

**(2023) 12 CESTAT CK 0002**

**Customs, Excise And Service Tax Appellate, Chandigarh**

**Case No:** Service Tax Appeal No. 773 Of 2012

Mahashakti Energy Limited

APPELLANT

Vs

CCE, Chandigarh-II

RESPONDENT

**Date of Decision:** Dec. 5, 2023

**Acts Referred:**

- Central Excise Act, 1944 - Section 11C

**Hon'ble Judges:** S. S. Garg, Member (J)

**Bench:** Single Bench

**Advocate:** Naveen Bindal, Raman Mittal

**Final Decision:** Allowed

### Judgement

S. S. Garg, Member (J)

1. The present appeal is directed against the impugned order dated 13.03.2012 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has confirmed the rejection of refund claim of Rs. 7,27,884/- filed by the appellant.

2. Briefly the facts of the case are that the appellant is engaged in the manufacture of transformer and was registered with the department. The Appellant is also registered under Finance Act, 1994 for payment of service tax on account of erection, commissioning and installation. The appellant filed a refund claim of service tax amounting to Rs 7,27,884/- on 7.12.10 for the refund of service tax paid for the period 27.2.10 to 30.6.10 on account of Erection, Commissioning & Installation services for transmission of electricity which is exempted under Notification No. 11/2010-ST dated 27.2.10. The department raised certain objections and demanded certain documents from the appellant before processing the refund application and the appellant supplied copies of GAR-7 showing payment of service tax alongwith copy of work order cum contract agreement and running invoices pertaining to the said contract. The appellant also submitted certificate from Punjab State Electricity Board (PSEB) for work done and running invoices for the month of April, 2010, May 2010 and June 2010 and also filed declaration that the refund of service tax will be shown under recovery in their balance sheet and will not be charged as expenses.

2.1. After following due process, the original authority rejected the refund claim.

2.2 Aggrieved by the said order, the appellant filed appeal before the Commissioner (Appeals) who also rejected their appeal and upheld the order-in-original.

2.3 Hence, the present appeal.

3. Heard the parties and perused the case records.

4. Ld. Counsel for the appellant submits that the impugned order qua rejecting the refund claim on the ground of non-submissions of evidence is not sustainable in law because both the authorities have not considered the evidence submitted by the appellant in the proper perspective. He further submitted that thrust of the department to reject refund claim is that the work was executed prior to 27.02.2010 and therefore, the Appellant is not entitled to benefit of Notification dated 27.02.2010. He further submits that the Government by Notification 45/2010 dated 20.07.2010 has exempted services in question even for the period prior to 27.02.2010. He further submits that the said Notification has been issued in exercise of powers conferred by Section 11C of the Central Excise Act, 1944 and as per said Section, refund claim can be filed within six months from the date of issue of notification and in the present case, the appellant has filed the refund claim on 07.12.2010 which is within the period of limitation. He further submitted that the Ld. Commissioner (Appeals) has rejected their contention on the ground that said Notification pertains to those cases where service tax has not been levied and not to those cases where service tax has been levied.

4.1 Ld. Counsel further submits that the Ld. Commissioner (Appeals) has wrongly interpreted the language of the Notification. He further submitted that the appellant has given details of the bills showing the work but the same has been ignored by both the authorities. He further submits that in the absence of any evidence, it is unjustified to assume that the services must have been rendered prior to 27.02.2010.

4.2 Ld. Counsel also submits that both the authorities have wrongly held that the burden of duty has already been passed on to the customers whereas the appellant has never received any service tax from PSEB and has not charged the same in the invoices issued to PSEB.

5. On the other hand, Ld. DR reiterated the findings in the impugned order and submitted that the appellant is not found entitled to the benefit of Notification No. 11/2010-ST dated 27.02.2010 and also Notification No. 45/2010-ST dated 20.07.2010 which was examined by the Commissioner (Appeals) and found the appellant ineligible for the benefits of the notifications.

6. After considering the submissions of both the parties and perusal of material on record, I find that the appellant has proved on record that he has paid the service tax for the month of April, May and June 2010 amounting to Rs. 7,27,884/-. Further, the Notification No. 11/2010-ST dated 27.02.2010 provided that the services provided by any person to another person for transmission of electricity is exempt from service tax. The appellant has filed various documents as was demanded by the original authority but the original authority has wrongly come to the conclusion that the appellant has failed to establish whether the service tax paid for the month of April, May and June, 2010 is for the services provided by them for period after issuance of Notification No. 11/2010-ST or otherwise.

6.1 Further, I find that the Ld. Commissioner (Appeals) has passed the impugned order without affording an opportunity of hearing to the appellant and without considering all the submissions made by him in his appeal.

6.2 Further, I also find that both the authorities have wrongly come to the conclusion that the burden of duty has already been passed on to the customers. Both the authorities did not examine the invoices/bills submitted by the appellant. There is no invoice wherein the appellant has charged service tax and in the absence of specifically charging the service tax, it cannot be presumed that service tax has been actually charged. Moreover, the appellant has paid service tax on the gross value received from PSEB which is a Government undertaking and as per the terms and conditions of the work order, it is the responsibility of the appellant for payment of all the taxes and

duties due to the Central Government.

6.3 In view of my discussion above, I am of the considered view that this case needs to be remanded back to the original authority for denovo adjudication of the refund application filed by the appellant. The original authority will considered the effect of both the notifications relied upon by the appellant and also the various documents produced by them and will pass a fresh order in accordance with law. I further direct the adjudicating authority to complete the denovo adjudication within 2 months from the date of receipt of certified copy of this order.

7. Appeal is accordingly allowed by way of remand.