

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

REGIONAL BENCH - COURT NO. 3

**SERVICE TAX Appeal No. 00446 of 2012-DB**

[Arising out of Order-in-Original/Appeal No CS-18-DMN-SDMN-2012-13 dated 08.05.2012 passed by Commissioner of Central Excise, Customs and Service Tax-DAMAN]

**Subhlaxmi Electricals**

1st Floor, Lalubhai Patel Shopping Centre,  
Somnath Temple Road, Somnath,  
DAMAN, U T OF DADRA & NAGAR HAVELI-396210

**.... Appellant**

*VERSUS*

**Commissioner of Central Excise & ST, Daman**

3rd Floor, Adarsh Dham Building, Vapi-Daman Road,  
Opp.Vapi Town Police Station, Vapi, Gujarat -396191

**.... Respondent**

**APPEARANCE :**

Shri PD Rachchh, Advocate for the Appellant  
Shri Anand Kumar, Superintendent, (AR) for the Respondent

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

DATE OF HEARING: 05.06.2024  
DATE OF DECISION: 10.09.2024

**FINAL ORDER NO. 11965/2024**

**C.L. MAHAR :**

The brief facts of the matter are that the appellant are engaged in the business of providing various kinds of services such as Business Auxiliary Service, Erection Commissioning and Installation Service, Maintenance and Repair services and Supply of Tangible Goods service etc. Working on an intelligence the department had searched the premises of the appellant on 10.06.2011 wherein it was revealed that the appellant has not obtained any service tax registration as required under Finance Act, 1994 and they have not been paying service tax on the taxable service provided by them to various clients. On being pointed out, the appellant have deposited the amount of Rs. 10,53,727/- towards their service tax liability along with interest of Rs. 2,55,491/-. The appellant has also deposited penalty of Rs. 2,63,432/- being 25% of the service tax liability as per provisions of Section 78 of the Finance Act, 1994. A show cause notice dated 05.07.2011 was issued which was adjudicated by impugned order-in-original dated

15.11.2011 whereunder all the charges leveled in the show cause notice have been confirmed by the Adjudicating Authority. The appellant have approached Commissioner (Appeals) against the impugned order-in-original dated 15.11.2011 however, they did not succeed and accordingly, they are before us against the order-in-appeal dated 08.05.2012.

2. Shri P D Rachchh, learned advocate appearing for the appellant have primarily contended that demand of service tax amounting to Rs. 60,268/- out of total demand of Rs. 10,53,727/- is not sustainable as the same pertains to the activity of laying electrical cables upto distribution point of residential or commercial localities/ complexes and therefore Adjudicating Authority should have been extended the benefit of CBEC Circular No. 123/5/2010-TRU dated 24.05.2010 to them, when it is clarified that laying of electrical cables upto distribution point of residential or commercial localities/ complexes does not fall under the category of taxable service. The learned advocate has also contended that the Commissioner (Appeals) has not considered their contention properly as to whether in the given facts and circumstances it was correct and legal on the part of the lower authorities to invoke the extended period of demand under Section 73(1) of Finance Act, 1994. when there were certain doubts regarding taxability of services of shifting of overhead cables, laying of cables alongside roads, laying of electric cables between grids/sub stations/transformer stations en-route, laying of electrical cables upto distribution point of residential or commercial localities/ complexes.

3. We have also heard Shri Anand Kumar, learned Superintendent (AR) who has reiterated the findings as given in the order-in-appeal.

4. Having considered the submissions made by both the sides, we find that the service tax has been demanded from the appellant as per following tables given hereunder:-

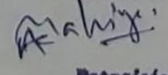
Year-wise break-up of ST payable

TABLE-A					
Financial Year	Taxable Value (Inclusive of ST)	ST @ 12/10%	Edu. Cess @ 2%	S&HE Cess @ 1%	Total ST payable
(1)	(2)	(3)	(4)	(5)	(6)
2006-07	360025	38492	770	0	39262
2007-08	622136	66468	1329	435	68232
2008-09	2257190	241366	4827	2414	248608
2009-10	4347119	400289	8006	4003	412298
2010-11	2979845	277016	5541	2770	285327
<b>TOTAL</b>	<b>10566314</b>	<b>1023632</b>	<b>20473</b>	<b>9622</b>	<b>1053727</b>

Service category-wise break-up of ST payable

TABLE-B					
Category of Service	Taxable Value (Inclusive of ST)	ST @ 12/10%	Edu. Cess @ 2%	S&HE Cess @ 1%	Total ST payable
(1)	(2)	(3)	(4)	(5)	(6)
Business Auxiliary Service	283800	28772	575	288	29635
Erection, Commissioning & Installation Service	8244747	791142	15823	7297	814262
Maintenance & Repair Service	387900	35168	703	352	36223
Supply of Tangible Goods Service	10000	906	18	9	934
Renting of Immovable Property Service	1639867	167644	3353	1676	172673
<b>TOTAL</b>	<b>10566314</b>	<b>1023632</b>	<b>20473</b>	<b>9622</b>	<b>1053727</b>

For Shubhlakshmi Electrical



Proprietor

It can be seen from the above mentioned tables that demand of Rs. 8,14,262/- has been made against the appellant under the category of Erection, Commissioning and Installation Service. The learned advocate on the other hand contended that out of this amount, an amount of Rs. 60,268/- pertains to activities such as laying of electrical cables upto distribution point of residential or commercial localities/ complexes and therefore, same is not taxable as per clarification issued by CBEC Circular

No. 123/5/2010-TRU dated 24.05.2010. In this regard we are of the view that appellant need to approach the original adjudicating authority with all the relevant documents to prove the fact that the activity undertaken by them is covered by Circular dated 24.05.2010 supra.

5. So far as their claim that extended period of demand under Section 73 (1) of Finance Act, 1994 is not invocable in their case, we do agree with this arguments of the learned advocate as we find that the entire activity undertaken by them for the demand period 2006-07 to 2010-11 was only detected by the department during the course of search at the premises of the appellant. We are of the view that even if they were ignorant of the provisions of service tax, that does not exonerate them from demand of service tax under the extended time proviso under Finance Act, 1994.

6. In view of above, we remand back the matter to the Adjudicating Authority only for a limited purpose of determining as to how much taxable value is covered by the Circular No. 123/5/2010-TRU dated 24.05.2010. We refrain from interfering with the impugned order-in-appeal on merit with regard to rest of the order, however the Commissioner (Appeals) will give them an opportunity of hearing and for adducing the evidences with regard to claim made by them and as mentioned in the preceding Para. The final amount of service tax payable and penalty etc. also need to be re-worked out. In view of above, the appeal is partially allowed by way of remand.

*(Pronounced in the open court on 10.09.2024)*

**(Somesh Arora)**  
**Member (Judicial)**

**(C L Mahar)**  
**Member (Technical)**

KL