CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 85422 of 2017

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-216-16-17 dated 08.11.2016 passed by the Commissioner (Appeals-I), Central Excise, Pune)

Royal Electricals .... **Appellant**
Office No. 3, Mahada Commercial Complex,
Sant Tukaram Nagar, Pimpri, Pune- 411 018.

Versus

Commissioner of Service Tax-I, Pune .... **Respondent**
ICE House, 3rd Floor, 41A, Sassoon Road,
Opp. Wadia College, Pune- 411 001.

Appearance:

Shri Shankargouda S. Patil, Advocate for the Appellant

Shri Aditya Pratap Singh Parihar, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85897/2025

Date of Hearing: 05.06.2025

Date of Decision: 05.06.2025

Per: S.K. MOHANTY

Heard both sides and examined the case records.

2. Briefly stated, the facts of the case are that the appellants are engaged in providing the services under the category of 'erection, commissioning or installation service' and 'works contract service', defined under the Finance Act, 1994. For providing such taxable services, the appellants got themselves registered with the Service Tax department. During the disputed period, the appellants had entered into various contracts for providing the above category of services. During the course of audit, the department had observed that for provision of such taxable services, the appellants did not

discharge the Service Tax liability thereon. Accordingly, the show cause proceedings were initiated against the appellants, which culminated into the adjudication order dated 28.11.2014, wherein the original authority had confirmed Service Tax demand of Rs.13,65,704/- along with interest and also imposed penalties on the appellants. On appeal against the said adjudication order dated 28.11.2014, the learned Commissioner (Appeals) vide the impugned order dated 08.11.2016 has upheld confirmation of the adjudged demands and rejected the appeal filed by the appellants. Feeling aggrieved with the impugned order dated 08.11.2016, the appellants have preferred this appeal before the Tribunal.

3. Learned Advocate appearing for the appellant submitted that during the disputed period, the appellant was a sole proprietorship concern, which was taken over by M/s. Royal Power Turnkey Implements Pvt. Ltd., as per the deed of assignment entered into between them on 01.11.2011. He further submitted that during the disputed period, the appellants in the capacity of a proprietorship concern, had not engaged in providing any activities, which were liable for payment of service tax under the taxable category of erection, commissioning or installation service and works contract service. In this context, he has submitted the balance sheet as well the ST-3 returns, capturing the figures of provision of such service as 'Nil'. Furthermore, learned Advocate has also submitted that the department had not relied upon any purchase order issued by the contractees to the appellants and also had not referred to any invoices, which were allegedly issued by the appellants, claiming the receipt of the sale/contract proceeds from the service recipients. Thus, he contended that in absence of provision of any taxable services, the appellants shall not be liable to pay any service tax in respect of the alleged taxable services provided by them.

4. On the other hand, learned AR appearing for the Revenue reiterated the findings recorded in the impugned order. He has also referred to the annexure to the show cause notice (SCN) to state that the appellants, during the disputed period, had provided taxable services to their customers, for which they are liable to pay service tax.

5. On perusal of case records, more particularly the adjudication as well as the impugned order passed by the lower authorities, we find that no purchase orders or invoices were referred to therein to contend that the appellants, had in fact, provided the taxable services to their customers. Further, we also find that in the Annexure to the show cause notice dated 03.01.2014, the name of 'M/s. Royal Power Turnkey Implements Pvt. Ltd.', though was initially mentioned, but the same was manually overwritten to indicate the name of 'Royal Electricals'. Further, the said Annexure had also reflected that the payment received by the appellants towards provision of the service/goods had suffered VAT during the material time. Since, the appellants in the present case, was a proprietorship concern and the said concern was taken over by a Pvt. Ltd. Company and thereafter commenced the business under the name and style of such private limited company, it cannot be said that the appellants had provided any taxable service, as alleged in the SCN issued by the department. We also find that the department had not relied upon any specific documents/records to substantiate their stand that the appellants had provided the taxable service to their clients, for which they were required to discharge the service tax liability.

6. In view of the foregoing discussions, we are unable to concur with the views expressed by the learned Commissioner (Appeals) that the appellants should be liable to pay the service tax as confirmed in the adjudication order. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellant.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM