

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

SERVICE TAX Appeal No. 11865 of 2015-DB

[Arising out of Order-in-Original/Appeal No AHM-EXCUS-003-COM-002-15-16 dated 20.07.2015 passed by Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD-III]

Paresh H Thakkar

Balabhai Club, Opposite Civil Hospital, Bagwada Gate,
PATAN, GUJARAT-384265

.... Appellant

VERSUS

Commissioner of Central Excise & ST, Ahmedabad

Custom House, 2nd Floor,
Opp. Old Gujarat High Court, Navrangpura,
Ahmedabad, Gujarat-380009

.... Respondent

APPEARANCE :

Shri Bishan R. Shah, Chartered Accountant for the Appellant
Shri P. Ganesan, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)**

DATE OF HEARING : 25.07.2023

DATE OF DECISION : 12.09.2023

FINAL ORDER NO. 12009/2023

RAMESH NAIR :

The present appeal is filed by the appellant against the Order-in-Original No. AHM-EXCUS-003-COM-002-15-16 dated 20.07.2015 passed by the Commissioner of Central Excise, Ahmedabad -III.

2. Briefly stated the facts of the case are that on the basis of survey conducted to find out the non-payment/ evasion of service tax by the Service provider, it was noticed by the department that Appellant had provided 'Works Contract Service' to M/s Gujarat State Police Housing Corporation Ltd. (M/s GSPHCL), and other but had not paid the Service tax thereon. The matter was investigated and detailed documents were called for from the appellant under summons proceedings. From the copies of works orders, financial accounts and other documents submitted by the appellant and details of work done was narrated by appellant, it was alleged that appellant was engaged in providing Works Contract Services to their

clients. Accordingly, a detail Show Cause Notice dated 22.10.2012 was issued proposing to service tax demand under works contract services along with interest and also for imposing penalty. After due process of law, the adjudicating authority vide impugned order confirmed the service tax demand that has been raised in the Show Cause Notice. The adjudicating authority also imposed penalty in regard to the demands confirmed. Aggrieved by the impugned order, the appellant is now before this Tribunal.

3. Shri Bishan Shah, learned Chartered Accountant appeared and argued for the appellant. He submits that the services were mainly provided to Government Departments and the work undertaken related to Government Buildings either meant for residential or non-commercial purpose apart from public utilities.

4. He submits that Appellant has provided services to Gujarat State Police Housing Corporation for electrification of Jail and Residences of police officers. The services rendered to Gujarat State Police Housing Corporation are not taxable. The services rendered by the appellant are to Government Agencies and are for purposes which are not for commerce or Industry or any other business or profession. He placed reliance on the following decisions.

- (a) Ample Construction vs. CCE Rajkot –STA/12006/2014
- (b) DH Patel Vs. CCE, Surat -2023(4) TMI 920
- (c) RD Contractor Vs. CCE Anand 2023(2) TMI 946
- (d) Aravindra Electricals Vs. CCE Chandigarh – 2018(9)TMI 86

5. He also submits that the appellant is engaged in laying of wires generally and therefore the services rendered by appellant is not taxable as per the Circular 123/5/2010 dated 24.05.2010 and Circular No. 62/11/2003 dated 21.08.2003. He also placed reliance on following decisions.

- (a) CCE Vs. H.M. Satyanarayan Engineers -2018(8)TMI 736
- (b) Bansal Electric Works Vs. CCE & ST Noida (2017) 3 GSTL 65

6. He argued that the show cause notice was issued on 22.10.2012 and covers period 2007-08 to 2011-12. The present issue was interpretation in nature, therefore the extended period is wrongly invoked in the present matter. He placed reliance on following decisions.

- (a) Shanti Construction Vs. CCE Rajkot 2023(3)TMI 14
- (b) JS Katari Vs. CCE, Rajkot 2022 (11) TMI 633
- (c) Infinity Infotech Parks Vs. Union of India (2014) 36 STR 37

7. Shri P. Ganesan, learned Superintendent (AR) supported the findings in the impugned order.

8. We have carefully considered the submission made by both the sides and perused the records. We find that the case of revenue is that the electrical installation works undertaken by the appellant during the disputed period is to be classified under the Works Contract Service. For the purpose of ascertaining the taxability and classification of services it is necessary to analyze the definition of both the services. We firstly reproduce the definition 'Works Contracts Services' defined under Section 65(105)(zzzza) of Finance Act, 1994. That entry reads as under:

Taxable service means any services provided or to be provided to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

Explanation. — For the purposes of this sub-clause, "works contract" means a contract wherein, —

(i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and

(ii) such contract is for the purposes of carrying out, —

(a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or

(b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or

(c) construction of a new residential complex or a part thereof; or

(d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or

(e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects;"

From the above definition of Works contract we find that only erection, commissioning or installation of electrical and electronic devices are covered under the above entry. As per the analysis of above definition it is clear that

there must be installation of electrical devices or electronics devices. Whereas appellant are engaged in the business of electrical contractor for State Government and Semi-Governments Department. The nature of business of appellant is both, electrification and electrical material supply through tender from Government Department. In the present matter revenue nowhere provided any invoices or any documents by which it can be conclude that the appellant are engaged in erection, commissioning or installation of electrical and electronic devices. Further, general wiring contracts and fitting thereof are not covered under the above entry. Therefore we hold that the Service tax demand in the present matter not sustainable under works contract services on appellant's activity.

12. As regard the limitation issue argued by the appellant, we find that in the facts of the present case that firstly the issue involved is of pure interpretation of legal provisions and classification of services therefore, it cannot be said that the Appellant had any *mala fide* intentions and have suppressed any fact with intention to evade payment of service tax. It is also on record that the Appellant have represented the matter before department during the investigation of case. This clearly shows that there is no suppression or willful misstatement on the part of the Appellant. Further, Revenue has picked up the figures from the balance sheet and profit and loss account maintained by the assessee. In various decisions it stands concluded that when the income arising from various activities stand reflected in the said Balance Sheet, it cannot be said that there was any suppression or misstatement on the part of the assessee so as to invoke the longer period of limitation. Reference can be made to Tribunal's decision in the case of *C.S.T., New Delhi v. Kamal Lalwani* [[2017 \(49\) S.T.R. 552](#) (Tri. - Del.)], laying down that extended period is not invocable if services rendered are reflected in balance sheet and income tax returns and no evidence was produced that non-payment of duty was due to any *mala fide*. Reference can also be made to Hon'ble Allahabad High Court's decision in the case of *Commissioner of Central Tax v. Zee Media Corporation Ltd.* [[2018 \(18\) G.S.T.L. 32](#) (All.)]. The Hon'ble High Court observed that the show cause notice itself shows that every details was maintained by the assessee in usual course of business, the ingredients of proviso to Section 73(1) of the Finance Act, 1994, establishing any suppression of facts to

evade payment of tax cannot be held to be present and invocation of extended period of limitation was not correct on the part of the Revenue. In this circumstances charge of suppression or willful misstatement do not survive against the Appellant. Thus extended period of limitation is also not invocable in the present matter.

13. We are also unable to find any proof of intent to evade either from the show cause notice or from the impugned order. Mere omission or merely classifying its services under an incorrect head does not amount to fraud or collusion or willful misstatement or suppression of facts. The intention has to be proved to invoke extended period of limitation. Hon'ble Supreme Court has delivered the judgment in the case of *Larsen & Toubro* dated 20 August, 2015, prior to which there was no clear ruling that services which involved supply or deemed supply of goods could only be classified under Works Contract Service. Therefore, demand is time barred and, therefore, cannot sustain. For the same reason, the penalties imposed upon the appellant also cannot be upheld.

14. In view of above discussion and finding, we hold that the impugned order is required to be set aside and we do so. The appeal is allowed with consequential reliefs, if any, in accordance with law.

(Pronounced in the open court on 12.09.2023)

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

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