

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH

Service Tax Appeal No. 57583 of 2013

(Arising out of Order-in-Original No. 34-ST-COMMR-DM-RTK-2012-13 dated 31.01.2013 passed by the Commissioner of Service Tax, Delhi-I)

M/s. KEC International Ltd.

.....Appellant

Plot No. 9, Tower A, 8th Floor,
DLF Cyber City, Phase III,
Gurgaon - 122002

versus

Commissioner of CGST,

.....Respondent

Gurugram, GST Bhawan,
Plot No. 36-37, Sector 32,
Gurgaon, Haryana 122001

AND

Service Tax Appeal No. 50041 of 2014

(Arising out of Order-in-Original No. 45-ST-COMMR-DM-RTK-2013-14 dated 10.09.2013 passed by the Commissioner of Service Tax, Delhi)

M/s. KEC International Ltd.

.....Appellant

Plot No. 9, Tower A, 8th Floor,
DLF Cyber City, Phase III,
Gurgaon, Haryana 122002

versus

Commissioner of S.T., Delhi

.....Respondent

MG Marg, IP Estate, 17B,
IAEA House, Delhi 110002

APPEARANCE:

Shri B.L. Narasimhan, Ms. Krati Singh and Ms. Priyanka Singla, Advocates
for the Appellant

Shri Saurav Goel, Special Counsel and Shri Bhasha Ram, Authorized
Representative for the Department

CORAM:

HON'BLE MR.JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

Date of Hearing: 18.08.2022

Date of Decision: 23.08.2022

FINAL ORDER No. 60120-60121/2022

JUSTICE DILIP GUPTA:

M/s KEC International Ltd.¹ has filed to the two appeals to assail the orders dated 31.01.2013 and 10.09.2013 passed by the Commissioner, Central Excise, Rohtak whereby the demands of service tax raised in the show cause notice dated 03.05.2012 (for the period from 01.06.2007 to 31.03.2011) and the show cause notice dated 19.10.2012 (for the period 2011-12) have been confirmed with penalty.

2. The appellant is engaged in the manufacture of power transmission towers and parts and accessories. The appellant is also engaged in the supply of such towers, parts and accessories and erection, commissioning and installation of such towers. It was allotted two separate contracts by various Electricity Distribution Authorities². The first one was for ex-works supply of parts of towers manufactured as per the designs provided by EDAs and the second was for setting up of transmission line which included erection and installation of towers, for which, goods such as conductors, insulators were provided by EDAs. The appellant discharged excise duty and VAT on the sale price of the parts of towers sold to EDAs under the first contract. For the second contract, the appellant was using materials such as concrete, reinforcement steel, nuts, bolts etc. and was discharging its service tax liability under works contract services.

3. The department issued a show cause notice dated 03.05.2012 for the period 01.06.2007 to 31.03.2011 alleging that the value of towers/parts supplied by the appellant under the first contract should have been added to the value of the second contract for determining the service tax liability. It was also alleged that the appellant had

1. the appellant
2. EDAs

artificially split the two contracts to evade the payment of service tax. This show cause notice was adjudicated by order dated 31.01.2013 confirming the demand levied in the show cause notice.

4. In continuation of the above proceedings and on the basis of the allegations contained in the show cause notice dated 03.05.2012, another show cause notice dated 19.10.2012 for the period 2011-12 was issued to the appellant. This was adjudicated by order dated 10.09.2013 and the proposed demand was confirmed.

5. The appellant has filed the present appeals feeling aggrieved by the orders dated 31.01.2013 and 10.09.2013.

6. Shri B.L. Narasimhan learned counsel for the appellant made the following submissions:

- (i)** The supply contract and erection contract cannot be construed as a single contract. The different clauses of both the contracts clearly show that the parties intended to execute two separate and independent contracts for the supply of towers and erection;
- (ii)** In any case, the service for transmission of electricity was exempted for the entire relevant period by virtue of notification dated 20.07.2010 (till the period of 26.02.2010) and notification dated 27.02.2010 (w.e.f. 27.02.2010) and, therefore, so far as the activities undertaken by the appellant are concerned, no service tax is payable as these activities are towards the erection of transmission lines;
- (iii)** Cross fall breach clause does not make the two contracts interdependent;
- (iv)** Inclusion of value of materials can be done only in respect of contracts for the period subsequent to 07.07.2009;
- (v)** The extended period of limitation could not have been invoked in the facts and circumstance of the case; and
- (vi)** Penalty could not have been imposed.

7. However, learned counsel fairly also stated that only the

submission with regard to the exemption notifications dated 20.07.2010 and 27.02.2010 can be considered by the Bench at this stage and if this issue is decided against the appellant, then the appellant would make submissions on the remaining contentions.

8. Shri Saurav Goel learned special counsel appearing for the department however supported the impugned orders and submitted that they do not call for any interference in the appeals. Learned special counsel submitted that the appellant was not entitled to take the benefit of the two notifications dated 27.02.2010 and 20.07.2010 and that the cases relied upon by the appellant are not applicable to the facts of the present case. In support of the contention, learned counsel relied upon the following decisions:

- (a) **Commissioner of Central Excise & Service Tax, Ghaziabad Appellant versus M/s Shiv Shankar Electricals & Contractors³;**
- (b) **M/s Electric Supply Co. Ltd. versus Commissioner of Central Excise, Noida and Vice-Versa⁴;**
- (c) **M/s Kalapatru Power Transmission Ltd. versus C.C.E. & S.T.-Ahmdabad-III⁵;**
- (d) **M/s K Ramachandra Rao Transmission & Projects Pvt. Ltd. versus Commissioner of Service Tax, Hyderabad (Vice-Versa);**
- (e) **Variegate Projects Pvt. Ltd. versus CST, Hyderabad-ST⁶;**
- (f) **M/s S.K. Shah versus Commissioner of Central Excise & Service Tax, Kolhapur⁷;**
- (g) **M/s Ranjit Singh & Company Ltd. versus Principal Commissioner, Central Excise and Service Tax Commissionerate Meerut⁸;**
- (h) **M/s GEE CEE Metals Pvt. Ltd. versus**

3. 2018 (11) TMI 1642 - CESTAT Allahabad
 4. 2018 (8) TMI 361 - CESTAT Bangalore
 5. 2019 (7) TMI 503 - CESTAT Ahmedabad
 6. 2019 (2) TMI 764 - CESTAT Hyderabad
 7. 2019 (2) TMI 1103 - CESTAT Mumbai
 8. 2022 (3) TMI 1257 - CESTAT Allahabad

Commissioner of Central Excise and Service Tax, Meerut (Uttar Pradesh)⁹;

(i) M/s Deepak Cables (India)Limited versus The Commissioner of Central Tax, Bangalore¹⁰;

(j) M/s Perfect Electricals C/o. Mescom, M/s Jayadeva Electricals versus Commissioner of Central Excise, Customs and Service Tax; and

(k) KEC International Ltd. versus Commissioner of Service Tax Mumbai-VII¹¹.

9. The submissions advanced by the learned counsel for the appellant and the learned special counsel appearing for the department have been considered.

10. At this stage only the submission raised by the learned counsel for the appellant that the services provided by the appellant are exempted under the two notifications dated 20.07.2010 and 27.02.2010 is being considered.

11. Learned counsel for the appellant submitted that the service for transmission of electricity was exempted for the entire relevant period by virtue of the notification dated 20.07.2010 (till the period of 26.02.2010) and the notification dated 27.02.2010 (w.e.f. 27.02.2010) and, therefore, so far as the activities undertaken by the appellant are concerned, no service tax is payable as these activities are towards the erection of transmission lines and hence, are exempted.

12. To appreciate this submission, it would be appropriate to refer to the two notifications dated 20.07.2010 and 27.02.2010 and they are as follows:

"Notification No. 45/2010-ST dated 20/07/2010

Regarding levy of service tax on all taxable

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- 9. 2019 (8) TMI 1690 – CESTAT New Delhi**
10. 2018 (6) TMI 673 – CESTAT Bangalore
11. 2019 (9) TMI 1531 – CESTAT Mumbai

services relating to transmission and distribution of electricity

G.S.R. (E).- 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".

"Notification No. 11/2010-S.T. dated 27.02.2010

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

13. To appreciate the submissions it would also be appropriate to reproduce the allegations contained in the show cause notice as also the reply filed by the appellant.

14. The relevant portion of the show cause notice dated 03.05.2012 is reproduced below:

"10.3 In order to provide the taxable services of Transmission/Distribution of electricity, a number of other taxable services are used by the EDAs. These taxable services, like 'Works Contract Services' in the present case, are Input services for the EDAs which can be used by them to provide the Output services of Transmission/Distribution of electricity and the EDAs can avail CENVAT credit of ST paid on these Input services, if otherwise admissible. These Input services, which are liable to ST in the hands of other service providers (like KEC, in the present case), would not become exempted under the referred Notifications by virtue of the phrase 'relating to' used in these Notifications because this phrase expands the scope of the taxable service of Transmission/Distribution of electricity but does not completely change its nature and character by bringing entirely different and distinct taxable services within its ambit. Further, the phrase 'relating to' used in these Notifications cannot be interpreted to mean 'used to provide or 'for use by any person to provide'."

15. The relevant portion of the reply filed by the appellant to the aforesaid allegation contained in the show cause notice are as follows:

"D.1 The notice submitted that vide Notification No. 45/2010-ST dated 20.07.2010, the Central Government exercising its powers under Section 11C of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 has granted exemption from service tax to all taxable services relating to transmission of electricity till 26.02.2010 and distribution of electricity till 21.06.2010. Thus as far as the period prior to 26.02.2010 is concerned, there is an unconditional exemption to all taxable services relating to

transmission of electricity and distribution of electricity. They mentioned that the aforesaid Notification has exempted all the services which are provided in relation to transmission and distribution of electricity. In the present case, it is not in dispute that the services provided by them have been used by EDAs in relation to transmission or distribution of electricity. Therefore, the services provided by the them have been exempted retrospectively and therefore no service tax is payable on such services. The further relied upon the judgment in the case of **Praveen Electrical Works vs. CCE, Belgaum**¹².

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D.3 That further, in terms of Notification No. 11/2010-ST dated 27.02.2010 unconditional exemption is granted to services provided for transmission of electricity for the period from 27.02.2010 onwards. The notice further mentioned that CBEC's Circular No. 131/13/2010- S.T., dated 7-12-2010 further clarified that renting of the meter qualifies for exemption under Notification No. 11/2010-ST. Thus, the intention of the government has always been to exempt all the services which are in relation to transmission of electricity. The activity of supply and construction of transmission lines is indispensable for providing the service of transmission of electricity and therefore is integral to the activity of transmission of electricity and is therefore exempt.

D.4 The Noticee further submitted that the exemption under Notification No. 45/2010-ST dated 20.07.2010 and Notification No. 11/2010-ST dated 27.02.2010 is an omnibus exemption as the said Notification does not exempt any particular category of taxable service but exempts "all taxable services relating to transmission of electricity and distribution of electricity". Thus whether or not the taxable services relating to transmission of electricity and distribution of electricity are classifiable under a particular category of taxable service under the provisions of Finance Act, 1994, the exemption is available under Notification No. 45/2010-ST dated 20.07.2010 and Notification No. 11/2010-ST dated 27.02.2010 if the condition is satisfied that the taxable

service in question is relating to transmission of electricity and distribution of electricity.

D.5 The Noticee submitted that this wide interpretation to be accorded to the interpretation of the term "relating to" also finds a place in the decisions of the Hon'ble Supreme Court.

16. The relevant portion of the order dated 31.03.2013 passed by the Commissioner is reproduced below:

32. KEC also contended that vide Notification No. 45/2010-ST dated 20.07.2010, the Central Government exercising its powers under Section 11C of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 has granted exemption from service tax to all taxable services relating to transmission of electricity till 26.02.2010 and distribution of electricity till 21.06.2010. Thus as far as the period prior to 26.02.2010 is concerned, there is an unconditional exemption to all taxable services relating to transmission of electricity and distribution of electricity. Since the services provided by them are in relation to transmission of electricity and distribution of electricity, the services provided by them have been exempted retrospectively and therefore no service tax is payable on such services. They Reliance placed the following judgements:

- Praveen Electrical Works v CCE, Belgaum, 2011 (22) S.T.R. 17 (Tri. - Bang.); and
- M/s Paschimanchal Vidyut Vitran Nigam Ltd. v. Commissioner of Central Excise, Meerut, 2012 (28) S.T.R. 412 (Tri. - Del.).

33. The above mentioned contention of M/s KEC is also not tenable stating that the various EDAs, to whom KEC are providing 'Works Contract Services', are themselves engaged in Transmission/Distribution of electricity, which are also taxable services under the Finance Act, 1994. All taxable services relating to Transmission/Distribution of electricity have been exempted retrospectively vide Notification No. 11/2010-ST dated 27-2-2010, Notification No. 32/2010-ST dated 22-6-2010 and Notification No. 45/2010-ST dated 20-7-2010.

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34. It is observed that in order to provide the taxable services of Transmission/Distribution of electricity, a number of other taxable services are used by the **EDAs**. These taxable services, like 'Works Contract Services' in the present case, are Input services for the EDAs which can be used by them to provide the Output services of Transmission/Distribution of electricity and the EDAs can avail CENVAT credit of Service Tax paid on these Input services, if otherwise admissible. These Input services, which are liable to Service Tax in the hands of other service providers (like **KEC**, in the present case), would not become exempted under the referred Notifications by virtue of the phrase 'relating to' used in these Notifications because this phrase expands the scope of the taxable service of Transmission/Distribution of electricity but does not completely change its nature and character by bringing entirely different and distinct taxable services within its ambit. **Further, the phrase 'relating to' used in these Notifications cannot be interpreted to mean 'used to provide' or 'for use by any person to provide'.**

17. As noticed above, the notification dated 20.07.2010 is in connection with exemption that can be availed for the period up to 26.02.2010 and the notification dated 27.02.2010 is for the period 27.02.2010 onwards.

18. A division bench of the Tribunal in **KEC International** dealt with contracts with 'electricity distribution authorities' for supply, and/or installation of 'transmission towers' between 01.10.2004 and 31.03.2009. In paragraph 7, the division bench rejected the contention of the department that the benefit of this notification would not be available to the appellant in the following manner:

"7. The impugned order did consider the plea of the noticee therein for the benefit of notification no. 45/2010-ST dated 20th July 2010 but concluded that exemption granted under section 11 C of Central Excise Act, 1944 is contingent upon non-levy due to practice

in the industry and that the assessee would not fall in that category. We take notice that the appellant herein had been discharging tax, either as provider of 'erection, commissioning and installation agency service' or as provider of 'commercial or industrial construction service' before paying the composition rate for 'works contract service' in 10 of the contracts with spillover into the period after this was made taxable. By the impugned proceedings, the jurisdictional tax authorities sought to place the assessment, and discharge of tax liability, by the appellant in jeopardy and, by part denial of the classification claimed by them as well as by inclusion of the value of the 'towers' in the assessable value, confirmed demand for the entire period of dispute to erase the discharge thereof. The appropriation of the amount paid till then is tantamount to deeming such payment to be a tentative deposit and not the final payment of tax. Revenue is not an appeal against the exercise undertaken by the adjudicating authority to bring the entirety of the disputed amount within the scope of a fresh demand under section 73 of Finance Act, 1994. Hence, the objection raised by the adjudicating authority for denying the benefit of notification issued under section 11 C of Central Excise Act, 1944 is not tenable and demand is liable to be set aside."

19. The division bench, thereafter, examined the notification dated 20.07.2010 particularly the expression, 'in relation to' and after placing reliance upon the decision of the Tribunal in **Kedar construction** and **Noida Power Company Ltd.** conclude that since the expression 'relating to' is very wide in its amplitude and scope, all taxable services rendered in relation to transmission/distribution of electricity would be eligible of the benefit of exemption under notification dated 20.07.2010 for the period upto 27.02.2010.

20. It would, therefore, be useful to reproduce the portion of the decision of the Tribunal in **Kedar construction** that was relied upon and it is as follows:

"5. We notice that out of the total demand confirmed of ` 2,04,14,368/-, bulk of the demand of ` 1,90,47,124/- pertains to Commercial or Industrial Construction service rendered to Maharashtra State Electricity Transmission Co. Ltd., Maharashtra State Electricity Distribution Co. Ltd., Sunil Hi-Tech, Suraj Constructions, V.B. Bhike, etc. for transmission of electricity. Vide Notification 45/2010-S.T., all taxable services rendered `in relation to' transmission and distribution of electricity have been exempted from the purview of Service Tax. The expression `relating to' is very wide in its amplitude and scope as held by the Hon'ble Apex Court in Doypack Systems P. Ltd. - 1988 (36) E.L.T. 201 (S.C.). Therefore, all taxable services rendered in relation to transmission/distribution of electricity would be eligible for the benefit of exemption under the said Notification for the period prior to 27-2-2010."

21. The decision of the Tribunal in **Kedar Construction** also considered the notification dated 27.02.2010 for the period 27.02.2010 onwards and held that since the exemption is available if the taxable services are rendered **for** transmission of electricity, the expression `for' would cover a very wide gamut of activities and, therefore, the activities undertaken by the appellant would be eligible to the benefit of a notification, as was held by the Tribunal in **Noida Power Company Limited**. The relevant portion of the decision of the Tribunal in **Kedar Construction** on this aspect is reproduced below:

"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.”

The appellant is, therefore, clearly entitled to the benefit of both the notifications dated 20.07.2010 and 27.02.2010.

22. A similar order dated 10.09.2013 was passed by the Commissioner and this order has been assailed in Service Tax Appeal No. 50041 of 2014.

23. The impugned orders dated 31.01.2013 and 10.09.2013 passed by the Commissioner cannot, therefore, be sustained and are set aside. Service Tax Appeal No. 57583 of 2013 and Service Tax Appeal No. 50041 of 2014 are, accordingly, allowed.

(Order pronounced **23.08.2022**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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CORAM:

HON'BLE MR.JUSTICE DILIP GUPTA, PRESIDENT

Date of Hearing: 18.08.2022

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ORDER

Order pronounced on 23.08.2022.

**(JUSTICE DILIP GUPTA)
PRESIDENT**