Jintoor Road, Opp: MSEB Division, Parbhani ***…Respondent***

WITH

(i) Service Tax Appeal No: 87232 of 2015 (Rachana Electricals), (ii) Service Tax Appeal No: 87234 of 2015 (Panchlinga Electricals), (iii) Service Tax Appeal No: 87235 of 2015 (Saibaba Engineering Works), (iv) Service Tax Appeal No: 87237 of 2015 (Gajanan Electricals), (v) Service Tax Appeal No: 87238 of 2015 (Pratibha Electrical Engineers), (vi) Service Tax Appeal No: 87239 of 2015 (Sham Electricals Stores), (vii) Service Tax Appeal No: 87240 of 2015 (Kalani Electricals), (viii) Service Tax Appeal No: 87241 of 2015 (Shravan Electrical Contractor), and (ix) Service Tax Appeal No: 87242 of 2015 (Sachin Electricals).

[Arising out of (i) Order-in-Original No: 33/ST/Commr/2015 dated 12th June 2015, (ii) Order-in-Original No: 34/ST/Commr/2015 dated 3rd July 2015, (iii) Order-in-Original No: 31/ST/Commr/2015 dated 12th June 2015; (iv) Order-in-Original No: 27/ST/Commr/2015 dated 12th June 2015; (v) Order-in-Original No: 20/ST/Commr/2015 dated 9th June 2015; (vi) Order-in-Original No: 21/ST/Commr/2015 dated 9th June 2015; (vii) Order-in-Original No: 23/ST/Commr/2015 dated 9th June 2015; (viii) Order-in-Original No: 32/ST/Commr/2015 dated 9th June 2015 and (ix) Order-in-Original No: 30/ST/Commr/2015 dated 12th June 2015 passed by the Commissioner of Customs, Central Excise & Service Tax, Aurangabad

APPEARANCE:

Shri Dilip Shinde and Shri O Shivadikar, Assistant Commissioner (AR) for the appellant

Shri SM Sayed, Consultant for the respondents

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLEDR SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO: A/85805-85814 / 2020

DATE OF HEARING: 22/08/2019
DATE OF DECISION: 23/07/2020

PER: C J MATHEW

These ten appeals filed by Commissioner of Customs, Central Excise & Service Tax, Aurangabad, on the direction of the competent reviewing authority in exercise of powers conferred under section 86(2) of Finance Act, 1994, arising from identical issues in proceedings, initiated under section 111 of Finance Act, 2013 within chapter VI enacted for dealing with the Service Tax Voluntary Compliance Encouragement Scheme, 2013, that were dropped by the adjudicating Commissioner, are disposed of by this common order after hearing Learned Authorized Representative and Learned Consultant appearing for the respondents who relies upon the decision of the Tribunal, rendered in identical circumstances, in *Commissioner of Central Excise, Aurangabad v. Narsinha Engineering Works [final order no. A/87075/2018 dated 16th July 2018 disposing of appeal no. ST/86736/2015]*, upholding the eligibility for exemption in notification no. 11/2010-ST dated 26th February 2010 without resort to notification no. 32/2010-ST dated 26th February relied upon in the adjudication, which appears to have been the cause of grievance to the reviewing authority for seeking appellate remedy. The submissions of Learned Authorized Representative shall, if not already covered by the decision cited, be taken up at the appropriate stage.

2. The respondents undertake 'erection, commissioning and installation' contracted by Maharashtra State Electricity Distribution Company Ltd, established by restructuring of Maharashtra State Electricity Board in accordance with the 'unbundling' mandated by Electricity Act, 2003 in pursuance of eliminating cross-subsidy, by, and across, the generation, transmission and distribution components, for determination of fair tariffs and recoveries in supply of electrical energy, and had registered themselves accordingly under Finance Act, 1994. Having opted to take recourse to the scheme of voluntary compliance of tax liability not discharged that was offered by the Government of India in 2013, M/s RD Magar filed declaration dated 26th December 2013, as prescribed in section 107(1) of Finance Act, 2013, and admitted to unpaid liability of ₹55,55,841 for the period

from October 2007 to December 2012. The said declaration took into account payment of ₹10,32,015 prior to the scheme and total tax liability of ₹65,87,856 was worked out after deducting ₹51,78,609, being the value attributable to tax paid by recipient of service after July 2012, from ₹6,74,46,827, the total value of services rendered during the period covered by the declaration.

3. It would appear from the records that scrutiny of the said declaration was followed by the show cause notice dated 17th December 2014 under section 111(1) of Finance Act, 2013 as the liability, including the undischarged, was, admittedly, computed on the gross value of taxable service rendered till 20th June 2012 netted for abatement permitted in notification no. 1/2006-ST dated 1st March 2006 instead of applying 'composition rate', intended for assessment of 'works contract service' in which, as alleged in the notice, segregation of the 'material component' is not in evidence, on ₹35,56,59,791 received for performance of service.

4. In their reply of September 2014 to communications from the jurisdictional tax authorities, the respondent claimed that receipts of ₹11,54,44,728, pertaining to distribution of electricity, was exempted in accordance with circular no. 123/5/2010-TRU dated 24th May 2010 of Central Board of Excise & Customs (as it then was) which was not taken cognizance of. The response of 16th December 2014 to another

communication from the tax authorities reiterating the claim and that the bills issued by them did segregate the material and service component was also not found acceptable.

5. The noticee pointed out the infirmity in enjoining the liability arising from performance of ‘works contract service’ instead of ‘erection, commissioning and installation service’ which they were registered under with eligibility to avail prescribed abatement towards cost of materials and, conceding that the said abatement had ceased with the rescinding notification no. 34/2012-ST dated 20th June 2012, contended that remaining liability could, at best, be limited to ₹7,46,300.

6. The adjudicating authority has held that the tax liability stood erased by notification no. 45/2010-ST dated 20th July 2010 which accorded retrospective exemption to services, upto 26th February 2010, in relation to ‘transmission of electricity’ and, upto 21st June 2010, in relation to ‘distribution of electricity’ beyond which notification no. 11/2010-ST dated 27th February 2010 and notification no. 32/2010-ST dated 22nd June 2010 respectively continued the exemption till these were rescinded by notification no. 34/2012-ST dated 20th June 2012.

7. The reviewing authority is not aggrieved by the rejection of the proposal in show cause notice to subject the receipts of the

respondents to tax as provider of ‘works contract service’ instead of ‘erection, commission and installation service’ and the appeal is limited to the inapplicability of notification no. 32/2010-ST dated 22nd June 2010 that has been relied upon by the adjudicating authority. Learned Authorized Representative drew our attention to The Electricity Act, 2003 and, in particular, to the definition of ‘distribution licensee’ and ‘distribution system’ for establishing that appellant was ineligible to avail the said exemption. We find, however, that the eligibility for exemption till 30th June 2012, under alternative notification no. 11/2010-ST dated 27th February 2010, and, under notification no. 45/2010-ST dated 20th July 2010, for the period prior to 26th February 2010, has been upheld by the Tribunal in *re Narsinha Engineering Works* thus

> *‘8.0 From the above it is quite evident that this tribunal has in similar circumstances extended the benefit of Notification No 45/2010-ST. However beyond 26.2.2010, the Notification No 11/2010-ST dated 26.2.2010 was not brought to the notice of the bench or the said notification has not been considered by the said bench, hence the order of bench in this aspect is sub-silentio, and for the period beyond 26.2 .2010 cannot be taken as binding precedent. In view of the exemptions contained in the notification No 11/2010-ST we are of the view that taxable services provided by the respondents to the M/s MSEDCL continue to remain exempted. For availing the benefit of the exemptions under notification No 11/2010-ST the service provider need not be 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). The said conditions are necessary only in case if the exemptions was being allowed under notification No 32/2010-ST. In the appeal filed by the department, revenue has contested the applicability of notification No 32/2010-ST without mentioning an iota of word in respect of notification No 11/2010-ST. Similar view has been expressed by the tribunal in case of M/s Kedar Constructions [2014-TIOL-2138-CESTAT-MUM]*
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>> *"6. From the reading of the above notification it is clear that all the services which are provided in relation to transmission of electricity are exempted. The transmission of electricity is carried out by the Maharashtra State Electricity Transmission Board and for transmission of electricity whatever services used, all the services are exempted under Notification No 45/10 and 11/10. This issue is no longer res integra as in the various judgements of this Tribunal which are cited by the Ld Counsel for the respondent, the issue has been decided. Accordingly, in orders are just and legal which do not need any interference. Accordingly, we uphold the impugned orders and dismiss Revenue's appeals."*

by applying that decision after taking into consideration the decision of the Tribunal in *Sudharshan Electricals Engineering Works [final order no. A/85724-85725/2018 dated 23rd March 2018]* and others expressing like opinion.

8. We find that the grounds preferred in the present appeals are also limited to the eligibility of the respondents to avail the benefit of a notification intended for exempting services rendered by distributors of electricity. The appeal has not disputed eligibility under the other notification, exempting services in relation to 'transmission of

electricity' which, as held by the Tribunal *supra*, extinguishes tax liability for the period prior to 30th June 2012. The impugned order has confirmed the liability for the period thereafter and found that the noticees therein had paid in excess of such amounts while making their declarations under the scheme. In view of these circumstances, we find no merit in the appeals of Revenue which are dismissed.

(Order pronounced in the open court on 23/07/2020)

(C J Mathew)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

**/as*