IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL Nos.ST/55482, 56310/2013, 51356/2014 & 50809/2015-CU[DB]

Sl. No.	Appeal No.	Appellant	Respondent	Impugned Order-in-Original
1.	ST/55482/2013	M/s NTPC Electric Supply Co. Ltd.	Commissioner of Central Excise, Noida	No.29/Commissioner/Noida/2012-13 dated 10.10.2012 passed by CCE, Noida
2.	ST/56310/2013	CCE, Noida	M/s NTPC Electric Supply Co. Ltd.	No.29/Commissioner/Noida/2012-13 dated 10.10.2012 passed by CCE, Noida
3.	ST/51356/2014	M/s NTPC Electric Supply Co. Ltd.	CCE, Noida	No.19/Commissioner/Noida/2013-14 dated 19.11.2013 passed by CCE, Noida
4.	ST/50809/2015	M/s NTPC Electric Supply Co. Ltd.	CCE, Noida	No.15/Commissioner/Noida/2014-15 dated 21.11.2014 passed by CCE & ST, Noida

Appearance:

Shri B.L. Narasimhan & Shri Utkarsh Malviya, Advocates for Assessee
Shri Rajeev Ranjan, Additional Commissioner (AR), for Revenue

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 26/07/2018
Date of Decision : 26/07/2018

FINAL ORDER NOs-**71669-71672 / 2018**

Per: Ashok Jindal

Both sides are in appeal against the impugned orders, demand of service tax has been confirmed along with interest and various penalties against the assessee and in one case, no penalty has been imposed on the assessee, revenue is in appeal.

2. The facts of the case are as under:-

> "2. Rural Electrification Corporation Ltd. (REC) and the appellant– M/s NTPC, both instrumentalities of the State, entered into a Memorandum of Understanding (MoU) on 16/08/2004 where under both the entities agreed to carry out certain activities for formulation for Rural Electrification programmes. Under the MoU the appellant was to provide formulation and development of agreed projects in identified rural areas including systems planning, design engineering and procurement of goods and services under competitive building process; and other services falling within the taxable category of Consulting Engineer Service. In respect of services amounting to consulting engineer service, it remitted the service tax due. On this, there is no dispute at this stage of the proceedings.
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> 3. The appellant and REC entered into other agreements with the respective State Governments and State Power Utilities. In terms of such agreements, the appellant provided certain other services including formulation of the terms of tenders for execution of works in terms of sanction granted by REC to proposals of the concerned State Governments – State Power

Utilities; scrutiny of the bids received pursuant to invitation to tender, i.e. bids by contractors for carrying out electrification works; scrutiny of the bids and award of contracts on appraisal of the bids; and in addition, on the request of State Governments – State Power Utilities remittances of funds received from REC (for the benefit of such State Governments – State Power Utilities) to the contractors after retaining a commission for channelizing the funds, after monitoring successful execution of the contracts by the contractors concerned. In respect of the later activity, the appellant was proceeded against on the ground that it had provided erection, commissioning or installation service, on the assumption that the appellant had failed to obtain registration; to fate returns and remit the tax due on the consideration received for providing this taxable service. The proceedings culminated in the adjudication orders.

4. Substantively the appellant contends that the service rendered by it in this area does not amount to erection, commissioning or installation service as the appellant did not provide any service falling within the definition of erection, commissioning or installation service, on the activity of acting as a channelizing agency for payment of funds received by State Governments – State Power Utilities from REC and in arranging payments out of such funds received, to the

contractors after monitoring performance of the contracts. According to the appellant, this activity does not amount to erection, commissioning or installation service. Alternatively, it is contended; and this is the substantive contention at this stage; that even assuming that this service provided by the appellant amounts to erection, commissioning or installation service, even so the appellant is entitled to immunity from levy and collection of service tax and the corresponding liability to interest and penalties, in view of Notification No.45/2010-ST dated 20/07/2010; Notification No.11/2010-ST dated 27/02/2010 and Notification No.32/2010-ST dated 22/06/2010. These Notifications were considered by this Tribunal in the Final Order No.56642/2013 in an appeal preferred by Noida Power Company Ltd. This Tribunal concluded, on consideration of the Exemption Notification dated 22/06/2010 and the immunity Notification dated 20/07/2010 (referred to supra) that all taxable services provided in relation to distribution of electrical services are not liable to service tax; that the expression “in relation to” is of wide import and indicates all activities having a direct and proximal nexus with distribution and transmission of electrical energy. Since transmission of electrical energy cannot be successfully accomplished without installation of infrastructure, any service provided in relation to the provision of infrastructure for facilitating transmission of electrical energy would also be comprehend within the expression "in relation to transmission of electrical energy", and taxable services in relation to transmission are immunized from the levy and collection of service tax, under the Exemption Notification No.11/2010-ST and Immunity Notification No.45/2010-ST, ruled this Tribunal.

5. Learned Departmental Representative representing the respondent/Revenue contends that the raft of taxable services which are provided immunity under Notification No.45/2010-ST or Exemption (for the period subsequent to 27/02/2010) by the Exemption Notification No.11/2010-ST (in relation to transmission of electricity) should be considered as those taxable services which have a direct connect with the transmission of electricity and not all taxable services provided prior to the actual process of transmission or evacuation of electrical energy.

6. Heard the parties. Examined the Notifications.

7. Notification No.45/2010-ST dated 20/07/2010 has granted immunity from service tax in respect of all services relating to transmission and distribution of electricity provided during the specified period relating to transmission of electricity upto 21/02/2010 and in

relation to distribution of electricity upto 21/06/2010. Notification No.11/2010-ST dated 27/02/2010 exempted taxable services provided for transmission of electricity from the whole of the service tax leviable thereon, prospectively. Similarly, Notification No.32/2010-ST dated 22/06/2010 granted exemption to taxable service provided to any person, by a distribution licence, a distribution franchisee, or any other person by whatever name called, authorized to distribute power under the Electricity Act, 2003, for distribution of electricity, from the whole of service tax leviable thereon, prospectively.

8. In view of the above Notifications, we are satisfied that the taxable service of "erection, commissioning or installation service", when provided in relation to transmission of electricity electrical energy would be covered by the immunity/exemption, as the case may be.

3. Same view was taken by this Tribunal in the case of M/s M.P. Power Transmission Co. Ltd. Vs Commissioner of Customs, Central Excise, Bhopal reported in 2011 (24) STR 67 (Tri.-Del.) wherein this Tribunal has observed as under:-

> **"9.** We find that Notification No. 11/10-S.T., dated 27th February, 2010 exempts services relating to transmission and distribution of electricity provided by a person (service provider) to any other person (service receiver) from 27-2-2010. Further for the past period upto 26-2-10, Ministry has

> issued Notification No. 45/2010 dated 20-7-10 exempts such service invoking provision under Section 11C of the Central Excise Act read with Section 83 of the Finance Act, 1994. Hence, the impugned orders, demanding service tax on transmission and distribution of electricity are not sustainable. Accordingly, the impugned orders are set aside."

4. Therefore, by following the precedent decision of this Tribunal in the case of M/s M.P. Power Transmission Co. Ltd. (supra) we hold that no service tax is payable by the assessee. Accordingly, impugned orders qua demanding service tax and imposing penalties on the assessee are set aside. Consequently, revenue's appeal is also not sustainable.

5. In view of the above analysis, we set aside the impugned orders, consequentially, appeals filed by the assessee are allowed and appeal filed by the revenue is dismissed.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Ashok Jindal)
Member (Judicial)

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