



सायुक्त (अपील) का कार्यालय, भारतीय वस्तु एवं सेवा कर और उत्पाद शुल्क :
 CENTRAL TAX APPEALS (APPEALS), CENTRAL GST & EXCISE



इकीर्णक तम नगर में एच- 21, प्लॉट 001 अंगण
 राजीव गान्धी रोड, New Connaught Place

संख्या: दिल्ली-257001

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इलिकट्टी, डाक प. सी. उद्योग :-

क) अपील संख्या / No. of Appeal	ए. संख्या / No.	दिनांक / Date
2015-16/2018/2016	18902515/0019-2018	14.03.2018

ख) अपील संख्या (Date of Appeal No.):

BHV-EXCL-S-100-APP-176-2017-18

अपील का दिनांक / Date of Appeal: **23.02.2018** / अपील करने की तिथि / Date of Appeal: **14.03.2018**

कुमार संतोष सायुक्त (अपील), राजकोट नगर, गुजरात
 Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

ग) अपीलकर्ता का पता / Address of the Appellant: श्री. क. एच. दुर्गा प्रसाद, एच. 21, प्लॉट 001, राजीव गान्धी रोड, नया अंगण, कान्नाउट प्लेस, दिल्ली - 110008

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घ) अपीलकर्ता & प्रतिवादी का पता / Address of the Appellants & Respondent: श्री. क. एच. दुर्गा प्रसाद, एच. 21, प्लॉट 001, राजीव गान्धी रोड, नया अंगण, कान्नाउट प्लेस, दिल्ली - 110008

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= ORDER IN APPEAL =

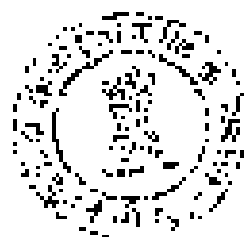
The Commissioner, Central Excise & Service Tax, Bhavnagar (hereinafter referred to as "Department") has filed the appeal against Order-in-Original No. 146/2024-ST/DT dated 16.03.2024 (hereinafter referred to as "impugned order") passed by the Assistant Commissioner, Service Tax Division, Bhavnagar (hereinafter referred to as "lower adjudicating authority") in the case against M/s. Central Builders A-33, Shastri Nagar, Nani Maya Road (New Address - 9/H, Shubham Complex, Talya Road, Kanti Alap Green City, Shanti Viharan Residency Road, Rajkot; (Registered address in GST regime - Plot No. 50, Viji Vatika, Karamanagar, Rajkot - 360 001) (hereinafter referred to as "respondent").

2. The facts of the case are that inquiry revealed that M/s. Gujarat Energy Transmission Corporation Limited (hereinafter referred to as "GETCO"); engaged in storage and transmission of electricity has received various services such as "Commercial or Industrial Construction Service", "Erection, Commissioning or Installation Service", "Works Contract Service", and "Management, Maintenance or Repairs Service" from the respondent during the period from FY 2006-07 to FY 2020-21. However the respondent had not paid service tax of Rs. 1,64,2024. Show Cause Notice No. 1413-288/ST/DT/2023-24 dated 13.04.2024 was issued to respondent demanding non-paid Service Tax of Rs. 1,64,2024 under section 75(2) of the Finance Act, 1994 (hereinafter referred to as "the Act"), to recover interest under Section 75 of the Act and to impose penalty under Section 71(a), Section 71(b) and Section 71 of the Act. The lower adjudicating authority vide impugned order dropped demand of Service Tax of Rs. 1,64,2024 and also dropped proposals of recovery of interest and imposition of penalty.

3. Being aggrieved with the impugned order, the department filed appeal, inter alia on the following grounds:

(i) The lower adjudicating authority has erred in interpreting Notification No. 45/2010-ST dated 20.07.2010 and considered "Commercial or Industrial Construction Service", "Erection, Commissioning or Installation Service", "Works Contract Service" and "Management, Maintenance or Repairs Service" carried out by the respondent as non-taxable as the same are not activities/services having direct relationship with generation or distribution of electricity.

(ii) The respondent has other business services has also providing services of civil works at staff quarters, GK Building, Extension wall, etc. which apparently has no direct and close nexus with transmission and distribution of electricity. The activity of



transmission and distribution of electricity can never be abetted by 09991 as in absence of said civil works/structures in any possible manner.

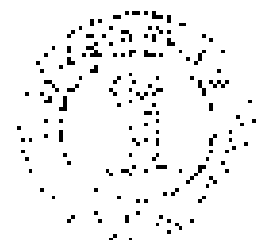
(ii) The lower adjudicating authority has interpreted Notification No. 45/2010-ST dated 20.07.2010 in a very literal manner and allowed exemption to subsidiaries/services of civil works at staff quarters, CR Buildings, Protection wall, etc. which are not directly related to transmission and distribution of electricity'. The lower adjudicating authority failed to consider CDEC Circular No. 121/2020-ST dated 07.12.2019 to clarify the scope of activity of transmission and distribution of electricity and also failed to appreciate clarification issued by CDEC vide D.O. No. 5049/2019 TRJ dated 01.07.2019.

(iii) Notification No. 45/2010-ST dated 27.07.2010 is parasitery to Notification No. 45/2010-ST dated 20.07.2010 and aforesaid clarification is very much applicable to it also. Thus, services which are being provided in relation to transmission and distribution of electricity are exempted from levy of service tax and not all services that have been rendered by the company which is engaged in transmission and distribution of electricity, which have no nexus with the above activities.

(iv) The lower adjudicating authority has failed to appreciate case-law in the cases of Panchsai Vidyalay Nigam Limited - 2015 (30) STR 295 (Trib. - Del.), Paveen Electrical Works - 2011 (22) STR 17 (Trib. - Jaisal.) M.P. Power Transmission Company Limited - 2011 (24) STR 10 (Trib. - Jaisal.)

(v) The lower adjudicating authority at Para-11 of the Impugned order has mentioned that C.A. No. 11/2013(DVT/SKS/Comm/A) dated 21.01.2013 passed by Commissioner (Appeals) has been accepted by the department. However, the lower adjudicating authority has failed to decide the merits of the present case as the nature and scope of the services in dispute in the present case are different from those in the earlier case. The lower adjudicating authority should have compared nature of each and every service provided by the respondent with respect to their nexus with transmission or distribution of electricity and should have given proper findings, before reaching at any conclusion.

4. Personal hearing in the matter was fixed on 25.07.2017, 09.08.2017, 12.09.2017, 13.10.2017, 02.11.2017, 11.12.2017, 12.01.2018 and 31.01.2018, however neither respondent nor department appeared even once hence sufficient opportunities have been given to the department as well as respondent and since the appeal filed by the department is pending since long, proceed to decide the case ex parte on merits on the basis of available records.



FINDINGS: -

5. I have carefully gone through the facts of the case, the impugned order and the grounds of appeal filed by the respondent. The issue to be decided is whether in the facts and circumstances of the present case, the impugned order disposing demand of service tax of Rs. 1,64,252/- along with interest in respect of service tax not paid by the respondent for "Commercial or Industrial Construction Service", "Erection, Commissioning or Installation Service", "Works Contract Service", and "Management, Maintenance or Repairs Service" provided to M/s. GETCO is correct or not.

6. I find that the respondent has neither filed Memorandum of Cross Objections concerning Grounds of Appeal nor submitted any reply to Appeal filed by the department. However, I find that the respondent has submitted reply to SCN that it was issued without jurisdiction. I find substantial force in the submission made by the respondent. The records of the case reveal that the respondent was having their office at Rajkot which is not falling within the jurisdiction of Service Tax Division, Bhavnagar Harve. I find that SCN has been issued without any jurisdiction over the respondent and accordingly SCN cannot be allowed to operate.

7. The department has contended that the lower adjudicating authority has considered "Commercial or Industrial Construction Service", "Erection, Commissioning or Installation Service", "Works Contract Service", and "Management, Maintenance or Repairs Service" carried out by the respondent as non-taxable under Notification No. 45/2013 ST dated 28.07.2013, whereas the said services are not having direct relationship with transmission or distribution of electricity and that the respondent has provided services at our works at state quarters, CR Building, Protection well, etc. which also have no direct and close nexus with transmission and distribution of electricity.

7.1 I would like to reproduce Notification No. 45/2013 ST dated 28.07.2013 for ease of reference, which is as under -

Whereas, the Central Government is satisfied that a practice was generally prevalent regarding levy of service tax (including cess and interest) under section 66 of the Finance Act, 1994 (89 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 came into force w.e.f. 01.01.2013 for all taxable services relating to transmission of electricity, and the period up to 31st day of June, 2013 for all taxable services relating to distribution of electricity;

Now, therefore, in exercise of the powers conferred by section 110 of the Central Finance Act, 1994 (11 of 1994), read with section 23 of the said Finance Act, the Central Government hereby directs that the service tax leviable 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 provision subject to the approval of the Board in respect of the said taxable services relating to transmission and distribution of electricity during the concerned period.

7.2 It could be seen that Notification No. 45/2010-ST dated 21.07.2010 provides retrospective exemption to all taxable services relating to transmission and distribution of electricity, w.e.f. upto 26.02.2010 for all taxable services relating to transmission of electricity and also provided exemption to all taxable services provided upto 21.03.2010 in relation to distribution of electricity. The language employed in the said Notification is clear and unambiguous as it provides exemption to all taxable services provided in relation to transmission and distribution of electricity. It is settled legal position that exemption notification is required to be construed strictly and when it is found that the meaning of notification is applicable to the case of the respondent, the same must be allowed to them and a notification needs to be construed with regard to the purpose and object for which it has been issued. My views are supported by the Hon'ble Apex Court in the case of Sarveshali Sugar Mills reported as 2011 (2) 49 ITR 143 (SC), wherein it has been held as under:

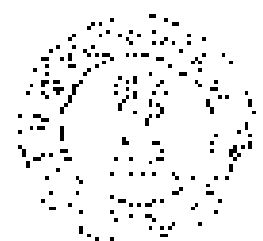
7. An exemption notification has to be strictly construed. The conditions for taking benefit under the notification are also to be strictly interpreted. When the wording of notification is clear, then the plain language of the notification must be given effect by way of interpretation or construction. The Court cannot add or substitute any word with a view to giving the notification wider or grant or deny exemption. The Courts are also not expected to stretch the words of notification or add or subtract words in order to grant or deny the benefit of exemption available to taxpayer. In Swamy (Saxena) (P) Ltd v. CCE (1995) 220 ITR 600 (SC) = 1995 (1) CTR 3 (SC), a three-judge Bench of the Court had made an exemption notification issued by government wrong, but even an error is bound to satisfy the test by which it falls in the notification. The error cannot be corrected by construing said notification narrowly.

(Emphasis supplied)

7.2 The Hon'ble Apex Court in the case of Mahar Industries Limited reported as 2005 (2) 15 EIT 214 (SC) has also held as under:-

10. An exemption notification should be read liberally. A person claiming benefit of an exemption notification must show that he satisfies the eligibility criteria. Once it is found that the exemption notification is applicable to the case of the assessee, the same should be construed liberally.

11.



17. A notification in any other provision of a statute must be construed having regard to the purpose and object it seeks to achieve. For the aforementioned purpose, the statutory scheme in some instances with a nullification been enacted should also be taken into consideration.

(emphasis supplied)


18. In view of the above, I am of the view that exemption from payment of service tax on all taxable services provided relating to transmission and distribution of electricity have been granted by the Central Government vide Notification No. 40/2013-ST dated 20.07.2013, than the demand of service tax on such services provided is not sustainable.

19. In view of above facts and figures, I do not find any infirmity in the impugned order passed by the lower adjudicating authority imposing demand of service tax on the services provided in relation to transmission and distribution of electricity and I uphold the same. Accordingly, I reject the appeal filed by the department.

20. आपलें अपील ह्या रान तो पद इतरोन खोत का निरप त्त त्पुन वीके व केला मत हे

3.1 The appeal filed by the department stands disposed off as above.

T. S. S. S.



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(अधीक्षक/अधीक्षक)

आयुक्त (श्रीगंगार)

By Regd. Post AD

2

(i) M/s. Central Builders,
8/11, Shreehari Complex,
Rajya Road, Near Anap Green City,
Shant Niketan Housing Road
Rajkot;

(ii) श्री शीतल बिल्डर्स,
अ. नं. ८/११ शुकुल
प्लॉट नं. ८/११, आनप ग्रीन सिटी कॉम्प्लेक्स,
शांत निकेतन वसतिगृह रोड,
राजकोट

(iii) M/s. Central Builders,
Plot No. 31 Vraj Vastika
Kalswad Road,
Rajkot - 360 007

(iv) श्री शीतल बिल्डर्स
प्लॉट नं. ३१, व्राज वास्तिका,
कालसाव रोड,
राजकोट - ३६० ००७

Copy to:

- 1: The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
- 2: The Commissioner, GST & Central Excise Commissionerate, Bhavnagar
- 3: The Assistant Commissioner, GST & Central Excise Division, Bhavnagar.
- 4: Guard file.

