

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 1**

SERVICE TAX APPEAL NO. 51104 OF 2017

[Arising out of Order-in-Original No. 38-40/COMMR/ST/JBP/2017 dated 28.03.2017 passed by the Commissioner of Central Excise Jabalpur]

M/S KAILASH DEVBUILD INDIA PVT LTD

Appellant

818, Gulab Bhawan, Hathital,
Jabalpur, Madhya Pradesh

Vs.

**THE COMMISSIONER OF CENTRAL EXCISE,
JABALPUR, MADHYA PRADESH**

Respondent

Station Road, Napier Town, Jabalpur,
Madhya Pradesh

Appearance:

Present for the Appellant :	Shri Anil Mishra, Advocate
Present for the Respondent:	Ms. Jaya Kumari, Authorised Representative

CORAM:

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)**

Final Order No. 51681 /2023

Date of Hearing : 12/09/2023

Date of Decision: 22/12/2023

P V SUBBA RAO:

The Order in Original dated 28.3.2017¹ passed by the Commissioner of Central Excise, Jabalpur is assailed in this appeal by M/s. Kailash Devebuild India Pvt. Ltd.². This order decided the proposals made in three Show Cause Notices³ dated 20.10.2009 (covering the period 2004-05 to 2008-09), 4.5.2011 (covering the period 2009-10) and 18.10.2011 (covering the period 2010-11) and confirmed demands of service tax totaling Rs.2,40,48,132/-

1	Impugned order
2	Appellant
3	SCN

and imposed penalties under sections 76 and 77 and 78 of the Finance Act, 1994⁴.

2. We have heard Shri Anil Mishra, learned counsel for the appellant and Smt. Jaya Kumari, learned authorised representative for the Revenue and perused the records.

3. The undisputed facts of the case are that the appellant provided the service of erection of transmission line towers during the disputed period. According to the Revenue, this service is exigible to service tax under the head 'erection, commissioning and installation service' while according to the appellant, this service is fully exempted from service tax by Notification no. 11/2010-ST dated 27.2.2010 and for the period prior to this date, by a retrospective exemption given through Notification no. 45/2010-ST dated 20.7.2010 issued by the Government under section 11C of the Central Excise Act, 1944 made applicable to service tax matters by section 83 of the Finance Act.

4. A perusal of both these notifications shows that they exempted **all taxable services related to transmission of electricity**. The case of the appellant is the transmission towers which it had erected were for transmission of electricity and hence they are fully exempted. The case of the department is that erection of these transmission towers does not involve transmission of electricity and hence these services were not covered by the exemption as transmission starts after completion of the erection of these towers and making other connections. Therefore, the service

4 Finance Act

of erection of transmission towers is not exempted by the two notifications mentioned above.

5. We find that there is no dispute that the towers erected by the appellant were meant for transmission of electricity. The question as to whether such a service is covered as **taxable services related to transmission of electricity** under these notifications has been decided by this Tribunal in favour of the assessee in the following cases:

- a) **M/S. KEC International Ltd. vs. Commissioner, Gurgaon⁵**
- b) **M/S. KEC International Ltd. vs. Commissioner, Mumbai⁶**
- c) **M/S. Kedar Constructions vs. Commissioner, Kolhapur⁷**

6. In **KEC International vs. Commissioner, Gurgaon**, this Tribunal held as under:

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 Authorities. 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.

5 **2022(8)TMI992-CESTAT Chandigarh**
 6 **2019(9)TMI1531-CESTAT Mumbai**
 7 **2014(11)TMI336-CESTAT Mumbai**

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 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."

.....

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.”

22. 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.

7. Thus, the question is no longer *res integra* and it has been the consistent view in several precedent decisions that the

expression 'services relating to transmission of electricity' in the two notifications has a wide ambit and includes the services of installation of transmission towers for electricity and no service tax is payable.

8. The other submissions made by the appellant need not be considered since we find that the entire service tax is exempted as no service tax has to be paid by the appellant. Consequently, the penalties imposed under sections 76, 77 and 78 of the Finance Act also cannot be sustained.

9. The appeal is allowed and the impugned order is set aside with consequential relief to the appellant.

[Order pronounced on **22.12.2023**]

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)