

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA**

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75999 of 2014

(Arising out of Order-in-Original No. 101/Comm/ST/KOL/2013-14 dated 31.03.2014 passed by the Commissioner of Service Tax, Kolkata, Kendriya Utpad Shulk Bhawan, 3rd Floor, 180, Shantipally, Rajdanga Main Road, Kolkata – 700 107)

M/s. Damodar Ropeways & Infra Limited : **Appellant**
1/A, Vansittart Row,
Kolkata – 700 001

VERSUS

Commissioner of Service Tax : **Respondent**
Kendriya Utpad Shulk Bhawan, 3rd Floor,
180, Shantipally, Rajdanga Main Road, Kolkata – 700 107

AND

Service Tax Appeal No. 75760 of 2015

(Arising out of Order-in-Original No. 02/Commr/ST-I/Kol/2015-16 dated 30.04.2015 passed by the Commissioner of Service Tax-I, Kendriya Utpad Shulk Bhawan, 3rd Floor, 180, Shantipally, Rajdanga Main Road, Kolkata – 700 107)

M/s. Damodar Ropeways & Infra Limited : **Appellant**
1/A, Vansittart Row,
Kolkata – 700 001

VERSUS

Commissioner of Service Tax : **Respondent**
Kendriya Utpad Shulk Bhawan, 3rd Floor,
180, Shantipally, Rajdanga Main Road, Kolkata – 700 107

APPEARANCE:

Shri Ajay Sanwaria, Advocate for the Appellant

Shri R.K. Agarwal, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs.77023-77024 / 2024

DATE OF HEARING: 03.09.2024

DATE OF DECISION: 24.09.2024

ORDER: [PER SHRI K. ANPAZHAKAN]

There are two appeals filed by M/s. Damodar Ropeways & Infra Limited (hereinafter referred to as the 'appellant'). Service Tax Appeal No. 75999 of 2014 was filed against impugned Order-in-Original No. 101/Comm/ST/KOL/2013-14 dated 31.03.2014 passed by the Commissioner of Service Tax, Kolkata. Service Tax Appeal No. 75760 of 2015 was filed against impugned Order-in-Original No. 02/Commr/ST-I/Kol/2015-16 dated 30.04.2015 passed by the Commissioner of Service Tax-I, Kolkata.

1.1. As the issues involved in both the appeals are the same, they are taken up together for decision by a common order.

2. The facts of the case are that the appellant are registered under Service Tax for providing various categories of services such as Maintenance or Repair Services, Transport of Goods by Road, Erection, Commissioning and Installation Services, Works Contract Service, Survey and Map Making Service, Design Service, Commercial & Industrial Construction Service.

2.1. The Appellant was audited for the FY 2008-12, wherein certain Audit Objections were raised by the Audit group. Pursuant to the said objection, a Show Cause Notice No. 06/2014 through C. No. V(15) 320/ST-Adjn/Commr/13/38307 dated 10.01.2014 was issued by Commissioner of Service Tax, Kolkata Commissionerate on the following issues: -

Issue	Particular	Tax Demand
I	Demand of Service Tax on alleged operation and maintenance of the Ropeway from Deorali Bazar to Secretariat (Tashiling), at Gangtok provided to the Government of Sikkim	47,82,326
II	Demand of Service Tax on alleged operation and maintenance of the Ropeway at Trikut Hill, Deoghar, provided to the Government of Jharkhand	12,98,761
III	Demand of Service Tax on alleged operation and regular & periodic repair and maintenance including preventive maintenance of the battery operated vehicle and existing road train and prevailing track by providing license fee to the Science City Authority	1,36,398
IV	Demand of Service Tax on alleged operation and maintenance of external coal handling system consisting of 9.8 km long bi-cable Aerial Ropeway System at Heavy Water Plant (Manuguru) Khammam, Andhra Pradesh	36,23,317
V	Demand of Service Tax on Advances received against various Projects	4,42,565
VI	Demand of Service Tax on alleged work for operation and maintenance and repair of the Bridge at Jaleswar, awarded by SE railways	12,97,057
VII	Denial of Cenvat Credit utilized for discharging the Service Tax Liability, Tawang	2,92,081
VIII	Reversal of Cenvat credit on account of non-payment to supplier/contractor	16,67,815

2.2. Another Show cause Notice No. 70/2014 through C. No. V(15) 146/ST-Adjn/Commr/14/6506 dated 11.06.2014 was issued demanding service tax of Rs. 85,36,534/- for the period April 2012 to March 2013, as mentioned in the following table:

Issue	Particular	Tax Demand
I	Demand of Service Tax on alleged operation and maintenance of the Ropeway from Deorali Bazar to Secretariat (Tashiling), at Gangtok provided to the Government of Sikkim	12,61,083
II	Demand of Service Tax on alleged operation and maintenance of the Ropeway at Trikut Hill, Deoghar, provided to the Government of Jharkhand	16,84,673
III	Demand of Service Tax on alleged operation and regular & periodic repair and maintenance including preventive maintenance of the battery operated vehicle and existing road train and prevailing track by providing license fee to the Science City Authority	32,857
IV	Demand of Service Tax on alleged operation and maintenance of external coal handling system consisting of 9.8 km long bi-cable Aerial Ropeway System at Heavy Water Plant (Manuguru) Khammam, Andhra Pradesh	54,12,061
V	Demand of Service Tax under Reverse Charge Mechanism on Rent a cab, Security Service, Works Contract Service, Manpower Recruitment Service & Legal Services	1,45,860

2.3. Both the Notices were adjudicated wherein the Id. adjudicating authority has confirmed the demands of service tax, along with interest and penalty.

2.4 The breakup of the demands as per both the Orders-in-Original, in respect of the present appeals, is furnished below:

Appeal No(s): ST/75999/2014-DB
& ST/75760/2015-DB

Issue	Particular	Appeal No ST/75999/2014 Apr 08 to Mar 12	Appeal No. ST/75760/2015 Apr 12 to Mar 13
		Tax Demand	Tax Demand
1	Demand of Service Tax on alleged operation and maintenance & repair of the Ropeway from Deorali Bazar to Secretariat (Tashiling), at Gangtok provided to the Government of Sikkim	4,782,326	1,261,083
2	Demand of Service Tax on alleged operation and maintenance of the Ropeway at Trikut Hill, Deoghar, provided to the Government of Jharkhand	1,298,761	1,684,673
3	Demand of Service Tax on alleged operation and regular & periodic repair and maintenance including preventive maintenance of the battery operated vehicle and existing road train and prevailing track by providing license fee to the Science City Authority	136,398	32,857

4	Demand of Service Tax on alleged operation and maintenance of external coal handling system consisting of 9.8 km long bi-cable Aerial Ropeway System at Heavy Water Plant (Manuguru) Khammam, Andhra Pradesh	3,623,317	5,412,061
5	Service tax liability under reverse charge (RCM)	-	145,860
6	Demand of Service Tax on Advances received against various Projects Vodafone: 22,112/- Abir Construction: 1,854/- Namchi Project: 2,45,352/-	442,565	-
7	Demand of Service Tax on alleged operation and maintenance & repair of the Bridge at Jaleswar	1,297,057	-
8	Denial of CENVAT Credit, utilized for discharging the Service Tax Liability, Tawang	292,081	-
9	Reversal of Cenvat on account of non-payment to supplier/contractor	1,667,815	-
TOTAL		13,540,320	8,536,534

2.5. Aggrieved against the confirmation of the demands, the appellant has filed these appeals.

3.Regarding the demands of Service Tax of Rs.47,82,326/- and Rs.12,61,083/- on the operation and maintenance & repair of the Ropeway from Deorali Bazar to Secretariat (Tashiling), at Gangtok provided to the Government of Sikkim and the demand of Service Tax of Rs 12,98,761/- and Rs.16,84,673/- confirmed on the operation and maintenance of the Ropeway at Trikut Hill, Deoghar, provided to the Government of Jharkhand, the appellant submits that as per the agreement, they have operated the Aerial Ropeway by charging value of tickets from the riders of the ropeway. It is their contention that they paid yearly license fee/royalty at specific rate to the Sikkim/Jharkhand Government; rest of the money earned is appropriated by them for operation and maintenance of the said Ropeway.

3.1. The Appellant submits that they were given a license to operate and maintain ropeway by the Government of Sikkim and Jharkhand against a license fee; the service provider was the Government of Sikkim and Jharkhand for providing the right to operate and maintain the ropeway for which a license fee was being paid to the said governments. They submit that the activities undertaken by them are transportation of passengers by ropeway which is not a taxable service; the same was not taxable under any of the category under the positive list and was exempted under Serial No. 23(c) of Notification No.25/2012 ST dated 20.06.2012, under the negative list regime. The appellant contends that the said

exemption was removed vide Notification No. 9/2016-ST dated 01.03.2016 with effect from 01.04.2016 and therefore, prior to such date, there was no service tax liability.

3.2. In support of their claim, the appellant relied on the decision of CESTAT New Delhi in the case of *M/s Usha Breco Ltd vs. CCE (STA no. 50592 of 2017)*.

4. Regarding the demand of Service Tax Rs.1,36,398/- and Rs.32,857/- confirmed in the impugned order on the operation and regular & periodic repair and maintenance including preventive maintenance of the battery operated vehicle and existing road train and prevailing track by providing license fee to the Science City Authority, the appellant submits that they were entrusted with the task to collect money from the visitors by selling tickets and giving a part of it to Science city authority as royalty; thus, the money has been collected only for allowing the visitors in to the science city, which is not a taxable service. They submit that the same was not taxable under any of the category under the positive list and was exempted under Serial No. 23(c) of Notification No.25/2012 ST dated 20.06.2012, under the negative list regime.

5. Regarding the demand of Service Tax Rs.36,23,317/- and Rs. 54,12,061/- confirmed in the impugned orders on the operation and maintenance of external coal handling system consisting of 9.8 km long bi-cable Aerial Ropeway System at Heavy Water Plant (Manuguru) Khammam, Andhra Pradesh, the appellant submits that the essence of the contract was

transportation of 60,000 MT of coal in a month through the aerial ropeway system. Further, payment for coal transportation was made based on reading taken from the belt weighing scale. It is also submitted that the Department of Atomic Energy (GOI) in the contract awarded to the Appellant had provided that service tax is leviable only on maintenance activity (13.33% of the total operations) and balance is exempt from payment of service. They also discharged Service tax liability on the 'Maintenance part' from time to time for the entire period.

5.1. Further, for the demand on the 'operation part' prior to 01-07-2012, it was submitted that their activities in that case are restricted to transportation of coal in a specific manner and at a specific point which does not in any manner can be described as 'infrastructural support and maintenance services'. Reliance is also placed upon Circular No. 232/2/2006 CX 4 dated 12.11.2007 issued by CBIC, wherein it has been clarified that if transportation of coal is undertaken by mechanical systems, such as ropeway system, no service tax would be chargeable.

5.2. The appellant submitted that they started paying service tax since 01-07-2012 on the entire activity undertaken by them and have paid Rs. 42,95,835 [through Cash of Rs.36,36,634& CENVAT Credit of Rs.6,59,201] out of the total demand of Rs.54,12,061/-.

6. Regarding the demand of Service Tax of Rs.1,45,860/- under Reverse Charge Mechanism on Rent a cab, Security Service, Works Contract Service, Manpower Recruitment Service & Legal Services, the appellant submits that they have already paid the total amount of Service Tax of Rs. 1,45,860/- along with interest of Rs. 44,853/-, towards their dues. The appellant submits that they have no intention to evade payment of tax and paid the service tax along with interest. Since the entire demand confirmed in the impugned order is paid along with interest, they submit that no penalty is imposable on them.

7. Regarding the demand of service Tax of Rs.12,97,057/- on the operation and maintenance & repair of the Bridge at Jaleswar, the appellant submits that the said service related to maintenance of bridges is exempted from payment of service tax.

8.Regarding denial of CENVAT Credit utilized for discharging the Service Tax Liability, Tawang, non-payment of service tax on advances and Reversal of CENVAT on account of non-payment to supplier/contractor, the appellant submits that they have the documents with them readily and if the issue is remanded back to the adjudicating authority, they will be able to explain the issue. Accordingly, they prayed for remanding these issues to the adjudicating authority.

9. In view of the above submissions, the appellant prayed for allowing their appeals.

10. The Ld. Ld. Authorized Representative reiterated the findings in the impugned order.

11. Heard both sides and perused the appeal documents.

12. Regarding the demands of service tax confirmed in both orders, on the operation and maintenance & repair of the Ropeway, we observe that the appellant was awarded the right to operate and maintain the ropeway for which a license fee was paid to the respective state governments. A perusal of the agreements executed by the appellant with the respective state governments clearly reveal that the appellant operated the Aerial Ropeway by charging value of tickets from the riders of the ropeway. They paid yearly license fee at specific rate to the respective governments of Sikkim and Jharkhand. Rest of the money earned is appropriated by them for operation and maintenance of the said Ropeway. Thus, we observe that the appellant has rendered the service of transportation of passengers by Rope Way, which has been specifically exempted from payment of service tax. The activities undertaken by the Appellant by way of transportation of passengers by ropeway was not taxable under any of the category under the positive list and was exempted under Serial No. 23(c) of Notification No.25/2012 ST dated 20.06.2012, under the negative list regime. Accordingly, we hold that the demands of service tax confirmed on this count in the both the orders are not sustainable.

13. Regarding the demand of Service Tax confirmed in the impugned order on the activity of maintenance of the battery-operated vehicle and existing road train and prevailing track in the Science City Authority, we observe that the appellant was entrusted with the task to collect money from the visitors by selling tickets and giving a part of it to Science city authority as royalty. Thus, we observe that the money has been collected only for allowing the visitors in to the science city, which is not a taxable service. The said activity was not taxable under any of the category under the positive list and was exempted under Serial No. 23(c) of Notification No.25/2012-ST dated 20.06.2012, under the negative list regime. Accordingly, we hold that the demands of service tax confirmed on this count in the both the orders is not sustainable.

14. Regarding the demand of Service Tax on the operation and maintenance of external coal handling system, we observe that the essence of the contract was transportation of 60,000 MT of coal in a month through the aerial ropeway system. Further, payment for coal transportation was made based on reading taken from the belt weighing scale. It is also submitted that the Department of Atomic Energy (GOI) in the contract awarded to the Appellant had provided that service tax is leviable only on maintenance activity (13.33% of the total operations) and balance is exempt from payment of service. We observe that the appellant has discharged Service tax liability on the 'Maintenance part' from time to time for the entire period. We observe that the activities of the appellant relating to transportation of coal in a specific manner and at a specific point cannot be

considered as infrastructural support and maintenance services. In this regard, we rely on the Board Circular No. 232/2/2006 CX 4 dated 12.11.2007, wherein it has been clarified that if transportation of coal is undertaken by mechanical systems, such as ropeway system, no service tax would be chargeable. We further observe that the appellant started paying service tax w.e.f. 01-07-2012 on the entire activity undertaken by them and have paid Rs.42,95,835/-(through Cash of Rs.36,36,634 and CENVAT Credit of Rs. 6,59,201] out of the total demand of Rs.54,12,061/-. However, the adjudicating authority failed to adjust this amount against the demand confirmed. Since there is no service tax payable for the period prior to 01.07.2012 and appropriate service tax has already been paid by the appellant for the period after 01.07.2012, there is no further liability on the appellant. However, the issue is remanded back to the adjudicating authority for verification and confirmation of payment of Rs.42,95,835/- as claimed by the appellant.

15. Regarding the demand of Service Tax of Rs.1,45,860/- under Reverse Charge Mechanism on Rent a cab, Security Service, Works Contract Service, Manpower Recruitment Service & Legal Services, the appellant claimed that they have already paid the total amount of Service Tax of Rs. 1,45,860/- along with interest of Rs. 44,853/-. We observe that there is no suppression of facts in this case and the intention to evade payment of tax has not been established. Since the entire demand confirmed in the impugned order is paid along with interest, we hold that no penalty

imposable on the appellant. Accordingly, the penalty equal to the tax confirmed on this count is set aside.

16. Regarding the demand of service Tax of Rs.12,97,057/- confirmed in the impugned order on the operation and maintenance & repair of the Bridge at Jaleswar, we observe that the said service related to maintenance of bridges and thus are exempted from payment of service tax. Accordingly, the demand confirmed on this count is set aside.

17. Regarding denial of CENVAT Credit utilized for discharging the Service Tax Liability, Tawang, non-payment of service tax on advances and Reversal of CENVAT on account of non-payment to supplier/contractor, we observe that the appellant has not produced the relevant documents earlier. Now, they claim that they have the documents with them readily and if the issue is remanded back to the adjudicating authority, they will be able to explain the issue. Accordingly, we remand these issues back to the adjudicating authority for the purpose of verification of the documents and pass an appropriate order regarding eligibility of the credit.

18. In view of the above discussions, we pass the following order:

- (i) The activities undertaken by the Appellant by way of transportation of passengers by ropeway was not taxable under any of the category under the positive list and was exempted under Serial No. 23(c) of Notification No.25/2012 ST dated 20.06.2012, under the negative list regime. Accordingly, the demands of service tax

confirmed on this count in the both the orders are set aside.

- (ii) The demand of Service Tax confirmed in the impugned orders on the activity of maintenance of the battery-operated vehicle and existing road train and prevailing track, is set aside.
- (iii) Regarding the demand of Service Tax on the operation and maintenance of external coal handling system, no service tax payable for the period prior to 01.07.2012. The issue is remanded back to the adjudicating for verification and confirmation of payment of Rs.42,95,835/- for the period after 01.07.2012, as claimed by the appellant.
- (iv) Regarding the demand of Service Tax of Rs.1,45,860/- under Reverse Charge Mechanism, since the entire demand confirmed in the impugned order is paid along with interest, we hold that no penalty imposable on the appellant.
- (v) The demand of service Tax of Rs.12,97,057/- confirmed in the impugned order on the operation and maintenance & repair of the Bridge at Jaleswar, is set aside.
- (vi) Regarding denial of CENVAT Credit, utilized for discharging the Service Tax Liability, Tawang, non-payment of service tax on advances and Reversal of CENVAT on account of non-payment to supplier/contractor, these issues are remanded back to the adjudicating authority for the purpose of verification of the documents and pass an appropriate order.

19. The appeals filed by the appellant are disposed on the above terms.

(Order pronounced in the open court on **24.09.2024**)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd