Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No. 11214 of 2016

(Arising out of OIA-VAD-EXCUS-002-APP-514-516-2015-16 dated 04/02/2016 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Alkesh Electricals ....**Appellant**
20, Gurukrupa Society,
Inside Deepika Society-2,
Karelibaug,
Vadodara, Gujarat

VERSUS

C.C.E. & S.T.-Vadodara-i ....**Respondent**
1st Floor...Central Excise Building,
Race Course Circle,
Vadodara, Gujarat- 390007

WITH

i. **Service Tax Appeal No. 11215 of 2016 (Alkesh Electricals)**
ii. **Service Tax Appeal No. 11216 of 2016(Alkesh Electricals)**
iii. **Service Tax Appeal No. 11217 of 2016 (Uco Traders)**
iv. **Service Tax Appeal No. 11220 of 2016 (Uco Traders)**
v. **Service Tax Appeal No. 11221 of 2016 (Uco Traders)**

APPEARANCE:
Shri Dhaval Shah, Advocate for the Appellant
Shri Rajesh R Kurup, Superintendent (AR), for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

Final Order No. A/12691-12696 /2023

DATE OF HEARING: 17.11.2023
DATE OF DECISION:01.12.2023

RAJU

These appeals have been filed by M/s. Alkesh Electricals V/s. M/s. UCO Traders against the demand of Service Tax.

2. Learned Counsel for the Appellant pointed out that they are electrical contractors and they were discharging service tax under the head of Erection, Commissioning and Installation service and they are registered with authorities. The contracts were indivisible contracts

involving supply of material and labour. They were discharging service tax liability after availing abatement of 67% in terms of Notification No. 1/2006–ST. Show cause notice was issued seeking to demand service tax on the entire value of the service without allowing the benefit of the abatement under Notification No. 1/2006-ST.

2.1 Learned Counsel pointed out that they had sought benefit of Notification No. 12/2003 which was denied to them on the ground that their bill did not specifically show description or value of the item sold during the provision of the sale service.

3. The Learned AR relied on the impugned order.

4. We have considered rival submissions. We find that the show cause notice has been issued to the Appellant demanding service tax. The annexure to the show cause notice shows that the demand has been calculated considering the entire consideration received by the Appellant as the assessable value. It is seen that the Notification No. 1/2006-ST dated 01.03.2006 grants abatement in respect of Erection, Commissioning and Installation Service. The said notification reads as follows:

> *"Effective rate of Service tax for specified services — Percentage of abatements*
>
> *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 of the description specified in column (3) of the Table below and specified in the relevant sub-clauses of clause (105) of section 65 of the Finance Act, specified in the corresponding entry in column (2) of the said Table, from so much of the service tax leviable thereon under section 66 of the said Finance Act, as is in excess of the service tax calculated on a value which is equivalent to a percentage specified in the corresponding entry in column (5) of the said Table, of the gross amount charged by such service provider for providing the said taxable service, subject to the relevant conditions specified in the corresponding entry in column (4) of the Table aforesaid :*

S. No.	*Sub-clause of clause (105) of Section 6 5*	*Description of taxable service*	*Conditions*	*Percentage*
5.	*(zzd)*	*Erection, commissioning or installation, under a contract for supplying a plant, machinery or equipment and erection, commissioning or installation of such plant, machinery or equipment.*	*This exemption is optional to the commissioning and installation agency.* *Explanation. - The gross amount charged from the customer shall include the value of the plant, machinery, equipment, parts and any other material sold by the commissioning and installation agency, during the course of providing erection, commissioning or installation service.*	*33*

Provided that this notification shall not apply in cases where, -

(i) the CENVAT credit of duty on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service, has been taken under the provisions of the CENVAT Credit Rules, 2004; or

(ii) the service provider has availed the benefit under the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2003-Service Tax, dated the 20th June, 2003 [G.S.R. 503 (E), dated the 20th June, 2003].

Explanation. - For the purposes of this notification, the expression "food" means a substantial and satisfying meal and the expression "catering service" shall be construed accordingly.

[Notification No. 1/2006-S.T., dated 1-3-2006]"

It is seen that in terms of the aforesaid Notifications the Appellant to be entitled to benefit of abatement of 67% for the purpose of Erection, Commissioning and Installation Service. This aspect of the dispute has not been examined by the lower authority.

5. The impugned order is therefore set aside and matter into the orders is remanded to the original adjudicating authority to examine if the Appellant are eligible to the benefit of Notification No. 01/2006-ST.

6. The appeals are allowed by way of remand.

(Pronounced in the open court on 01.12.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

PLK