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

REGIONAL BENCH - COURT NO. 3

SERVICE TAX Appeal No. 10317 of 2017-DB

[Arising out of Order-in-Original/Appeal No AND-EXCUS-000-COM-018-019-16-17 dated 25.10.2016 passed by Commissioner of Central Excise, Customs and Service Tax-ANAND]

Gujarat Energy Transmission Corporation Limited .... Appellant
Construction Division, Dabhan Road, Nadiad
KHEDA, GUJARAT

VERSUS

Commissioner of Central Excise & ST, Anand .... Respondent
Central Excise, Customs & Service Tax, Central Excise
Building, Nr. JunaDadar, Behind Old Bus Depot
Anand, Gujarat-388001

AND

SERVICE TAX Appeal No. 10318 of 2017-DB

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Building, Nr. JunaDadar, Behind Old Bus Depot
Anand, Gujarat-388001

APPEARANCE :

Shri JC Patel and Shri RajulGajera Advocates for the Appellant
Shri Tara Prakash, Deputy Commissioner (AR) for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)

DATE OF HEARING : 12.01.2024
DATE OFDECISION : 06.02.2024

FINAL ORDER NO. 10331-10332/2024

RAMESH NAIR:

Brief facts of the case are that the appellant is a Gujarat Government Company and is notified by the Government of Gujarat as State Transmission Utility in the State of Gujarat in terms of Section 2 (67) read

with Section 39(1) of Finance Act, 1994 andin terms of the Electricity Act 2003. As a State Transmission Utility, the appellant undertook transmission of electricity in the State of Gujarat. For the purpose of transmission of electricity erection of Bays, Sub-stations and Transmission Lines is required to be carried out. The appellant recovers from the consumers various charges such as erection charges, contingency charges, supervision charges, development charges etc. for such erection of Bays, Sub-station and Transmission Lines which are required for transmission of electricity. For the purpose of said erection of Bays, Sub-station and Transmission Lines, the appellant receives work contract service from EPC Contractors. The appellant was served two show cause notices dated 20.10.2014 and 10.04.2015 for the period 2009-10 to 2012-13 and 2013-14 respectively demanding service tax on various charges recovered by the appellant from the consumers for the erection of Bays, Sub-stations and Transmission Lines under the category of Erection, Commissioning and Installation Service under Section 65 (zzd) of the Finance Act, 1994 and further service tax to the extent of 50% under reverse charge on work contract service received by the appellant. Further, show cause notice dated 20.10.2014 also demand interest on Cenvat credit which was never utilised by the appellant. After considering the reply submitted by the appellant, learned Commissioner by two orders-in-originaldated 20.10.2016 confirmed the said show cause notices against which the present two appeals are preferred by the appellant.

2. Shri JC Patel, learned Counsel along with Shri Rahul Gajera, advocate appearing on behalf of the appellant submits that all the services provided by the appellant are in relation to transmission of electricity accordingly the same is exempted vide Notification No. 45/2010-ST dated 20.07.2010 for the period up to 27.02.2010 and for the period from 27.02.2010 vide Notification No. 11/2010-ST dated 27.02.2010 and the same services are not taxable from 01.07.2012 in view of the negative list of services under Section 66D of Finance Act, 1994. He submits that the issue is no longer *res-integra* in view of the following decisions:-

(a) Hyderabad Power Installations P. Ltd v. CST-2016 (7) TMI 599 20-21

(b) Hyderabad Power Installations P. Ltd v CST-2016 (45) STR 217

(c) CCE v Sri Rajyalakshmi Cement Products-2017 (52) STR 309

(d) Madhya Pradesh Power Transmission Co. Ltd v Pr. Commr - 2023 (385) ELT 152

(e) Madhya Pradesh Poorva Kshetra Vidyut Vitran Co Ld v Commr - 2021 (2) TMI 155

(f) Kailash Dev build India P. Ltd v CCE-2023 (12) TMI 1010

(g) Tamilnadu Generation and Distribution Corpn Ltd v CCE-2023 (10) TMI 61

(h) Tamilnadu Generation and Distribution Corpn Ltd v CCE- 2023 (11) TMI 14

(i) Purvanchal Vidyut Vitran Nigam Ltd v CCE-2013 (30) STR 259

(j) Noida Power Co.Ltd v CCE-2014 (33) STR 383

(k) M.P.Power Transmission Co. Ltd v CCE-2011 (24) STR 67

(l) U.P. Rajkiya Nirman Nigam Ltd v CCE-2016 (41) STR 967

(m) Shri Ganesh Enterprises v CCE-2014 (35) STR 348

(n) Torrent Power Ltd v UOI-2020 (34) GSTL 385 (Guj)

(o) Aban Offshore Ltd v CST-2023 (70) GSTL 471

(p) CCE v Bill Forge P. Ltd-2012 (279) ELT 209 (Kar)

(q) Commissioner v TVS Whirlpool Ltd-2000 (119) ELT A177 (SC)

(r) Commissioner v Emco Ltd-2015 (325) ELT A 104 (Bom)

(s) Kwality Ice Cream Company v UOI-2012 (27) STR 8 (Del)

3. He submits that above judgments have considered the identical services and also the period pre and post 2012 when negative list was introduced therefore, the entire demand under Erection, Commissioning and Installation Service is not sustainable. He further submits that demand is also not sustainable on limitation as there is no suppression of facts particularly the appellant being a Government Company, moreover, the activities of the appellant is very well known to the department. Therefore

the demand for the extended period is not sustainable. On limitation, he further submits that there is another issue of demand of interest of Cenvat credit, he submits that appellant have admittedly reversed the Cenvat credit without utilisation thereof, therefore no interest could have been demanded. He submits that the demand of interest is also covered in longer period in view of the following judgments, the limitation provided under Section 73(1) is also applicable for demand of interest therefore, the demand of interest is also time-barred. He relied on the following judgments:-

(a) CCE Bill Forge P. Ltd – 2012 (279) ELT 209 (Kar)

(b) Aban Offshore Ltd v CST – 2023 (70) GSTL 471

(c) Commissioner v TVS Whirlpool Ltd-2000 (119) ELT A177

(d) Commissioner v Emco Ltd-2015 (325) ELT A 104 (Bom)

(e) Kwality Ice Cream Company v UOL-2012 (27) STR 8 (Del).

4. He submits that in the present case since the taking of the credit and its reversal clearly reflected in the record, suppression of facts or willful mis-statement with an intention to evade payment of duty cannot be alleged and hence longer period of limitation is not applicable and therefore, demand of interest must fall.

5. Shri Tara Prakash, learned Deputy Commissioner (AR) appearing for the Revenue reiterates the findings of the impugned order.

6. On careful consideration of the submissions made by both the sides and perusal of record, we find that on the issue whether services namely, erection of Bays, Sub-stations and Transmission Lines provided by the appellant to the service recipient is liable to service tax, we find that undisputedly the services are in relation to transmission of electricity. The only dispute raised by the Revenue is that only service which is directly a service of transmission of electricity is exempted not the present service.We find that this issue has been considered in various judgments that any service which is provided in relation to transmission of electricity is exempted under Notification Nos. 45/2010-ST dated 20.07.2010, 11/2020-ST dated 27.02.2010 and as per negative list under Section 66D of the Finance Act, 1994. The relevant judgments are reproduced below:-

(a) Torrent Power Limited (supra) – The Hon'ble Gujarat High Court passed the following order:-

"7. In the backdrop of the facts and contentions noted hereinabove, the first question that arises for consideration is as regards the maintainability of the petitioner. A preliminary contention has been raised that the petition is not maintainable as the same is directed against a summons issued by the respondent authorities. In this regard, a perusal of the impugned summons dated 28-3-2018 clearly reveals that the same is based on the impugned circular dated 1-3-2018, inasmuch as the petitioner has been called upon to produce (i) copy of balance-sheets, Form 26AS and Profit and Loss Accounts for financial years 2012-13 to 2016-17; bifurcation of income head along with ledger account of each income head, namely, (i) application fee for releasing connection of electricity; (ii) rental charges against metering equipment; (iii) testing fee for meters/transformers, capacitors etc; (iv) labour charges from customers for shifting of meters or shifting of service lines; (v) charges for duplicate bill; (vi) income from shifting of HT Lines received from MEGA. This part is not subject matter of challenge in the petition; (vii) revenue from power supply/transmission income for the financial year 2012-13 to the financial year 2017-18, which is clearly in terms of the impugned circular dated 1-3-2018, item-4 whereof clarifies that services by way of transmission or distribution of electricity by an electricity transmission or distribution utility is exempt from GST under Notification No. 12/17-C.T. (R) No. 25; the other services such as (i) application fee for releasing connection of electricity; (ii) rental charges against metering equipment; (iii) testing fee for meters/transformers, capacitors etc; (iv) labour charges from customers for shifting of meters or shifting of service line; (v) charges for duplicate bill provided by DISCOMS to consumers are taxable. Thus, it is crystal clear, that the impugned summons, except to the extent the same relates to services provided to MEGA, has been issued on the basis of the impugned circular. It appears that the respondents for the entire duration of the negative list regime seem to have proceeded on the basis that these services stand included in the transmission and distribution of electricity and, therefore, have not raised any demand till date. However, now, taking shelter behind the impugned circular, the impugned summons has been issued seeking documents/details in connection with services provided right from financial year 2012-13 to financial year 2017-18. In the opinion of this Court, in view of the fact that the impugned summons is based upon the clarificatory circular, which is subject matter of challenge in the present petition, the contention that the petition challenging the summons is not maintainable does not merit acceptance, inasmuch as, it is not the summons *per se* which is subject matter of challenge, but the basis thereof, viz. the clarificatory circular dated 1st March, 2018 which is also subject matter of challenge, and the challenge to the impugned summons is only an ancillary relief sought in connection therewith. Besides, the clarificatory circular cannot be challenged before the statutory authorities who are bound by the same, and can be challenged only by way of a writ petition under Article 226 of the Constitution of India.

8. Adverting to the merits of the case, from the affidavit-in-reply filed on behalf of the respondents, it is evident that it is in two parts; the first part is with respect to the taxability of the service provided to M/s. Metro Link Express for Gandhinagar and Ahmedabad (MEGA), which according to the respondents is a declared service falling within the ambit of clause (e) of Section 66E of the Finance Act; the second part is with regard to the related/ancillary services of transmission and distribution of electricity, which, according to the petitioners, were exempted by virtue of notifications dated 27-2-2010 and 22-6-2010. It is clear that insofar as the taxability of the services provided to MEGA is concerned, this court is not required to enter into the merits thereof, as the Learned Counsel for the petitioners has submitted that to that extent, the petitioners shall respond to the summons.

9. As noticed earlier, the petitioners have filed the present petition, calling in question the summons dated 28-3-2018 issued by the respondent calling upon the petitioners to give evidence or make statement and to produce the documents and things mentioned in the schedule thereto. A perusal of the impugned summons reveals that the same relates to three phases; (i) prior to 1st July, 2012, namely, the pre-negative list regime; (ii) from 1st July, 2012 to 30th June, 2017 that is negative list regime; and (iii) from 1-7-2017 onwards, namely, the CGST/SGST regime.

10. Insofar as the first phase is concerned, the respondents do not dispute that the related/ancillary services to transmission and distribution of electricity are exempt from payment of service tax. The dispute, therefore, relates to the period of the negative list regime and the CGST/SGST regime.

11. Insofar as the second phase, namely, the negative list regime is concerned, with effect from 1-7-2012, Section 65B of the Finance Act, 1994 came to be amended and service tax became leviable on all services, other than those services specified in the negative list. Admittedly, transmission and distribution of electricity by an electricity transmission or distribution utility, finds place in the negative list and, is therefore, not exigible to service tax.

12. The first question that arises for consideration is whether services relating to transmission and distribution of electricity fall within the ambit of clause (k) of Section 66D of the Finance Act and, are therefore, exempt. In this regard, it may be noted that prior to the coming into force of the negative list regime, goods and services were exempted by virtue of notifications issued in exercise of powers under sub-section (1) of Section 93 of the Finance Act. By virtue of Notification No. 11/2010, dated 27-2-2010, the Central Government exempted transmission of electricity from the whole of service tax leviable thereon under Section 66 of the Finance Act; and by virtue of Notification No. 32/2010-Service Tax, dated 22-6-2010, distribution of electricity came to be exempted from the whole of service tax leviable thereon under Section 66 of the Finance Act. Thus, what was exempt under those provisions was transmission and distribution of electricity, despite which, during the pre-negative list regime, the respondents have considered services related to transmission and distribution of electricity as exempted from service tax by virtue of those notifications. Insofar as electricity meters are concerned, vide Circular No. 131/13/2010-S.T., dated 7-12-2010, it was clarified that supply of electricity meters for hire to consumers being an essential activity, having direct and close nexus with transmission and distribution of electricity, the same is covered by the exemption for transmission and distribution of electricity extended under relevant notifications.

13. Thus, the reason for saying that supply of electricity meters for hire to consumers is covered by the exemption notification is that such service is an essential activity having direct and close nexus with transmission and distribution of electricity. This circular only provides an interpretation of when a service would stand included in another service, namely, when such service is an essential activity having direct and close nexus with the exempted activity. Therefore, the fact that the exemption notifications came to be rescinded would have no bearing inasmuch as the circular only clarifies what according to the Government of India would stand included in another service. Such interpretation would not change merely because such exemption is now granted under some other provision.

14. It may be noted that insofar as the exemptions prior to the negative list regime as well as post the negative list regime are concerned, it is the transmission and distribution of electricity that has been exempted by virtue of notifications. During the negative list regime, transmission and distribution of electricity has been placed in the

negative list. Therefore, in all the three phases, what was exempted was “transmission and distribution of electricity”. However, while for the pre-negative list phase, the respondents considered the services related to transmission and distribution of electricity as exempt under the exemption notifications, for the negative list regime and the GST regime, they seek to exclude such services from the ambit of transmission and distribution of electricity. From the affidavits-in-reply filed on behalf of the respondents, there is nothing to show as to how the very services, which stood included within the ambit of transmission and distribution of electricity now stand excluded. The sole refrain of the respondents is that in view of the fact that the exemption notification stands rescinded, the clarification also stands rescinded. What is lost sight of is that the clarification was only in respect of electric meters, whereas all related services were included within the ambit of transmission and distribution of electricity and given the benefit of the exemption notifications. Moreover, the clarificatory circular merely clarifies the stand of the Government as regards what would stand included within the meaning of “transmission and distribution services” namely, essential activities having direct and close nexus with the transmission and distribution of electricity. The respondents having themselves considered the services in question as being covered by the exemption for transmission and distribution of electricity as such services were essential activities having a direct and close nexus cannot be now permitted to take a U-turn and seek to exclude such services without pointing out any specific change in the nature of the exemptions, except that they are provided under different statutory provisions. In the opinion of this Court, the meaning of “transmission and distribution of electricity” does not change either for the negative list regime or the GST regime. If that be so, the services which stood included within the ambit of transmission and distribution of electricity during the pre-negative list regime cannot now be sought be excluded by merely issuing a clarificatory circular, that too, with retrospective effect. By the clarificatory circular, the respondents seek to give a different interpretation of the very same services as against the clarification issued for the pre-negative list regime.

15. Thus, from the very manner in which the respondents have treated the services related to transmission and distribution of electricity during the pre-negative list regime, such services would stand covered by the exemption granted to transmission and distribution of electricity by virtue of inclusion of such services in the list of negative services under Section 66D(k) of the Finance Act as well as by virtue of exemption notification issued under the CGST Act.

16. Examining the issue from the alternative argument advanced on behalf of the petitioners, if related services are *per se* not covered within the ambit of transmission and distribution of electricity, the question that next arises for consideration is whether such services would fall within the ambit of bundled services as contemplated under Section 66F(3) of the Finance Act and within the ambit of “composite service” as defined under Section 2(30) of the CGST/SGST Acts, and, therefore, liable to be taxed at the rate of the principal supply. Another question is whether Section 66F(3) of the Finance Act would cover cases where the single service which gives such bundle its essential character is placed in the negative list and Section 8 of CGST/SGST Acts would cover the cases of composite supply where exemption from service tax has been granted in respect of the principal supply.

17. Section 66F of the Finance Act lays down the principles of interpretation of specified descriptions of services or bundled services and reads thus :-

“66F. Principles of interpretation of specified descriptions of services or bundled services. - (1) Unless otherwise specified, reference to a service (herein referred to as main service) shall not include reference to a service which is used for providing main service.

Illustration. - The services by the Reserve Bank of India, being the main service within the meaning of clause (b) of Section 66-D, does not include any agency service provided or agreed to be provided by any bank to the Reserved Bank of India. Such agency service, being input service, used by the Reserve Bank of India for providing to main service, for which the consideration by way of fee or commission or any other amount is received by the agent bank, does not get excluded from the levy of service tax by virtue of inclusion of the main service in clause (b) of the negative list in Section 66-D and hence, such service is leviable to service tax.

(2) Where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description.

(3) Subject to the provisions of sub-section (2), the taxability of a bundled service shall be determined in the following manner, namely :-

(a) if various elements of such service are naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which gives such bundle its essential character;

(b) if various elements of such service are not naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which results in highest liability of service tax.

Explanation. - For the purposes of sub-section (3), the expression "bundled service" means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services."

18. Insofar as sub-section (1) of Section 66F is concerned, from the illustration provided thereunder, it is evident that while service by the Reserve Bank of India finds place in the negative list, by virtue of the illustration to sub-section (1) of Section 66F, it is provided that any agency service provided by any bank to the Reserve Bank of India would not stand included in the main service, as such agency service is used by the Reserve Bank of India by way of input service for providing main service and in respect of such service the concerned bank receives consideration and would not get excluded from the levy of service tax by inclusion of the main service in the negative list. Thus, in terms of the illustration, an input service would not be exempt from the levy of service tax merely because the main service is exempt. According to the respondents, this case at best would fall under sub-section (1) of Section 66F of the Finance Act and would not be exempted from levy of service tax. It has also been contended that as services in the negative list are not chargeable to tax, Section 66F would not apply to services falling in the negative list and, consequently, the benefit of bundling under Section 66F(3) would not be available.

19. Sub-section (3) of Section 66F of the Finance Act provides for the manner in which a bundled service is to be determined. Clause (a) thereof, which is relevant for the present purpose provides that if various elements of such service are naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which gives such bundle its essential character. The explanation thereof defines "bundled service" to mean a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services.

20. The facts of this case are required to be examined in the light of the above statutory provisions. In this case, we are concerned with transmission and distribution of electricity being the main services and application fee for releasing the connection for electricity; rental charges against metering equipment; testing fee for meters/transformers, capacitors etc.; labour charges from customers for shifting of meters or shifting of service lines; charges for duplicate bills provided by DISCOMS to consumers being related services. The question is whether an element of provision of these services is combined with an element or elements of provision of the main service of transmission and distribution of electricity. As noticed earlier, the respondents have themselves treated such related/ancillary services as part of the main service of transmission and distribution of electricity for the pre-negative list regime. Apart, therefrom, considering this issue independently, reference may be made to certain provisions of the Electricity Act. Sections 43 and 45 of the Electricity Act, which are relevant for the present purpose, read as under :-

*"**43. Duty to supply on request.** - (1) Save as otherwise provided in this Act, every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply :*

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission :

Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.

Explanation. - For the purposes of this sub-section, "application" means the application complete in all respects in the appropriate form, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances.

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line forgiving electric supply to the premises specified in sub-section (1) :

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.

***45. Power to recover charges.** - (1) Subject to the provisions of this section, the prices to be charged by a distribution licensee for the supply of electricity by him in pursuance of section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his licence.*

(2) The charges for electricity supplied by a distribution licensee shall be -

(a) fixed in accordance with the methods and the principles as may be specified by the concerned State Commission;

(b) published in such manner so as to give adequate publicity for such charges and prices.

(3) The charges for electricity supplied by a distribution licensee may include -

(a) a fixed charge in addition to the charge for the actual electricity supplied;

(b) a rent or other charges in respect of any electric meter or electrical plant provided by the distribution licensee.

(4) Subject to the provisions of section 62, in fixing charges under this section a distribution licensee shall not show undue preference to any person or class of persons or discrimination against any person or class of persons.

(5) The charges fixed by the distribution licensee shall be in accordance with the provisions of this Act and the regulations made in this behalf by the concerned State Commission."

21. On a plain reading of Section 43 of the Electricity Act, it is evident that a licensee, on an application by the owner or occupier of any premises, is required to supply electricity to such premises. For the purpose of supplying electricity, it is the duty of the distribution licensee to provide electric plant or electric line for giving electric supply to the premises of the consumer. In case the distribution licensee fails to supply the electricity, it is liable to penalty under sub-section (3) of Section 43. Thus, a statutory duty has been cast upon the licensee to provide electric plant or electric line for giving electric supply to the premises of the applicant. Electric line has been defined under sub-section (20) of Section 2 of the Electricity Act to mean any line which is used for carrying electricity for any purpose and includes - (a) any support for any such line, that is to say, any structure, tower, pole or other thing in, on, by or from which any such line is, or may be, supported, carried or suspended; and (b) any apparatus connected to any such line for the purpose of carrying electricity. Electric plant has been defined under sub-section (22) of Section 2 of the Electricity Act to mean any plant, equipment, apparatus or appliance or any part thereof used for, or connected with, the generation, transmission, distribution or supply of electricity but does not include - (a) an electric line; or (b) a meter used for ascertaining the quantity of electricity supplied to any premises; or (c) an electrical equipment, apparatus or appliance under the control of a consumer.

22. Thus, any line which is used for carrying electricity for any purpose as well as any apparatus connected to any such line for the purpose of carrying electricity is mandatorily required to be provided to the consumer by the licensee. Moreover, any plant, equipment, apparatus or appliance or any part thereof used for, or connected with, the generation, transmission, distribution or supply of electricity, except for electric meter and any electrical equipment, apparatus or appliance under the control of a consumer fall within the ambit of electrical plant as defined under Section 2(22) of the Electricity Act. Sub-section (2) of Section 43 of the Electricity Act casts a duty upon the licensee to provide if required electric plant or electric line for giving electric supply to the premises. Therefore, providing electric line and electric plant are elements of service which are naturally bundled in the ordinary course of business, with the single service of transmission and distribution of electricity which gives the bundle its essential character. The only related service which does not fall within the ambit of the definitions of electric line and electric plant is the meter used for ascertaining the quantity of electricity supplied to any premises. However, insofar as installation of electricity meter and hire charges collected in respect of electricity meters are concerned, by the circular dated 7th December, 2010, the Government of India has clarified that supply of electricity meters for hire to the consumers is an essential activity having direct and close nexus with transmission and distribution of electricity and therefore, is covered by the exemption for transmission and distribution of

electricity extended under the relevant notifications. Evidently therefore, all the services related to transmission and distribution of electricity are naturally bundled in the ordinary course of business of the petitioner and are required to be treated as provision of the single service of transmission and distribution of electricity which gives the bundle its essential character.

23. Besides, a perusal of the GERC Regulations indicates that the services which are sought to be taxed now are the services, which the petitioner is required to mandatorily provide at the rate prescribed by GERC, a statutory authority constituted under the provisions of the Electricity Act. In the opinion of this Court, all these services are essential activities which have a direct and close nexus with transmission and distribution of electricity. In terms of the earlier clarification dated 7-12-2010 issued vide Circular No. 131/13-2010-S.T., the Government of India had clarified that an activity, which is an essential activity having direct and close nexus with transmission and distribution of electricity would be covered by the exemption for transmission and distribution of electricity extended under the relevant notifications. Therefore, the taxability of the related/ancillary services are required to be given same treatment as is given to the single service, which gives such bundle its essential character, namely, transmission and distribution of electricity.

24. It has been contended on behalf of the respondents that sub-section (3) of Section 66F of the Finance Act would not apply where the single service which gives the bundle of services its essential character is exempt from the levy of service tax. In the opinion of this Court, there is nothing in the language employed in sub-section (3) to Section 66F to read into it a requirement that such service should not be exempt from tax. All that the sub-section provides is that taxability of bundled services shall be determined in the manner provided therein. The term taxability means liability to taxation. Thus the term taxability would take within its sweep not being taxable also inasmuch as liability to taxation would also mean not being liable to any tax. Thus, the liability to tax of a bundled service has to be determined in the manner provided under sub-section (3) of Section 66F of the Finance Act. If the services are naturally bundled in the ordinary course of business, the bundle of services shall be treated as provision of the single service which gives the bundle its essential character and where the services are not naturally bundled in the ordinary course of business, the same is required to be treated as provision of the single service which results in highest liability of service tax. Accordingly, where the services are naturally bundled in the ordinary course of business and the single service which gives such bundle its essential character is exempt from tax, the entire bundle will have to be treated as provision of such single service.

25. Thus, insofar as the phase relating to the negative list regime is concerned, the services in question would fall within the ambit of bundled services as contemplated under sub-section (3) of Section 66F of the Finance Act, and would have to be treated in the same manner as the service which gives the bundle its essential character, namely, transmission and distribution of electricity and, would therefore, be exempt from payment of service tax.

26. Insofar as the phase relating to the CGST/SGST Acts regime is concerned, Section 8 of the CGST Act makes provision for tax liability on composite and mixed supplies and postulates that the tax liability on a composite or a mixed supply shall be determined in the manner provided in clauses (a) and (b) thereunder. Clause (a) says that a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and clause (b) says that a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax. To fall within the ambit of clause (a) the supply has to be a composite one. Composite supply has been defined under Section 2(30) of

the CGST Act to mean a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is the principal supply. Thus, Section 8 read with Section 2(30) of the CGST Act are more or less akin to Section 66F(3)(a) of the Finance Act. Both require that to fall within the ambit thereof the services should be naturally bundled in the ordinary course of business. While clause (a) of Section 66F(3) of the Finance Act uses the expression "shall be treated as provision of the single service which gives such bundle it essential character"; clause (a) of Section 8 of the CGST Act uses the expression "shall be treated as a supply of such principal supply". As to what is a principal supply is defined in Section 2(90) of the CGST Act to mean the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary. In other words "principal supply" is the supply which gives the bundle its essential character. Reverting to the facts of the present case, the principal supply of transmission and distribution of electricity is naturally bundled and supplied in conjunction with the related/ancillary services in the ordinary course of business, accordingly, in view of the provisions of clause (a) of Section 8 of the CGST Act, the tax liability of such composite supply is required to be determined by treating the same as a supply of the principal supply namely, transmission and distribution of electricity.

27. It has been contended on behalf of the respondents that clause (a) of Section 8 of the CGST Act would not be applicable where the principal supply is exempt from levy of service tax. In the opinion of this Court, there is nothing in Section 8 of the Act to read any such construction. What the section says is that the tax liability of a composite or a mixed supply shall be determined in the manner provided thereunder. In a given case, the tax liability may be nil, but that would not take such service out of the purview of Section 8 of the Act, which would be attracted if the supply is either composite or mixed in nature, notwithstanding that the end result may be nil tax liability.

28. While on behalf of the petitioners it has been contended that the services rendered by them are in the nature of composite supply, on behalf of the respondents it has been contended that the same are in the nature of mixed supply within the meaning of such expression as contemplated in Section 2(74) of the CGST Act and would, therefore, fall within the ambit of clause (b) of Section 8 of that Act which provides that a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax. Mixed supply has been defined under Section 2(74) of the CGST Act to mean two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply. The illustration thereunder reads thus :

"Illustration. - A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately;"

The above illustration gives an indication of the intent of the Legislature, viz. it makes it clear that what is to be treated as "mixed supply" is a combination of supplies wherein each of the items forming part of the supply can be supplied separately and are independent of each other, but are supplied in conjunction with each other. Adverting to the facts of the present case, the related supplies cannot be supplied separately nor are the principal supply and related supplies independent of each other. The related supplies are dependent on the principal supply of transmission and distribution of electricity and *vice versa,* neither service can be provided independent of the other. The

transmission and distribution of electricity cannot be done without the help of electric line, electric plant and electric meter, and nor can the related services be used for any purpose other than for transmission and distribution of electricity. The principal supply and the related/ancillary services go hand in hand and one cannot be provided independent of the other. The upshot of this discussion is that the services provided by the petitioner are in the nature of composite supply and therefore, in view of the provisions of clause (a) of Section 8 of the CGST Act, the tax liability thereof has to be determined by treating such composite same as a supply of the principal supply of transmission and distribution of electricity. Consequently, if the principal supply of transmission and distribution of electricity is exempt from levy of service tax, the tax liability of the related services shall be determined accordingly.

29. TO SUMMARISE :

- The preliminary contention regarding the petition not being maintainable is rejected.

- As per the circular dated 7th December, 2010, the reason for saying that supply of electricity meters for hire to consumers is covered by the exemption notification is that such service is an essential activity having direct and close nexus with transmission and distribution of electricity. This circular only provides an interpretation of when a service would stand included in another service, namely, when such service is an essential activity having direct and close nexus with the exempted activity. Therefore, the fact that the exemption notifications came to be rescinded has no relevance inasmuch as all that the circular clarifies is what according to the Government of India would stand included in another service. Such interpretation would not change merely because such exemption is now granted under some other provision.

- The meaning of “transmission and distribution of electricity” does not change either for the negative list regime or the GST regime. Accordingly, the services which stood included within the ambit of transmission and distribution of electricity during the pre-negative list regime cannot now be sought be excluded by merely issuing a clarificatory circular, that too, with retrospective effect. By the clarificatory circular, the respondents seek to give a different interpretation of the very same services as against the clarification issued for the pre-negative list regime.

- From the very manner in which the respondents have treated the services related to transmission and distribution of electricity during the pre-negative list regime, the related/ancillary services would stand covered by the exemption granted to transmission and distribution of electricity by virtue of inclusion of such services in the list of negative services under Section 66D(k) of the Finance Act as well as by virtue of exemption notification issued under the CGST Act.

- Any line which is used for carrying electricity for any purpose as well as any apparatus connected to any such line for the purpose of carrying electricity is mandatorily required to be provided to the consumer by the licensee. The term “electrical plant” takes within its sweep any plant, equipment, apparatus or appliance or any part thereof used for, or connected with, the generation, transmission, distribution or supply of electricity, except for electric meter and any electrical equipment, apparatus or appliance under the control of a consumer. Sub-section (2) of Section 43 of the Electricity Act casts a duty upon the licensee to provide, if required, electric plant or electric line for giving electric supply to the premises. Therefore, providing electric line and electric plant are elements of service which are naturally bundled in the ordinary course of business, with the single service of transmission and distribution of electricity which gives the bundle its essential character. The only related service which does not fall within the ambit of the definitions of electric line and electric plant is the meter used for ascertaining the quantity of electricity supplied to any premises. However, insofar as

installation of electricity meter and hire charges collected in respect of electricity meters are concerned, by the circular dated 7th December, 2010 the Government of India has clarified that supply of electricity meters for hire to the consumers is an essential activity having direct and close nexus with transmission and distribution of electricity, and, therefore, is covered by the exemption for transmission and distribution of electricity extended under the relevant notifications. Therefore, all the services related to transmission and distribution of electricity are naturally bundled in the ordinary course of business of the petitioner and are required to be treated as provision of the single service of transmission and distribution of electricity which gives the bundle its essential character.

- The term "taxability" means liability to taxation. Thus, the term taxability would take within its sweep not being taxable also inasmuch as liability to taxation would also mean not being liable to any tax. Thus, the liability to tax of a bundled service has to be determined in the manner provided under sub-section (3) of Section 66F of the Finance Act. If the services are naturally bundled in the ordinary course of business, the bundle of services shall be treated as provision of the single service which gives the bundle its essential character and where the services are not naturally bundled in the ordinary course of business, the same is required to be treated as provision of the single service which results in highest liability of service tax. Accordingly, where the services are naturally bundled in the ordinary course of business and the single service which gives such bundle its essential character is exempt from tax, the entire bundle will have to be treated as provision of such single service.

- In respect of the period falling under the negative list regime, the services in question would fall within the ambit of bundled services as contemplated under sub-section (3) of Section 66F of the Act, and would have to be treated in the same manner as the service which gives the bundle its essential character, namely, transmission and distribution of electricity and, would therefore, be exempt from payment of service tax.

- The services provided by the petitioner are in the nature of composite supply and therefore, in view of the provisions of clause (a) of Section 8 of the CGST Act, the tax liability thereof has to be determined by treating such composite same as a supply of the principal supply of transmission and distribution of electricity. Consequently, if the principal supply of transmission and distribution of electricity is exempt from levy of service tax, the tax liability of the related services shall be determined accordingly.

30. For the foregoing reasons, the petition succeeds and is, accordingly, allowed to the following extent :

Paragraph 4(1) of the impugned Circular No. 34/8/2018-GST, dated 1-3-2018 to the extent the same reads as under is hereby struck down as being *ultra vires* the provisions of Section 8 of the Central Goods and Services Tax Act, 2017 as well as Notification No. 12/2017-C.T. (R) Serial No. 25 :

4.	(1) Whether the activities carried out by DISCOMS against recovery of charges from consumers under the State Electricity Act are exempt from the GST	(1) Service by way of transmission or distribution of electricity by an electricity transmission or distribution utility is exempt from GST under Notification No. 12/2017-C.T. (R), Sl. No. 25. The other services such as, - i. Application fee for releasing connection of electricity;

		ii. Rental Charges against metering equipment; iii. Testing fee for meters/transformers, capacitors etc.; iv. Labour charges from customers for shifting meters or shifting of service lines; v. charges for duplicate bill; provided by DISCOMS to consumer are taxable.

The impugned summons dated 28-3-2018 is hereby set aside to the extent the petitioners are called upon to produce the documents listed at Serial No. 5 of the annexure thereto, except clause (vi); income from shifting of HT lines received from MEGA. Consequently, the respondents shall drop the proceedings under the Finance Act, 1994 as well as under the CGST/SGST Acts sought to be initiated by virtue of the impugned summons to the extent the same is based upon Item No. 4(1) of the impugned circular dated 1st March, 2018.

31. Rule is made absolute to the aforesaid extent with no order as to costs.

32. At this stage, Learned Standing Counsel for the respondents has requested that the operation of this judgment be stayed for a period of eight weeks so as to enable the respondents to approach the higher forum. The request is considered and declined.**"**

(b) In the case of Hyderabad Power Installations (supra), the following view has been taken by the Tribunal:-

The appellant is registered with the Service Tax Department. On verification of records it emerged that the appellant had entered into contract agreements with Power Distribution/Transmission Companies which involved supply of material, erection and installation of sub-stations, related lines, installation of transformers and other electrical equipments etc. They also provided their land under lease agreement to a business organisation and received payment to that effect. The department entertained the view that the appellant has provided taxable services under the category of "Erection Commissioning or Installation Services (ECIS)" and Renting of Immovable Property Services, however, have neither disclosed these facts to the Department nor discharged appropriate service tax liability thereon.

2. In adjudication proceedings, service tax demand of Rs. 60,68,455/- was confirmed on services rendered under the category of ECI Services. Demand of ₹ 4,91,145/- was confirmed on services rendered under the category of Renting of Immovable Property. Hence this appeal.

3. The learned Counsel appearing for the appellant Shri R. Raghvendra Rao submitted that the challenge in this appeal is now limited to the demand, interest, penalty etc, confirmed under ECIS. He pointed out that the issue is no longer res integra as the same is settled in the following cases:

- Shri Ganesh Enterprises Vs CCE, Hyderabad-III [2014-TIOL-187-CESTAT-BANG]
- K. Shanmugavelu Vs CCE, Mudurai [2014-TIOL-1325-CESTAT-MAD]
- Kedar Construction Vs CCE, Kolhapur [2015 (37) S.T.R. 631 (Tri-Mumbai]
- UP RajkiyaNirman Nigam Ltd Vs CCE, Meerut [2015-TIOL-1485-CESTAT-DEL]
- Elmech Enterprises Vs CCE, Hyderabad-III *[2015-TIOL-459-CESTAT-BANG]

4. We find that the appeal before us is more than amply covered by the above judgments. The relevant portion of the judgment in Elmech Enterprises *case* is reproduced below:

> *5. The Notification No. 45/2010-ST provides exemption to all taxable services relating to transmission and distribution of electricity by a person to another person during the relevant period covered by the proceedings. It is not limited only to taxable service of transmission by the transmission company as observed by the learned original adjudicating authority. Prima facie, I find that appellant is eligible for the benefit of Notification and therefore the appeal could have been heard without insisting on pre-deposit. Accordingly, the impugned order is set aside and the matter is remanded to the Commissioner (A) with a request to hear the appeal without insisting on any pre-deposit.*

5. Similar view has been accorded in the other cited judgments also. Applying the dictum laid in the above judgments we find that the demand raised under ECIS is unsustainable and requires to be set aside which we hereby do. We do not interfere with the demand in regard to renting of Immovable Property. The appeal partly allowed with consequential reliefs, if any.

(c) In the case of Hyderabad Power Installations (P) Limited the following order was passed:-

6. We find that the contentions of the appellant are not without merits. In the first place itself, we find from the records that the issue of taxability of services provided by service providers such as the appellant in categories like “Erection, Commissioning or Installation Services” was in dispute and the department had contended that such services will not fall under the beneficial ambit of Notification Nos. 11/2010-S.T., dated 27-2-2010 and 32/2010-S.T., dated 22-6-2010. The relevant portions of these notifications are reproduced below :

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* provided to any person, by any other person for transmission of electricity, from the whole of service tax leviable thereon under section 66 of the said Finance Act.

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 said Finance Act’), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the *taxable service provided* to any person, by a distribution licencee, a distribution franchisee, or any other person by whatever name called, authorized to distribute power under the Electricity Act, 2003 (36 of 2003), for distribution of electricity, from the whole of service tax leviable thereon under section 66 of the said Finance Act.

7. The aforesaid dispute resulted in a number of show cause notices demanding service tax on such services provided related to Distribution/Transmission of electricity. We find that show cause notice O.R. 35/2011-ADJN. ST(Commissioner) (HQ POR No. 01/2011-STATE 1), dated 21-1-2011 was in addition to this very appellant-assessee for non-payment of service tax under the category ECIS etc., as the department harboured a view that services rendered by the appellant with Power Distribution/Transmission Companies were not eligible for exemption under Notification No. 45/2010-S.T., reference of which has been made in SCN dated 30-12-2011 related to the present appeal.

8. Subsequently, however the Government has issued a Notification No. 45/2010-S.T., dated 20-7-2010 the relevant portion of which is reproduced below :

"Whereas, as Central Government is satisfied that a practice was generally prevalent regarding levy of service (including non-levy thereof), under section 66 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), on all taxable services relating to transmission and distribution of electricity provided by a person (hereinafter called the service provider) to any other person (hereinafter called 'the service receiver'), and that all such services were liable to service tax under the said Finance Act, which were not being levied according to the said practice during the peiod up to 26th day of February, 2010 for all services relating to transmission of electricity, and the period up to 21st day of June, 2010 for all taxable services relating to distribution of electricity.

Now, therefore, in exercise of the powers conferred by section 11C of the Central Excise Act, 1944 (1 of 1944), read with section 83 of the said Finance Act, the Central Government hereby directs that the service tax payable on said taxable services relating to transmission and distribution of electricity provided by the service provider to the service receiver, which was not being levied in accordance with the said practice, shall not be required to be paid in respect of the said taxable services relating to transmission and distribution of electricity during the aforesaid period".

9. It is thus seen that the subsequent notification clearly stated that no service tax was required to be paid on all taxable services provided by service provider to service receiver during the period up to 26-2-2010 for all services relating to transmission of electricity, and during the period up to 21-6-2010 for all taxable services relating to distribution of electricity.

10. We find that the issue of eligibility of No. 45/2010-S.T. in identical situation is no longer *res integra* and has been decided in favour of service providers such as the appellant, in a number of cases. In fact relying upon such case laws, in the appellant's own appeal, this Bench has set aside the aforesaid demand made against them by denial of Notification No. 45/2010-S.T. vide Final Order No. A/30489/2016, dated 23-5-2016. The relevant portion of the order is reproduced below :

The appellant is registered with the Service Tax Department. On verification of records it emerged that the appellant had entered into contract agreements with Power Distribution/Transmission Companies which involved supply of material, erection and installation of sub-stations, related lines, installation of transformers and other electrical equipments etc. They also provided their land under lease agreement to a business organisation and received payment to that effect. The department entertained the view that the appellant has provided taxable services under the category of "Erection, Commissioning or Installation Services (ECIS)" and Renting of Immovable Property Services, however, have neither disclosed these facts to the Department nor discharged appropriate service tax liability thereon.

2. In adjudication proceedings, service tax demand of Rs. 60,68,455/- was confirmed on services rendered under the category of ECI Services. Demand of Rs. 4,91,145/- was confirmed on services rendered under the category of Renting of Immovable Property. Hence this appeal.

3. The learned Counsel appearing for the appellant Shri R. Raghvendra Rao submitted that the challenge in this appeal is now limited to the demand, interest, penalty etc., confirmed under ECIS. He pointed out that the issue is no longer *res integra* as the same is settled in the following cases :

- *Shri Ganesh Enterprises* v. *CCE, Hyderabad-III* [2014-TIOL-187-CESTAT-BANG]
- *K. Shanmugavelu* v. *CCE, Mudurai* [2014-TIOL-1325-CESTAT-MAD]
- *Kedar Construction* v. *CCE, Kolhapur* [2015 (37) S.T.R. 631 (Tri.-Mumbai]
- *UP Rajkiya Nirman Nigam Ltd.* v. *CCE, Meerut* [2015-TIOL-1485-CESTAT-DEL]
- *Elmech Enterprises* v. *CCE, Hyderabad-III*
- [2015-TIOL-459-CESTAT-BANG]

4. We find that the appeal before us is more than amply covered by the above judgments. The relevant portion of the judgment in *Elmech Enterprises* case is reproduced below :

5. The Notification No. 45/2010-S.T. provides exemption to all taxable services relating to transmission and distribution of electricity by a person to another person during the relevant period covered by the proceedings. It is not limited only to taxable service of transmission by the transmission company as observed by the learned original adjudicating authority. *Prima facie*, I find that appellant is eligible for the benefit of Notification and therefore the appeal could have been heard without insisting on pre-deposit. Accordingly, the impugned order is set aside and the matter is remanded to the Commissioner (A) with a request to hear the appeal without insisting on any pre-deposit.

5. Similar view has been accorded in the other cited judgments also. Applying the dictum laid in the above judgments we find that the demand raised under ECIS is unsustainable and requires to be set aside which we hereby do. We do not interfere with the demand in regard to renting of Immovable Property. The appeal partly allowed with consequential reliefs, if any.

11. In the circumstances, we therefore find that the main issue *per se* was in agitation/sub judice in respect of this appellant at least till the date of Tribunal's afore-cited Final Order viz., 23-5-2016. In the normal course, pursuant to issue of a notification under Section 11C of Central Excise Act, 1944 Section 83 of Finance Act, 1994, any refund arising on account of such Section 11C notification will have to be necessarily claimed before the expiry of six months from the date of issue of the said notification [Proviso to sub-section (2) of Sec. 11C]. This is a deviation from the normal period of one year provided for in claim of refund in Sec. 11B ibid. However, as per clause (ec) of Explanation (B) of sub-section (5) of Section 11B ibid read with sub-section (1) thereof, in case where a duty becomes refundable as a consequence of judgment, decree, order or direction of appellate authority, Appellate Tribunal or any Court, the refund claim can be made before the expiry of one year from the date of such judgment, decree or direction. The statutory interpretation in such a situation, as

distilled from settled law, is that when there are in an enactment two provisions which cannot be reconciled, they should be so interpreted that if possible, effect should be given to both. This is what is called as harmonious construction. Only if this is not possible as observed by the Hon'ble Apex Court in *South India Corporation (P) Ltd.* v. *Board of Revenue, Trivandrum* [AIR 1964 SC 207 at page 215], "A familiar approach in all such cases is to find out which of the two apparently conflicting provisions is more general and which is more specific and to construe the more general one as to exclude the more specific". This principle is expressed in the maxims "*Generaliaspecialibus non derogent*" and "*Generaliaspecaliaderogent*" which means that general things will not derogate from the special provisions and is invoked to determine the scope of a general enactment with reference to a special enactment which precedes it.

12. We find that both the apparently conflicting provisions in Section 11B vis-à-vis 11C ibid, with regard to time limit prescribed to file refund claim are in fact harmonious with each other. Each has its own place, purpose and intention in the statute. The time limit of six months provided in Section 11C will normally be applicable in respect of refund claims emanating out of notifications issued under that section. However, if the issue involved in such 11C notification is also sub judice in any Court etc., the said provision of Section 11C will stand eclipsed by the general provision of Section 11B. The general provision of S. 11B(5)(ec) will then take precedence over the special provision in S. 11C ibid. In such a case, by implication the refund claimant will legally become entitled to file the claim within a time limit of one year from the date of judgment, decree, order or direction of appellate authority, Tribunal or Court in view of clause (ec) of Explanation B of S. 11B(5) ibid.

13. In the circumstances, we are of the considered opinion that the limitation can therefore start clicking only from the date of final judgment/decree/decision of Court/Tribunal/Appellate Authority. In this case therefore the limitation period will only start, at the earliest, after 23-5-2016 i.e. date of Final Order No. A/30489/2016 stated above.

14. For the reasons discussed above, we find that the refund is not hit by infirmities of time bar and cannot also be rejected on the ground that the Notification No. 45/2010-S.T. is not applicable to the appellant. We therefore essentially hold that the appellant is eligible for refund. The rejection of refund being unsustainable, the same is set aside and the appeal is allowed with consequential reliefs, if any.

(d) In the case of Madhya Pradesh Power Transmission Company Limited (supra), the following order was passed:-

7. The submissions advanced by Learned Counsel for the appellant and the Learned Authorized Representativeappearing for the Department have been considered

8. Each of the heads under which service tax has been confirmed will be dealt with separately

Consultancy services:

9. The appellant provides consultancy services to contractors and power DISCOMS while laying the power of electricity transmission lines, erection of electricity poles and construction of electricity sub-stations. The appellant collects the amount for consultation services which are incidental to the transmission activities as the appellant has the expertise in power transmission. If the poles, lines or sub-stations are not erected or constructed as per the specifications, it will not be possible to transmit electricity.

10. The issue that arises for consideration is as to whether service tax could be levied on the amount collected by the appellant towards consultancy charges. This issue was examined by a Division Bench of the Tribunal in Madhya Pradesh PoorvaKshetraVidyutVitran Company Ltd. decided on 14-1-2021 and after placing reliance upon the decision of the Gujarat High Court in Torrent Power Ltd. v. Union of India [Special Civil Application No. 5443 of 2018, decided on December 19, 2018) [2020 (34) G.STL 385 (Guj.) [2019] 101 taxmann.com 303 (Guj)) the Tribunal observed as follows-

> *"28. It is clear from the aforesaid judgment of the Gujarat High Court that the activities that are related/ancillary totransmission and distribution of electricity would be exempt from payment of service tax since transmission and distribution of electricity is exempted. It is also clear from aforesaid decision that all services related to transmission and distribution of electricity are bundled services, as contemplated under section 65F(3) of the Finance Act, and are required to be treated asa provision of a single service of transmission and distribution of electricity, which service is exempted from payment ofservice tax."*

11. In the present case the amount collected towards consultation services is in connection with services which are incidental to the transmission activities carried out by the appellant. The demand, therefore, cannot be sustained in the view of the aforesaid decision of the Tribunal.

Liquidated damages:

12. The second issue that arises for consideration in this appeal is relating to the amount collected by the appellant towards liquidated damages or penalty. This issue was also examined by the Division Bench of the Tribunal in Madhya Pradesh Poorva Kshetra Vidyut Vitaran Company Ltd decided on 12-4-2022 and after referring to the decision of the Tribunal in M/s South Eastem Cool Fields v. Commissioner of Central Excise and Service Tax, Raipur [ST/50667/2019, decided by ST/51651/2020, dated 22-12-2020 2021 (55) GSTL 540 (Tri. Del.) =(2021) 124 taxmann.com 174 (New Delhi CESTAT)] which decision has been accepted by the Board, observed that no service tax can be levied on the amount collected towards liquidated damages or penalty for breach of any of the terms of the contract.

Hire charges:

13. The Commissioner has confirmed the demand proposed on the amount received as Tire charges for the reason that these charges have been recovered for use of equipments and machineries rented to the vendors and contractors without giving legal right of possession and effective control. Learned Counsel for the appellant has not been able to controvert the findings recorded by the Commissioner in the impugned order. The confirmation of the demand under this head is, therefore, justified.

Conclusion:

14. In the result the confirmation of demand on the amount collected on account of consultancy charges or liquidated damages cannot be sustained and is set aside. However, the confirmation of demand under hire charges is upheld. The order dated 1-3-2019 passed by the Commissioner is accordingly modified to the said extent and the appeal is allowed to the extent indicated above."

(e) Madhya Pradesh Poorva Kshetra Vidyut Vitran Co Ltd (supra), CESTAT New Delhi held asunder:-

17. The issue that arises for consideration in this appeal is whether the appellant is providing taxable service by way of collecting amount under the following headings:

Late payment Surcharge	Taxable under section 66E(e) of the Finance Act as a 'declared service'
Meter Rent	Taxable under section 66E(f) of the Finance Act as a 'declared service'
Supervision Charges	Taxable under section 66B(44) of the Finance Act that defines the term 'service'.

18. As noticed above, there is no dispute on payment of service tax on the lease rent income, on which the demand of service tax to the extent of ₹ 3,69,543/- has been paid by the appellant. The dispute on this amount is only on the amount of penalty that has been levied.

19. The appellant is a Public Sector Undertaking primarily engaged in the business of transmission and distribution of electricity, which is covered under Negative List entry under section 66D(k) of the Finance Act relating to "transmission or distribution of electricity by an electricity transmission or distribution utility". There is no dispute with regard to taxability on power charges paid by the consumers, as it is exempted under the Negative List Entry. The only dispute in the instant *case* is with regard to various other charges recovered from electricity consumers for supply of electricity.

20. The late payment surcharge, meter rent and supervision charges are collected by the appellant in terms of Madhya Pradesh Electricity Regulatory Commission (Recovery of Expenses and Other Charges for Providing Electric Line or Plant used for purpose of giving supply) Regulations, 2009 [M.P 2009 Regulations**]**.

21. The period of dispute is from July, 2012 upto March, 2017. Section 66D of the Finance Act provides for a negative list of services. This negative list comprises, amongst others, in sub-clause (k), "transmission or distribution of electricity by an electricity transmission or distribution utility". The issue involved in this appeal is not regarding the amount collected by the appellant for supply of electricity; the dispute is regarding the amount collected towards late payment surcharge, meter rent and supervision charges.

22. These three charges have been collected by the appellant in terms of the 2009 Regulations. The Principal Commissioner has confirmed the demand of service tax on 'late payment surcharge' under section 66E(e) of the Finance Act by holding that the same is a consideration received by the appellant "for tolerating an act of electricity consumers by receiving the payments after the prescribed due date for payment of electricity bills. The Principal Commissioner has confirmed the demand of service tax on meter rent as a declared service under section 66E(f) of the Finance Act by holding that the same is the consideration received by the appellant for transfer of goods by way of hiring. The Principal Commissioner has also confirmed the demand of service tax on supervision charges collected from electricity consumers by holding that the same is taxable as it is not covered under any exemption.

23. According to the appellant the amount has been collected in terms of the 2009 Regulations and are the services bundled in the ordinary course of business for providing electricity. They are, therefore, required to be treated as a single service for providing services for transmission and distribution of electricity, which service is exempted under the negative list under section 66D(k) of the Finance Act.

24. In this connection it needs to be noted that prior to introduction of the negative list regime for service tax under the Finance Act, there was no specific clause in the charging provisions of the Finance Act requiring payment of service tax on the amount collected from the consumers in relation to transmission and distribution of electricity. The Government of India issued a Notification dated February 27, 2010 exempting taxable service provided to any person by any other person for transmission of electricity. Another Notification dated June 22, 2010 was issued exempting taxable service provided to any person by a distribution, licensee or franchisee for distribution of electricity. There was some confusion and notices were issued by the department in respect of the activities relating to transmission and distribution of electricity for the period prior to the aforesaid notification. Various representations were received by the Government relating to the period prior to February 27, 2010 and June 22, 2010 as the transmission/ distribution companies believed that service tax was not required to be paid on activities **relating to** transmission and distribution of electricity. A Trade Notice dated July 20, 2010 was then issued by the Government of India providing that service tax shall not be required to be paid for the period prior to the issuance of the aforesaid two notifications on the services relating to transmission and distribution of electricity.

25. A question, however, arose as to whether the exemption granted for transmission and distribution of electricity would also include directly connected activities such as meter rents. The Government of India issued a Circular dated December 07, 2010 clarifying that supply of electricity meters to the consumers was an essential activity having direct and close nexus with transmission and distribution of electricity and was, therefore, covered by the exemption granted to transmission and distribution of electricity.

25.1 Thereafter, the negative list regime was introduced with effect from July 01, 2012. As noticed above, section 66D(k) includes “transmission or distribution of electricity by electricity transmission or distribution utility in the negative list”.

26. The issue as to whether the charges collected in connection with transmission of electricity even after July 01, 2012 would be subjected to tax as according to the Department they would not be exempted under section 66D(k) of the Finance Act, came up for consideration before the Gujarat High Court in **Torrent Power** after referring to the position prior to the introduction of the negative list and the Notifications referred to above and the introduction of the negative list regime w.e.f July 01, 2012, the Gujarat High Court observed as follows:

“10. **Insofar as the first phase is concerned, the respondents do not dispute that the related/ancillary services to transmission and distribution of electricity are exempt from payment of service tax. The dispute, therefore, relates to the period of the negative list regime and the CGST/SGST regime.**

11. Insofar as the second phase, namely, the negative list regime is concerned, with effect from 1.7.2012, section 65B of the Finance Act, 1994 came to be amended and service tax became leviable on all services, other than those services specified in the negative list. Admittedly, transmission and distribution of electricity by an electricity transmission or distribution utility, finds place in the negative list and, is therefore, not exigible to service tax.

12. The first question that arises for consideration is whether services relating to transmission and distribution of electricity fall within the ambit of clause (k) of section 66D of the Finance Act and, are therefore, exempt. In this regard, it may be noted that prior to the coming into force of the negative list regime, goods and services were exempted by virtue of notifications issued in exercise of powers under sub-section (1) of

section 93 of the Finance Act. By virtue of Notification No. 11/2010 dated 27.2.2010, the Central Government exempted transmission of electricity from the whole of service tax leviable thereon under section 66 of the Finance Act; and by virtue of Notification No.32/2010-Service Tax dated 22.6.2010, distribution of electricity came to be exempted from the whole of service tax leviable thereon under section 66 of the Finance Act. Thus, what was exempt under those provisions was transmission and distribution of electricity, despite which, during the pre-negative list regime, the respondents have considered services related to transmission and distribution of electricity as exempted from service tax by virtue of those notifications. Insofar as electricity meters are concerned, vide circular No.131/13/2010-ST dated 7.12.2010, it was clarified that supply of electricity meters for hire to consumers being an essential activity, having direct and close nexus with transmission and distribution of electricity, the same is covered by the exemption for transmission and distribution of electricity extended under relevant notifications.

13. Thus, the reason for saying that supply of electricity meters for hire to consumers is covered by the exemption notification is that such service is an essential activity having direct and close nexus with transmission and distribution of electricity. This circular only provides an interpretation of when a service would stand included in another service, namely, when such service is an essential activity having direct and close nexus with the exempted activity. Therefore, the fact that the exemption notifications came to be rescinded would have no bearing inasmuch as the circular only clarifies what according to the Government of India would stand included in another service. Such interpretation would not change merely because such exemption is now granted under some other provision.

14. **It may be noted that insofar as the exemptions prior to the negative list regime as well as post the negative list regime are concerned, it is the transmission and distribution of electricity that has been exempted by virtue of notifications.** During the negative list regime, transmission and distribution of electricity has been placed in the negative list. Therefore, in all the three phases, what was exempted was “transmission and distribution of electricity”. **However, while for the prenegative list phase, the respondents considered the services related to transmission and distribution of electricity as exempt under the exemption notifications, for the negative list regime and the GST regime, they seek to exclude such services from the ambit of transmission and distribution of electricity.** From the affidavits-in-reply filed on behalf of the respondents, there is nothing to show as to how the very services, which stood included within the ambit of transmission and distribution of electricity now stand excluded. The sole refrain of the respondents is that in view of the fact that the exemption notification stands rescinded, the clarification also stands rescinded. What is lost sight of is that the clarification was only in respect of electric meters, whereas all related services were included within the ambit of transmission and distribution of electricity and given the benefit of the exemption notifications. Moreover, the clarificatory circular merely clarifies the stand of the Government as regards what would stand included within the meaning of “transmission and distribution services” namely, essential activities having direct and close nexus with the transmission and distribution of electricity. **The respondents having themselves considered the services in question as being covered by the exemption for transmission and distribution of electricity as such services were essential activities having a direct and close nexus cannot be now permitted to take a U-turn and seek to exclude such services without pointing out any specific change in the nature of the exemptions, except that they are provided under different statutory provisions. In the opinion of this court, the meaning of “transmission and distribution of electricity” does not change either for the negative list regime or the GST regime.** If that be so, the services which stood included within the ambit of transmission and distribution of electricity during the pre-negative list regime cannot now be sought be

excluded by merely issuing a clarificatory circular, that too, with retrospective effect. By the clarificatory circular, the respondents seek to give a different interpretation of the very same services as against the clarification issued for the prenegative list regime.

15. **Thus, from the very manner in which the respondents have treated the services related to transmission and distribution of electricity during the pre-negative list regime, such services would stand covered by the exemption granted to transmission and distribution of electricity by virtue of inclusion of such services in the list of negative services under section 66D (k) of the Finance Act as well as by virtue of exemption notification issued under the CGST Act."**

(emphasis supplied)

27. The Gujarat High Court also examined whether services provided with fall within the ambit of bundle services as contemplated under Section 66F(3) of the Finance Act and observed that for the phase relating to the negative list, the services in question would fall within the ambit of bundle services, as contemplated under section 66F of the Finance Act and would have to be treated in the same manner as the service which gives the bundle its essential character, namely transmission and distribution of electricity. The service would, therefore, be exempted from payment of service tax. The relevant portion of the order is reproduced below:

"20. The facts of this *case* are required to be examined in the light of the above statutory provisions. **In this *case*, we are concerned with transmission and distribution of electricity being the main services and application fee for releasing the connection for electricity; rental charges against metering equipment; testing fee for meters/transformers, capacitors etc.; labour charges from customers for shifting of meters or shifting of service lines; charges for duplicate bills provided by DISCOMS** to consumers being related services. The question is whether an element of provision of these services is combined with an element or elements of provision of the main service of transmission and distribution of electricity. **As noticed earlier, the respondents have themselves treated such related/ancillary services as part of the main service of transmission and distribution of electricity for the pre-negative list regime.** Apart, therefrom, considering this issue independently, reference may be made to certain provisions of the Electricity Act. Sections 43 and 45 of the Electricity Act.

22. Thus, any line which is used for carrying electricity for any purpose as well as any apparatus connected to any such line for the purpose of carrying electricity is mandatorily required to be provided to the consumer by the licensee. Moreover, any plant, equipment, apparatus or appliance or any part thereof used for, or connected with, the generation, transmission, distribution or supply of electricity, except for electric meter and any electrical equipment, apparatus or appliance under the control of a consumer fall within the ambit of electrical plant as defined under section 2(22) of the Electricity Act. Sub-section (2) of section 43 of the Electricity Act casts a duty upon the licensee to provide if required electric plant or electric line for giving electric supply to the premises. Therefore, providing electric line and electric plant are elements of service which are naturally bundled in the ordinary course of business, with the single service of transmission and distribution of electricity which gives the bundle its essential character. The only related service which does not fall within the ambit of the definitions of electric line and electric plant is the meter used for ascertaining the quantity of electricity supplied to any premises. However, insofar as installation of electricity meter and hire charges collected in respect of electricity meters are concerned, by the circular dated 7th December, 2010, the Government of India has clarified that supply of electricity meters for hire to the consumers is an essential activity having direct and close nexus with transmission and distribution of electricity

and therefore, is covered by the exemption for transmission and distribution of electricity extended under the relevant notifications. **Evidently therefore, all the services related to transmission and distribution of electricity are naturally bundled in the ordinary course of business of the petitioner and are required to be treated as provision of the single service of transmission and distribution of electricity which gives the bundle its essential character.**

23. **Besides, a perusal of the GERC Regulations indicates that the services which are sought to be taxed now are the services, which the petitioner is required to mandatorily provide at the rate prescribed by GERC, a statutory authority constituted under the provisions of the Electricity Act. In the opinion of this court, all these services are essential activities which have a direct and close nexus with transmission and distribution of electricity.** In terms of the earlier clarification dated 7.12.2010 issued vide Circular No.131/13-2010-ST, the Government of India had clarified that an activity, which is an essential activity having direct and close nexus with transmission and distribution of electricity would be covered by the exemption for transmission and distribution of electricity extended under the relevant notifications. Therefore, the taxability of the related/ancillary services are required to be given same treatment as is given to the single service, which gives such bundle its essential character, namely, transmission and distribution of electricity.

25. **Thus, insofar as the phase relating to the negative list regime is concerned, the services in question would fall within the ambit of bundled services as contemplated under subsection (3) of section 66F of the Finance Act, and would have to be treated in the same manner as the service which gives the bundle its essential character, namely, transmission and distribution of electricity and, would therefore, be exempt from payment of service tax."**

(emphasis supplied)

28. It is clear from the aforesaid judgment of the Gujarat High Court that the activities that are related/ancillary to transmission and distribution of electricity would be exempt from payment of service tax since transmission and distribution of electricity is exempted. It is also clear from aforesaid decision that all services related to transmission and distribution of electricity are bundled services, as contemplated under section 66F(3) of the Finance Act, and are required to be treated as a provision of a single service of transmission and distribution of electricity, which service is exempted from payment of service tax.

29. Thus, for all the reasons stated above, it is not possible to sustain the levy of service tax on the amount collected by the appellant for late payment surcharge, meter rent and supervision charges.

30. The issue that now remains to be decided is about the levy of penalty on the lease rent collected from the customers. The appellant claims that since it has deposited the lease rent, the levy of penalty may be set aside. It is not possible to accept this contention of the learned counsel for the appellant. The imposition of penalty under 'lease rent' is, therefore, confirmed.

31. Thus, for all the reasons stated above, the confirmation of demand by the Principal Commissioner on late payment surcharge, meter rent and supervision charges are set aside. The levy of penalty on the lease rent amount is confirmed. The appeal is, therefore, allowed to the extent indicated above."

(f) In the case of Tamilnadu Generation and Distribution Corpn Ltd (supra), the Chennai Bench of the Tribunal passed the following order:-

"5. We have carefully gone through the appeal and heard the rival contentions. The issue as per Revenue pertains to the non-payment of service tax towards services related to 'Business Auxiliary Service', 'Consulting Engineering Service', 'Renting of Immovable Property Service' and 'Commercial Training or Coaching Service' rendered by the appellant. The appellant while not specifically denying the activities has stated that all services have been rendered in connection with transmission or distribution of electricity and were not liable for the levy of service tax during the entire period of the demand, which by the impugned orders covers the period from 2008-09 to 2017 i.e. both under the negative list regime and prior to it. We hence examine whether the activities of the appellant relate to transmission and distribution of electricity and are exempted from service tax or not. 6. The appellant has relied on the following table listing the notifications that were in force during the pre-negative list period of the service tax levy exempting all activities provided for transmission and distribution of electricity:

Notification	***What the Notification exempts***
11-ST dated 27 February 2010	*Exempts the taxable service provided to any person, by any other person for transmission of electricity, from the whole of service tax*
32-ST dated 22 June 2010	*Exempts the taxable service provided to any person, by a distribution licencee, a distribution franchisee, or any other person by whatever name called, authorized to distribute power under the Electricity Act, 2003 (36 of 2003), for distribution of electricity.*
45-ST dated 20 July 2010	*… a practice was generally prevalent regarding levy of service tax (including non-levy thereof) … on all taxable services relating to transmission and distribution of electricity provided by a person … and that all such services were liable to service tax … which were not being levied according to the said practice during the period up to 26th day of February, 2010 for all taxable services relating to transmission of electricity, and the period up to 21st day of June, 2010 for all taxable services relating to distribution of electricity;* *… the Central Government hereby directs that the service tax payable on said taxable services relating to transmission and distribution of electricity provided by the service provider to the service receiver, which was not being levied in accordance with the said practice, shall not be required to be paid in respect of the said taxable services relating to transmission and distribution of electricity during the aforesaid period.*

The Apex Court in ***M/S. Peekay Re-Rolling Mills (P) vs The Assistant Commissioner &Anr [Appeal (civil) 2653 of 2006/ 2007 (219) E.L.T. 3 (S.C.)]*** held:

"In our opinion, exemption can only operate when there has been a valid levy, for if there was no levy at all, there would be nothing to exempt. . . . . exemption does negate a levy of tax altogether. Despite an exemption, the liability to tax remains unaffected, only the subsequent requirement of payment of tax to fulfill the liability is done away with."

Hence transmission and distribution of electricity are taxable services that have been exempted from service tax. The question is whether the activities sought to be subject to service tax levy by the impugned orders viz. 'Business Auxiliary Service', 'Consulting Engineering Service', 'Renting of Immovable Property Service' and 'Commercial Training or Coaching Service' are activities used 'for transmission' of electricity or 'for distribution' of electricity, so as to be also eligible for the said exemptions.

7. The appellant has also provided a table that 'tests' the impugned activities for eligibility for the exemption from Service Tax under the notifications:

Activity → ***Whether it*** ***answers ↓***	***Registration / Application / Name transfer from WEG***	***Preparation of field feasibility reports etc., to establish wind farms***	***Non-employees for training/workshop***	***Leasing land for power plant***
Whether it ***relates to*** *transmission and distribution of electricity*	*Yes, relates*	*Yes, relates*	*Yes, relates*	*Yes, relates*
Whether it is ***for the purpose of*** *transmission of electricity*	*Yes, it is for the purpose*	*Yes, it is for the purpose*	*Yes, it is for the purpose*	*Yes, it is for the purpose (seamless generation and transmission of power).*
Whether the service is rendered ***by*** *a person authorized to distribute power*	*Yes, appellant is Discom.*			

Unlike the table made by the appellant the exemption only uses the phrase 'for distribution' and 'for transmission' and 'relating to'. The terms should normally be understood to encompass the entire process necessary in transmitting and distributing electricity to their customers. In its judgment in the *case* of ***State of Haryana v. DalmiaDadri Cement Ltd [AIR 1988 S.C. 342],*** pertaining to the Sales Tax Act it was held by the Hon'ble Apex Court that from a plain reading of the relevant clause it is clear that expression "for use" means intended for use. Thus the word 'for' appearing in the notifications are to be construed as expressions of width and amplitude which cover within its scope any activity which is rendered in connection with the main activity of transmission and distribution of electricity. While examining a similar phrase the Hon'ble Bombay High Court in the *case* of ***ONGC v. CCE, Raigad [2013 (32) S.T.R. 31 (Bom.)]*** has held that - "where the legislature or its delegate uses the expression "in or in relation to", its object and purpose is to widen the scope and purview of its entitlement". A similar treatment has to be given to the word 'for' in the context of the notifications. It would not suffice to examine the form of the activity sought to be classified in isolation. The guiding factor would be to examine it in conjunction with the real nature and substance of the main activity i.e transmission and distribution. It has

hence to be ascertained whether the activity sought to be classified is an essential activity which is having a direct and close nexus with transmission and distribution of electricity. If so, all these services would be eligible for the exemption otherwise not.

8. We may now examine the judicial precedents in the matter. The impugned order and the submissions made during the hearing by Revenue has not relied on any judgments of superior courts. The appellant has relied on the following judgements presented in a tabular form.

CITATION	***FACTS***	***DECISION***
Kedar Constructions v. CCE 2014 (11) TMI 336-CESTAT MUMBAI	*5. We notice that out of the total demand confirmed of ₹ 2,04,14,368/- bulk of the demand of ₹ 1,90,47,124/- pertains to Commercial or Industrial Construction service rendered to Maharashtra State Electricity Transmission Co. Ltd., Maharashtra State Electricity Distribution Co. Ltd., Sunil Hi-Tech, Suraj Constructions, V.B. Bhike, etc. for transmission of electricity. Vide Notification 45/10-ST, all taxable services rendered 'in relation to' transmission and distribution of electricity have been exempted from the purview of service tax. The expression 'relating to' is very wide in its amplitude and scope as held by the* ***Hon'ble Apex Court in Doypack Systems P. Ltd. [1998 (36) ELT 0201 (SC)].*** *Therefore, all taxable services rendered in relation to transmission/distribution of electricity would be eligible for the benefit of exemption under the said Notification for the period prior to 27.02.2010.* *6. As regards the demand for the period w.e.f. 27.02.2010, the said exemption is available if the taxable services are rendered for transmission of electricity.* ***As held by the Hon'ble Apex Court in the case cited supra the expression "for" means 'for the purpose of'. As per the definition of transmission (given in the Electricity Act, 2003), IT COVERS A VERY WIDE GAMUT OF ACTIVITIES*** *including sub-station and equipments. Therefore, the various activities undertaken by the appellant, though classifiable under Commercial or Industrial Construction prior to 01.06.2007 or under works contract service on or after 01.06.2007, would be eligible for the benefit of exemption as held by this Tribunal in the case of Noida Power Co. Ltd., PashchimanchalVidyutVitran Nigam, PurvanchalVidyutVitran Nigam and Shri Ganesh Enterprises cited supra.*	
Shri Ganesh Enterprises v CCE 2014 (2) TMI 436 - CESTAT BANGALORE	*Among the taxable services provided were 'management, maintenance*	*.. by Notification No. 45/2010-ST dt. 20/07/2010, in exercise of powers conferred by Section 11 C of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994, granted*

	or repair service' involving manning and maintenance of sub-stations; 'erection, commissioning or installation service' for erection of electrical lines of different capacities and transport of material from one location to another including - erection of sub-stations and allied services; transport of goods by road for transport of failed/repaired transformers and other material of the distribution companies; rent-a-cab operator service, provided to the distribution companies for transport of their personnel; Business Auxiliary Service by establishing' Customer Service Centres on behalf of distribution companies; and 'manpower recruitment and supply	*immunity from the liability to remit service tax in respect of any taxable service provided in relation to transmission and distribution of electricity, during the period upto 26/02/2010. As consequence of this immunity Notification, the service tax liability of the petitioner for the several taxable services provided to electricity distribution companies of Andhra Pradesh during 01/04/2004 to 30/11/2009, stands eclipsed*

	agency service', by supply of semi-skilled labour for attending to maintenance works in the sub-divisions of the distribution companies.	
PaschimanchalVidyutVitran Nigam Ltd. v. CCE 2012 (8) TMI 688 CESTAT NEW DELHI	*… apart from transmission of electricity, the appellant assessee was also engaged in the business of "erection, commissioning and installation" as also "technical testing and analysis" which according to the department, were subject to levy of service tax …*	*14. … any activity or service like erection, commissioning and installation of meters as also technical testing and analysis can easily be termed as the service relating to the transmission and distribution of electricity provided by the service provider to the service receiver. Thus, in our considered view such service, which is subject matter of this appeal, would be squarely covered under the exemption.*
Noida Power Company Ltd. v CCE 2013 (8) TMI 746 - CESTAT NEW DELHI	*The network involves installation, erection, commissioning of transmission towers and connectors for transmitting energy to various consumers for supply of HT & LT electricity and installation of meters to measure consumption of monthly*	*5. On true and fair analysis of the Exemption Notification dated 22.06.2010 and the immunity Notification dated 20.07.2010 the conclusion is compelling that all taxable services provided in relation to distribution of electrical energy are exempt from the liability to service tax. The expression in relation to is of wide import and indicates all activities having a direct and proximal nexus with distribution of electrical energy. Distribution of electricity energy cannot be effectively accomplished without installation of substations, transmission towers and installation of meters to record electricity consumption for*

	energy. The assessee recovers the charges for these services …	*periodic billing and recovery of charges.*
S.K. Shah v. CCE & ST 2019 (2) TMI 1103 CESTAT MUMBAI	*appellant.. rendered various taxable services namely, construction service, maintenance and repair service etc. to M/s Maharashtra State Electricity Distribution Company Ltd. … during the period 01.4.2007 to 31.3.2012.*	*5. We find that by virtue of Notification No. 45/2010-ST dated 20.7.2010, transmission and distribution of electricity for the period upto February, 2010 has been retrospectively held to be not leviable to Service Tax in exercise of powers conferred by Section 11C of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994. Subsequently, the transmission of electricity has been held exempted vide Notification No. 11/2010- ST dated 27.2.2010 and distribution of electricity under Notification No. 32/2010-ST dated 22.6.2010.*
CC.,CEX & ST Hydrabad III Vs Sri Rajayalakshmi Cement Products 2017 (52) STR 309 (Tri. Hyd.)	*Erection, Commissioning or Installation Services (ECIS) - Liability to tax - In terms of Notification No. 45/2010-S.T., all taxable services relating to transmission and distribution of electricity provided by any service provider not taxable for period up to 26-2-2010 and up to 21-6-2010 respectively for services relating to transmission and distribution of electricity - Dropping of proceedings by adjudicating authority relying on C.B.E. & C. Circular No. 123/5/2010-TRU, dated 24-5-2010 proper. [para 5]*	
MD Aub Khan Vs CC, CEx, & ST, Guntur 2015 (40) STR 267 (Tri.Bang.)	*Demand - Service Tax - Manpower Supply Service - Transmission and distribution of electricity - Exemption Notification No. 45/2010-S.T., eligibility - Appellant providing manpower supply services to a company exclusively engaged in providing transmission and distribution of electricity - Impugned notification exempting all services provided in relation to transmission and distribution of electricity, services provided by appellant fully exempt - Denial of exemption on ground that service was provided prior to transmission and distribution of electricity, not tenable - Nothing in impugned notification to hold so - Demand not sustainable. [paras 2, 3]*	
Hyderabad Power Installations (P) Ltd. Vs	*Erection, Commissioning or Installation Services (ECIS) - Service Tax - Notification No. 45/2010-S.T.,*	

CCCE, C. & ST., Hyderabad II 2016(45) STR 217 (Try.Hyd.)	*dated 20-7-2010 clarified that no Service Tax required to be paid for all services relating to transmission of electricity upto 26-2-2010 and for all services relating to distribution of electricity upto 21-6-2010 - Hence, Service Tax not payable on Erection, Commissioning or Installation Services. [paras 8, 9]*

They have further stated that, the Central Board of Excise & Customs has vide its Circular No. 131/ 13/ 2010 – ST dated 07 December 2010, clarified thus *"… an essential activity having direct and close nexus with transmission and distribution of electricity, the same is covered by the exemption for transmission and distribution of electricity, extended under the relevant notifications".* This was in the context of service tax on "hire charges" for energy meters installed by Transco and Discom in consumer premises. This cardinal rule they state will apply to all such activities of the Discom. They have further stated that the Hon'ble High Court of ***Gujarat [Torrent Power Ltd. v. Union of India 2019 (1) TMI 1092]*** and Hon'ble High Court of ***Rajasthan [Jodhpur VidyutVitran Nigam Ltd v. UOI 2021 (2) TMI 557***] had also categorically asserted in favour of the appellant, by applying the said circular to interpret the exemption for transmission and distribution of electricity, not merely on service tax prior to and after Negative List, but also during GST regime.

9. It would now merit to examine the individual activities sought to be taxed by the department. The description of the activity as given by the appellant is mentioned below.

i) Registration / application / name transfer from Wind Energy Generators (WEG): ['Business Auxiliary Service'], Registration fee, name transfer fee and Installation & tie up fee are fixed as statutory fee for grant of permission for setting up of a wind mill.

ii) Preparation of field feasibility reports etc., to establish wind farms. ['Consultant Engineer Service']. The field feasibility report is prepared for the purpose of installation of wind electric generator. It is a mandatory/ statutory document and helps the appellant to monitor the role of the applicant in its capacity as an electric transmission and distribution utility. Without assessing feasibility and hereafter approving the grid tie up the appellant cannot allow the electricity generated by the WEG to enter the grid.

iii) Non-employees for training/workshop. ['Commercial Coaching and Training']. The training given to its own employees is without collecting fees. Training for others is done by collecting a nominal fee for meeting the cost of training. The training is given as a part of human resource development as skill upgradation is essential for providing and maintaining proper transmission and distribution of electricity.

iv) Leasing land for power plant. ['Renting of Immovable Property Service']. The vacant land of the appellant was given on lease for setting up diesel engine-based power project having 4 units of 49 MW each. The land has been leased out to optimize the generation, transmission and distribution of electricity. As per the discussions at para 7 and the judgments above it is clear that all taxable services provided for the transmission and distribution of electrical energy are exempt from the liability to service tax during the impugned period. The sole purpose of the impugned activities as described above are 'for' ensuring the transmission and distribution of electricity. These services are not provided independently and are part of the appellant's statutory functions and are hence done 'for' transmission and distribution of electric power to various consumers located within the state of Tamil Nadu in terms of the provisions of the Electricity Act, 2003. Without the said services being rendered transmission and distribution of electricity

would be impaired. This being so the activities though being taxable services are covered by the exemption notifications stated above prior to 1.7.2012, and from the said date they figure in the negative list as per Section 66D(k) of the Finance Act 1994. Hence the appeal succeeds.

10. Since the issue has been decided on merits in favour of the appellant the question of paying duty, interest, penalties or of invoking the extended period does not arise.

11. Thus, the impugned order's No. CHN-SVTAX-001-COM-13-201415 dated 29.1.2015, No. CHN-SVTAX-001-COM-97-2016-17 dated 22.2.2017 and No. 111/2018 Ch. N. GST (Commr.) 20.11.2018 are set aside and the appeals are allowed with consequential relief, if any, as per law. The appeals are disposed off accordingly.

From the above judgments it can be seen that the entire period in the present appeal i.e. related to Notification No. 45/2010-ST, 11/2010-ST and also for the period when negative list under Section 66D was in force, it was held that service for transmission of electricity is not leviable to service tax. Therefore, the issue is no longer *res-integra.* Accordingly, in the present case also the service tax liability in respect of Erection, Commissioning and Installation Service is not sustainable.

7. As regards the issue that the Cenvat credit reversed by the appellant, whether they are liable for interest thereon or otherwise, we find that there is no dispute that the demand of interest was also raised by invoking extended period. As per facts and circumstances, there is no suppression of facts on the part of the appellant therefore, even for the demand of interest, the longer period cannot be invoked. The Hon'ble Supreme Court in the case of *Commissioner vs. TVS Whirlpool Limited (supra)* held as under:-

"The Supreme Court Bench comprising Hon'ble Mr. Justice S.P. Bharucha, Hon'ble Mr. Justice V.N. Khare and Hon'ble Mr. Justice D.P. Mohapatra on 7-10-1999 **dismissed** the Civil Appeal No. 8930 of 1997 with C.A. Nos. 7299-7309 of 1997 filed by Commissioner of Customs, Madras. The Civil Appeal Nos. 7299-7309 of 1997 was filed against the CEGAT Order No. 612/96-SRB, dated 12-4-1996 and reported in **1996 (86) E.L.T. 144 (Tribunal)**. While dismissing the appeal the Supreme Court passed the following order :-

"It is only reasonable that the period of limitation that applies to a claim for the principal amount should also apply to the claim for interest thereon. We find no merit in the appeals and they are dismissed with costs."

The Appellate Tribunal in its order in question had held that where no time limit is prescribed for demand/recovery of interest under Sections 47 and 61(3) of the Customs Act, 1962, then taking into consideration the scheme of Central Excise law and the limitation periods prescribed under different sections and rules. A reasonable period of limitation would be six months or five years, as the case may be, as provided under

Section 28 of the Customs Act, 1962. Therefore, the demand for interest beyond the period of six months from clearance of goods is barred by limitation.**"**

In the case of *Commissioner vs. Emco Limited (supra)* Hon'ble Bombay High Court passed the following order:-

"The Bombay High Court Bench comprising Hon'ble Mr. Justice J.P. Devadhar and Hon'ble Mr. Justice M.S. Sanklecha on 11-4-2012 **dismissed** the Central Excise Appeal (L) No. 116 of 2011 filed by Commissioner of Central Excise, Mumbai-III against the CESTAT Final Order No. A/464/2011-WZB/C-II(EB) and Stay Order No. S/426/2011-WZB/C-II(EB), dated 21-6-2011 as reported in **2011 (272) E.L.T. 136 (Tri.-Mumbai)***(Emco Ltd.* v. *Commissioner)*. While dismissing the appeal, the High Court passed the following order :

"Question of law raised by the Revenue in this appeal are as follows :

(a) Whether the CESTAT was correct in allowing the appeal of M/s. Emco Ltd. by holding that the department should have initiated the proceedings for recovery of interest within a period of one year from the date of filing of monthly returns, despite the fact that the assessee has never disputed this aspect in their appeal memorandum, more particularly, in view of the provisions of Section 11A(2B) of the Central Excise Act, 1944?

(b) Whether the Hon'ble CESTAT has acted in excess of jurisdiction while deciding the issue of "time limit" for recovery of interest?

2. On perusal of the order of the Tribunal it is seen that the Tribunal has allowed the claim of the assessee by relying upon the decision of the Apex Court in the case of *Commissioner of Central Excise* v. *TVS Whirlpool Ltd.*2000 (119) E.L.T. A177 (S.C.) wherein, the Apex Court *inter alia* has held as follows : -

"It is only reasonable that the period of limitation that applies to a claim for the principal amount should also apply to the claim for interest thereon."

3. In this view of the matter, we see no reason to entertain the appeal. The appeal is accordingly dismissed with no order as to costs."

The Appellate Tribunal in its impugned order had followed Supreme Court decision in 2000 (119) E.L.T. A177 (S.C.) to hold that it is reasonable to adopt one year period for recovery of interest. Since demand notice is issued on 7-8-2009, demand for recovery of interest for period prior to July, 2008 will be beyond the period of one year and therefore the same is hit by limitation.**"**

8. In view of the above judgments, the demand of interest for the longer period will not sustain.

9. As per our above discussion on both the issues, demand is not sustainable. As a result, the impugned order is set-aside and the appeals are allowed.

(Pronounced in the open court on 06.02.2024*)*

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

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