

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Service Tax Appeal No.40863 of 2015

(Arising out of Order in Original No. CHN-SVTAX-001-COM-13-2014-15 dated 29.1.2015 passed by the Commissioner of Service Tax – I, Chennai)

Service Tax Appeal No.41522 of 2017

(Arising out of Order in Original No.CHN-SVTAX-001-COM-97-2016-17 dated 22.2.2017 passed by the Principal Commissioner of Service Tax – I, Chennai)

Service Tax Appeal No.40367 of 2019

(Arising out of Order in Original No.111/2018 Ch. N. GST (Commr.) 20.11.2018 passed by the Principal Commissioner of GST & Central Excise, Chennai)

**M/s. Tamil Nadu Generation and
Distribution Corporation Limited**

No. 144, Anna Salai
Chennai – 600 002.

Appellant

Vs.

Commissioner of GST & Central Excise

Chennai North Commissionerate
26/1, Mahatma Gandhi Road
Chennai – 600 034.

Respondent

APPEARANCE:

Shri V. Ravindran, Advocate for the Appellant
Smt. Anandalakshmi Ganeshram, Supdt. (AR)

CORAM

Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order Nos. 40834 to 40836/2023

Date of Hearing : 16.08.2023

Date of Decision: 22.09.2023

Per M. Ajit Kumar,

These appeals are filed by the appellant Tamil Nadu Generation and Distribution Corporation Ltd. (TANGEDCO) against the above Orders-in-Original (impugned orders).

2. Brief facts of the case in all these appeals are that the appellants are providers of various services viz. 'Business Auxiliary Service', 'Consulting Engineering Service', 'Renting of Immovable Property Service' and 'Commercial Training or Coaching Service'. The appellants are registered under the category of 'Management or Business Consultant Service'. Based on intelligence regarding non-payment of service tax on amount collected towards processing and transfer fees from wind energy generators, an investigation was taken up by the officers of Survey, Intelligence and Research (SIR) Wing of the Commissionerate. Investigation revealed that the appellant TANGEDCO had been collecting (i) fees / charges from the developers of windmills for processing their registration / application / name transfer from their Wind Energy **Generators from 2008 to 2011 - 12, from 2012 - 13 to 2014 - 15 and from 2015 - 16 and 2016 - 17** for the services provided which it appeared is classifiable under the category of 'Business Auxiliary Service'. (ii) Consultancy charges for preparation of field feasibility report etc. to establish wind farms at notified sites i.e. Tirunelveli and Udumalpet in the State which services are classifiable under the category of 'Consultant Engineer Service'. (iii) A fee from non-employees towards participation in the training / workshop conducted by them at their training institute, which are classifiable under 'Commercial Coaching and Training' from 2010 - 11 onwards. (iv) The appellant had also let out their vacant land on rental lease to M/s. GMR Vasavi Power Corporation for setting up their diesel engine-based power plant at Basin Bridge, Chennai and the lease rental income received from M/s. GMR Power Corporation appeared to be taxable under the taxable category of 'Renting of Immovable Property

Service' from 2010- 11 onwards. The appellant had not registered themselves with the department nor had they paid service tax even after qualification of accounts by statutory auditors on non-payment of service tax liability vide Sl. No. 8 in Notes to Accounts in Balance Sheets for the disputed period. It therefore appeared that they had suppressed relevant facts from the knowledge of the department and contravened the aforesaid provisions of law with an intention to evade payment of service tax. Hence periodic Show Cause Notices were issued to the appellant demanding service tax. After due process of law, the adjudicating authorities under the above Orders-in-Original confirmed the service tax demand along with interest and imposed penalties under various provisions of Finance Act, 1994. The show cause notice wise duty involved are tabulated below.

Appeal No.	Period	Business Auxiliary Service'	'Consulting Engineering Service	'Renting of Immovable Property Service'	Commercial Training or Coaching Service
ST/40863/2015	2008 - 09 to 2011 - 12	87,02,278	4,71,51,927	90,27,374	56,32,229
ST/41522/2017	2012-13 to 2014 - 15	63,29,078	1,88,89,659	2,19,21,024	33,36,186
ST/40367/2019	5/15 to 6/2017	4,98,74,350			

Aggrieved by the impugned orders the appellant is before us in appeal.

3. No cross-objections have been filed by the respondent-department.

4. We have heard Shri V. Ravindran, learned counsel for the appellant and Smt. Anandalakshmi Ganeshram, learned Superintendent (AR) for the Revenue

4.1 Learned Counsel for the appellant has stated that the appellant is a 100% Government of Tamil Nadu owned public sector undertaking

formed under Section 131 of the Electricity Act, 2003 as an Electricity Generation and Distribution Utility and its primary functions are generation, transmission and distribution of electricity to various consumers located within the state of Tamil Nadu in terms of the provisions of the Electricity Act, 2003. Taxes on the consumption or sale of electricity fall under Sl.No.53 in List II in the Seventh Schedule to the Constitution. 'Transmit' as defined under section 2(74) of The Electricity Act, 2003 'means conveyance of electricity by means of transmission lines and the expression "transmission" shall be construed accordingly'. Prior to 1.7.2012, services for transmission of electricity, or for distribution of electricity were not liable for the levy of service tax. In this connection, he has drawn attention to the Govt. of India Notifications 11/2010-ST dated 27.02.2010, 32/2010 ST dated 22.06.2010 and to Notification No. 45/2010-ST dated 20.07.2010. He stated that from 1.7.2012, Section 66D(k) of the Finance Act 1994 covered transmission or distribution of electricity by an electricity transmission or distribution utility in the negative list. He further stated that when the first SCN was issued all the relevant facts were in the knowledge of the authorities. Later on, while issuing periodic show cause notices the same/similar facts could not be taken as suppression of facts on their part, hence the extended period could not have been evoked. He has cited several case laws in their favour and prayed that the appeals may be allowed, with consequential relief in all the three appeals, as per law.

4.2 The learned AR Smt. Anandalakshmi Ganeshram, Supdt. (AR) submitted that the contention of the appellant is not acceptable. In this regard, the Commissioner has held that the assessee, though being a

Government Department should have declared the value of services and even if they are of the belief that their services are exempted they should have approached the department for clarification. Hence, the extended period has been rightly invoked in the order. She stated that the exemptions are specific to services related to transmission and distribution of electricity only and do not exempt taxable services in relation to generation of electricity or in general the services provided by an authorized transmission and distribution utility. She further reiterated the points given in the impugned orders. She prayed that the impugned orders may be sustained and appeals may be rejected.

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 licensee, 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	<p>... 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;</p> <p>... 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.</p>

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 →	Registration / Application / Name transfer from WEG	Preparation of field feasibility reports etc., to establish wind farms	Non-employees for training/worksh op	Leasing land for power plant
Whether it answers ↓				
Whether it <u>relates to</u> transmission and distribution of electricity	Yes, relates	Yes, it relates	Yes, it relates	Yes, it relates
Whether it is <u>for the purpose of</u> 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. Dalmia Dadri 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	

	<p><i>taxable services rendered 'in relation to' transmission and distribution of electricity have been exempted from the purview of service tax. <u>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)].</u> 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.</i></p> <p><i>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. <u>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</u> 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., Pashchimanchal Vidyut Vitran Nigam, Purvanchal Vidyut Vitran Nigam and Shri Ganesh Enterprises cited supra.</i></p>	
<p>Shri Ganesh Enterprises v CCE 2014 (2) TMI 436 - CESTAT BANGALORE</p>	<p><i>Among the taxable services provided were 'management, maintenance 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/repared 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</i></p>	<p><i>.. 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 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.</i></p>

	<i>'manpower recruitment and supply agency service', by supply of semi-skilled labour for attending to maintenance works in the sub-divisions of the distribution companies.</i>	
Paschimanchal Vidyut Vitran Nigam Ltd. v. CCE 2012 (8) TMI 688 CESTAT NEW DELHI	<i>... 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 ...</i>	<i>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.</i>
Noida Power Company Ltd. v CCE 2013 (8) TMI 746 - CESTAT NEW DELHI	<i>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 energy. The assessee recovers the charges for these services ...</i>	<i>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 periodic billing and recovery of charges.</i>
S.K.Shah v. CCE&ST 2019	<i>appellant .. rendered various taxable services namely,</i>	<i>5. We find that by virtue of Notification No. 45/2010-ST</i>

<p>(2) TMI 1103 CESTAT MUMBAI</p>	<p><i>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.</i></p>	<p><i>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.</i></p>
<p>CC.,CEX & ST Hydrabad III Vs Sri Rajyalakshmi Cement Products 2017 (52) STR 309 (Tri. Hyd.)</p>	<p><i>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]</i></p>	
<p>MD Aub Khan Vs CC, CEx,& ST, Guntur 2015(40)STR 267 (Tri.Bang.)</p>	<p><i>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]</i></p>	
<p>Hyderabad Power Installations (P) Ltd. Vs CCCE, C. & ST., Hyderabad II 2016(45) STR 217 (Try.Hyd.)</p>	<p><i>Erection, Commissioning or Installation Services (ECIS) - Service Tax - Notification No. 45/2010-S.T., 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]</i></p>	

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 Vidyut Vitran 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 selectricity. 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-13-2014-15 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.

(Pronounced in open court on 22.9.2023)

(M. AJIT KUMAR)
Member (Technical)

(P. DINESHA)
Member (Judicial)