

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI**

**PRINCIPAL BENCH – COURT NO.III**

**Service Tax Appeal No.50038 of 2017 (DB)**

[Arising out of Order-in-Appeal No.304 (AK)ST/JPR/2016 dated 23.08.2016 passed by the Commissioner (Appeals), Customs, Central Excise and Service Tax, Jaipur]

**M/s. Ishwar Metal Industries**

F-79-B, Road No.6, VKI Area,  
Jaipur (Rajasthan).

**Appellant**

Versus

**Commissioner of Central Excise and  
Service Tax,**

NCR Building, Statue Circle,  
C-Schem, Jaipur  
Rajasthan-302 005.

**Respondent**

**APPEARANCE:**

Ms. Kainaat, Advocate for the appellant.

Shri Manoj Kumar, Authorised Representative for the respondent.

**CORAM:**

**HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)**

**HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

**FINAL ORDER No.50051/2024**

**DATE OF HEARING:28.11.2023**

**DATE OF DECISION:16.01.2024**

**BINU TAMTA:**

1. The appellant has assailed the Order-in-Appeal No.304(AK)ST/JPR/2016 dated 23.08.2016 whereby the Commissioner (Appeals) confirmed the levy of service tax on the appellant.

2. The appellant is manufacturer of Iron Tesla, Transformer Tank etc. falling under Chapter Heading 73 and 85 of Central Exide Act and is having service tax registration in the category of "Business Auxiliary

Service". During the period 10.09.2004 to 15.06.2005, the appellant received contract from electricity companies for erection of Transmission Tower. Their work contract includes conducting route survey, erection of PCC Poles in alignment, including excavation of pit, including back – filing and Consolidation, fixation of Arms, MS Angle, MS Channel, Double Pole Line Structure Guard Packet and Porcelain Insulator, Erection of Lattice Tower, and Drawing of Wire etc.

3. During audit in the balance sheet for the Financial year 2004-05, the audit team observed that the assessee had shown income against Erection of Turnkey Project as they received contract from electricity companies and that "Erection, Commissioning or Installation of Plant, Machinery or Equipment" became liable to service tax w.e.f. 10.09.2004, and hence they were liable to pay the service tax amounting to Rs.4,46,030/- approx. w.e.f. 10.09.2004. Accordingly, show cause notice dated 4.08.2006 alleging that appellant is liable to pay service tax on the amount received towards labour charges for providing Erection Service during the period 10.09.2004 to 15.06.2015 was issued. The demand was upheld by the Adjudicating Authority vide order dated 31.12.2020 and also in appeal by the impugned order. Being aggrieved the appellant has preferred the instant appeal before this Tribunal.

4. The learned counsel for the appellant referred to the definition of "Commissioning or Installation" as defined in Section 65(28) for the period prior to 10.09.2004 "Erection, Commissioning or Installation" under Section 65(39a) from 10.09.2004 to 15.06.2005 and thereafter from 16.06.2005, which is as under:

**“(1) Section 65(28): (Prior to 10.09.2004)**

"Commissioning or Installation" means any service provided by a commissioning and installation agency in relation to

commissioning or installation of plant, machinery or equipment.”

**“(2) Section 65(39a): (From 10.09.2004 to 15.06.2005)**

“Erection, Commissioning or Installation” means any service provided by a commissioning and installation agency in relation to erection, commissioning or installation of plant, machinery or equipment.

**Note: Since 10.09.2004 “Erection” is added**

**(3) Section (39a): (From 16.06.2005)**

“Erection, Commissioning or Installation” means any service provided by a commissioning and installation agency in relation to:

- (i) erection, commissioning or installation of plant, Machinery or Equipment; or
- (ii) Installation of –
  - (a)Electrical and Electronic Devices, including wirings or fittings therefore;or
  - (b)xxxxxxxxxxxxxxxxx(f).”

5. The submission of the learned Counsel is that from the definitions, it is clear that Installation of Electrical and Electronic Devices including wiring or fittings have been inserted since 16.06.2005 and the appellant is paying service tax for the services provided by them with effect from 16.06.2005, as prior to the said date only Erection, Commissioning or Installation of plant, machinery, equipment was covered under taxable service.

6. On the other hand, the learned Authorised Representative for the Revenue has retreated the findings of the Authorities below.

7. Having heard both sides and having perused the records, we find that the issue arises for our consideration is whether the activity of the appellant is covered under Section 65(39a) prior to 16.06.2005.

8. From the amended definition of Erection, Commissioning or Installation w.e.f. 16.06.2015, the concept has been expanded as prior to the said date the definition did not cover any activity relating to Electrical and Electronic Devices. Installation of Electrical and Electronic Devices including wirings or fittings has been specifically added by virtue of the enactment of the Finance

Act, 2005 and since then appellant has been paying the service tax under this category. Reliance has been placed on the decisions of the Tribunal in **Power Best Electricals Ltd. Vs. CCE – 2008 (9) STR 497 (Tri.)**, **Rajeev Electricals Works Vs. CCE – 2008 (10) STR 494 (Tri.)** and **CCE Vs. Rajeev Electricals Works – 2010 (18) STR 705 (P&H)**. These decisions in clear words observed that Erection services were made taxable from 10.09.2004 and Electrical wiring or Installation of electrical fittings or devices was made taxable only pursuant to the enactment of Finance Act, 2005 on 14.05.2005.

9. In the present case we find from the records that the appellant undertakes Erection work for Vidhyut Vitran Nigam i.e., Erection of Transmission Line/Tower and the nature of activity involved therein includes conducting route survey, erection of PCC Poles in alignment, including excavation of pit, including back – filling and Consolidation, fixation of Arms, MS Angle, MS Channel, Double Pole Line Structure Guard Packet and Porcelain Insulator, Erection of Lattice Tower, and Drawing of Wire etc. In terms of the enlarged definition of Erection, Commissioning or Installation as provided in Finance Act, 2005, the activity undertaken by the appellant becomes taxable w.e.f. 16.06.2005 and for the said period the appellant has already paid the service tax of Rs.1,37,515/-. Both sides have also relied on the Circular No.123/5/2010-TRU dated 24.05.2010, which was issued to clarify the applicability of service tax on certain activities, the relevant para reads as under :

**"2. Scope of certain taxable services --**

**(ii)** Under 'Erection, commissioning or installation services', the activities relevant to the instant issue are (a) the erection, commissioning and installation of plant, machinery, equipment or structures; and (b) the installation of electrical and electronic devices, including wiring or fitting there for. Thus, if an activity does not result in emergence of an

erected, installed and commissioned plant, machinery, equipment or structure or does not result in installation of an electrical or electronic device (i.e. a machine or equipment that uses electricity to perform some other function) the same is outside the purview of this taxable service.”

Based on the foregoing, the following would be the tax status of some of the activities in respect of which disputes have arisen—

S.No.	Activity	Status
1.	Shifting of overhead cables/wires for any reasons such as widening/renovation of roads.	Not a taxable service under any clause of sub-section (105) of Section 65 of the Finance Act, 1994.
2.	Laying of cables under or alongside roads.	Not a taxable service under any clause of sub-section (105) of Section 65 of the Finance Act, 1994.
3.	Laying of electric cables between girds/sub-stations/transformer stations enroute.	Not a taxable service under any clause of sub-section (105) of Section 65 of the Finance Act, 1994.
4.	Installation of transformer/sub-stations undertaken independently.	Taxable service, namely Erection, Commissioning or Installation services [65(105)(zzd)]
5.	Laying of electric cables upto distribution point of residential or commercial localities/complexes.	Not a taxable service under any clause of sub-section (105) of Section 65 of the Finance Act, 1994.
6.	Laying of electric beyond the distribution point of residential or commercial localities/complexes.	Taxable service, namely 'Erection, Commercial or Industrial Construction' or 'Construction of Complex' service [Section 65(105)(zzq)(zzzh)], as the case may be.
7.	Installation of street lights, traffic lights flood lights, or other electrical and electronic appliances/devices or providing electric connections to them.	Taxable service, namely Erection, Commissioning or Installation services [65(105)(zzd)]
8.	Railway electrification, electrification along the railway track.	Not a taxable service under any clause of sub-section (105) of Section 65 of the Finance Act, 1994.

According to the appellant, he is covered under Serial No.1,2,3 and 5. The Department has not led any evidence to substantiate as to under which category, the activity of the appellant would fall under the aforesaid chart.

10. We thus conclude that the liability to tax arises only from 16.06.2005 consequent to the amendment enlarging the scope of the services relating to electrical fittings, wiring and other components and devices. Therefore, the demand on account of service tax, interest and penalty is unsustainable.

Since we have decided the issue on merits in favour of the appellant, the issue of extended period does not require any consideration.

11. The impugned order is set aside and the appeal is, accordingly allowed.

[order pronounced on 16<sup>th</sup> January, 2024 ]

**(Binu Tamta)**  
**Member (Judicial)**

**(P. V. Subba Rao)**  
**Member (Technical)**

Ckp.