

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70367 of 2017

(Arising out of Order-in-Original No.ALD/EXCUS/000/(st-105/2015)06 of 2017 dated 27/01/2017 passed by Commissioner of Central Excise & Service Tax, Allahabad)

M/s M K S. Enterprises,
(Chakpadauna, Gopiganj, SRN, Bhadohi-221303)

.....Appellant

VERSUS

Commissioner of Central Excise &

Service Tax, Allahabad

....Respondent

(38, MG Marg, Civil Lines, Allahabad)

DATE OF HEARING : 26 November, 2024
DATE OF PRONOUNCEMENT : 03 March, 2025

WITH

Service Tax Appeal No.70436 of 2017

(Arising out of Order-in-Original No.ALD/EXCUS/000/(st-105/2015)06 of 2017 dated 27/01/2017 passed by Commissioner of Central Excise & Service Tax, Allahabad)

Commissioner of Central Excise &

Service Tax, Allahabad

.....Appellant

(38, MG Marg, Civil Lines, Allahabad)

VERSUS

M/s M K S. Enterprises,
(Chakpadauna, Gopiganj, SRN, Bhadohi-221303)

....Respondent

DATE OF HEARING : 26 November, 2024
DATE OF DECISION : 26 November, 2024

APPEARANCE:

Shri Ramji Khare, Advocate &
Shri A.K. Gupta, Consultant for the Appellant-assessee
Shri A.K. Choudhary, Authorised Representative for the Respondent-revenue

**CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

FINAL ORDER NOs.70102-70103/2025

SANJIV SRIVASTAVA:

These two appeals are directed against Order-in-Original No.ALD/EXCUS/000/(st-105/2015)06 of 2017 dated 27/01/2017 passed by Commissioner of Central Excise & Service Tax, Allahabad. By the impugned order following has been held:-

"ORDER

(i) I confirm the demand of Rs. 29,52,418/ (Rupees Twenty Nine Lakhs Fifty Two Thousand Four Hundred and Eighteen Only) including Education Cess and Secondary & Higher Education Cess, as service tax short paid, for the period 2010-11 to 2013-14, upon M/s M.K.S. Enterprises, Chakpadauna, Gopiganj, S.R.N. Ehadohi 221303 (U.P.), and order for recovery of the same under the proviso to Sub-Section (1) of Section 73 read with Section 73 (2) of Chapter V of the Finance Act, 1994 alongwith appropriate interest under Section 75 of the Act. Ibid. Since the party have placed before me two GAR-7 challans dated 23.03.2015 evidencing payment of service tax amounting to Rs. 162077/- and 46216/-respectively, I appropriate the said deposits against the demand confirmed herein.

(ii) I also impose a penalty of Rs. 10,000/- (Rupees Ten Thousand Only), upon M/s M.K:S. Enterprises, Chakpadauna, Gopiganj, S.R.N. Bhadohi-221303 (U.P.) under the provisions of Section 77(1) of the Finance Act, 1994, for having contravened the provisions of Section 69 of the Act read. with Rule 4 of the Rules.

(iii) I also impose a penalty of Rs. 10,000/- (Rupees Ten Thousand Only), upon M/s M.K.S. Enterprises, Chokpadauna, Gopiganj, S.R.N. Bhadohi 221303 (U.P.) under the provisions of Section 77(2) of the Finance Act, 1994, for having contravened the provisions of Section 70 of the Act read with Rule 7 of the Rules.

(iv) I also impose a penalty of Rs. 29,52,418/- (Rupees Twenty Nine Lakhs Fifty Two Thousand Four Hundred and Eighteen Only), upon M/s M.K.S. Enterprises, Chakpadauna, Gopiganj, S.R.N. Bhadohi 221303 (U.P.)

under the provisions of Section 78 of the Finance Act, 1994. The party shall be eligible for reduced penalty specified in second and third proviso of Section 78 of the Act, subject to fulfillment of conditions specified therein.”

2.1 Appellant-assessee is registered with the department for providing Maintenance or repair Service.

2.2 Certain discrepancies were noticed during reconciliation of service tax return and tax paid by the appellant with data available with the department in the form of profit and loss account, Form 26AS for the period 2012-13.

2.3 Inquiries were made from the party and letters dated 15.09.2014, 27.01.2015 and 16.03.2015 were send to the appellant to provide the copies of contract/work orders, as the documents indicates that appellant was engaged in providing services to M/s U.P. Power Corporation Ltd. (UPPCL) and M/s Purvanchal Vidyut Vitran Nigam Ltd. (PVVNL). Appellant had not submitted the details, however, vide their letter only admitted that they have not deposited any tax during the period 2012-13. They have also submitted a copy of letter dated 09.05.2014 and 19.05.2014 stated that they are engaged in providing maintenance and repair of electricity lines under contract, for transmission and distribution of electricity, for Electricity Board. The services provided by them is covered under negative list of services, therefore, they have neither charged any service tax nor deposited the same.

2.4 From the documents provided by the appellant, it transpires that appellant is engaged in providing services under contract to PVVNL and UPPCL in respect of maintenance and repair of electricity. These services are taxable under the category of maintenance and repair services. Appellants were therefore requested to provide vide letter dated 07.07.2015 and 20.07.2015 copies of Balance Sheet, Profit & Loss account, Form 26AS along with copies of work orders and bills issued during the period 2010-11 to 2013-14. In response, they provided the copies of balance sheet, profit and loss account, Form 26AS for the said period along with few copies of contracts/work orders of

the period 2010-11. However, appellant did not provide the copies of Bills raised by them for providing service during the said period.

2.5 Investigations were made and statements of Shri Shashi Kant Tripathi, Advocate (authorized person of party) was recorded on 01.09.2015. On the basis of inquiries and investigations made it appeared that appellant has short paid service tax as detailed in table below:-

Sl.No	Period	Value of taxable service Rate of (Rs)	Rate of service tax	Service Tax payable (Rs)
1	2010-11	1,30,19,761/-	10.30%	13,41,035/-
2	2011-12	2,43,92,756/-	10.30%	25,12,454/-
3	2012-13	5,37 32,982/-	12.36%	66,41,397/-
4	2013-14	12,44,54,467/-	12.36%	1,53,82,572/-
	Total	21,55,99,966/-		2,58,77,457/-

2.9 Demand Cum Show Cause notice dated 23.09.2015 was issued to the appellant asking them to show cause as to why-

"(a) Service Tax amounting to Rs.2,58,77,457/- (Rupees Two crore fifty eight lacs seventy seven thousand four hundred and fifty seven only), including Education Cess and Secondary and Higher Education Cess, should not be demanded and recovered from them under the provisions of proviso to Section 73 (1) of Chapter V of the Finance Act, 1994 along with interest as applicable under Section 75 of the Act, ibid.

b) Penalty should not be imposed upon them under Section 77(1)(a) of Chapter V of the Finance Act, 1994 for contravention of section 69 of the Act readwith Rule 4 of the Rules for obtaining delayed registration.

(c) Penalty should not be imposed upon them under Section 77(2) of Chapter V of the Finance Act, 1994 for contravention of section 70 of the Act read with Rule 7 for each default for not filing the statutory return ST-3 within due time and for contravention of Rule 5 & 6 of the Rules.

(d) Penalty should not be imposed upon them under Section 78 of Chapter V of the Finance Act, 1994 for not paying service tax in accordance with the provisions of

Section 66, 666, 67, 68, 69 and of Chapter V of the Finance Act, 1994, Rule 4, 6 of the Service Tax Rules 1994 and Rules of Service Tax (Determination of Value) Rules, 2006 and for their willful mis-declaration and suppression of facts with intent to evade payment of duty.”

2.6 The said show cause notice was adjudicated as per the impugned Order-in-Original referred in para 1 above.

2.11 Aggrieved appellant have filed this appeal.

2.12 Revenue has also filed appeal against dropping of demand for the services provided by the party to PVVNL and UPPCL during the period prior to 01.07.2012.

3.1 We have heard Shri Ramji Khare and Shri A.K. Gupta advocate for the appellant and Shri A.K. Choudhary Authorised Representative for the revenue.

3.2 Arguing for the appellant learned Counsel submits that issue involved in the present case is squarely covered by the decision of Chandigarh Bench in case of M/s Arvindra Electricals [Final Order No 62732/2018 dated 31.08.2018 in Appeal No e/60611/2017-(DB)] and Ahmedabad Bench decision in the case of Gujarat Energy Transmission Corporation Limited [Final Order No 10331-10332/2024 dated 06.02.2024 in Service Tax Appeal No 10317-10318/2017 (DB)]

3.3 Learned Authorized Representative reiterates the findings recorded in the orders of the lower authorities and also the grounds taken in the appeal filed by the revenue.

4.1 We have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 Impugned order records as follows for holding against the appellant:-

"Before proceeding any further, it is imperative to re- visit the allegations made in the impugned SCN. On the basis of investigation conducted by the department, it appeared that during the period from 2010-11 to 2013-14, the party, under composite contract has provided maintenance & repair service to UPPCL & PVVNL by way of maintaining

and repairing old H.T/L.T lines, replacement of PCC poles and conductors as well as maintenance of electricity feeders at different places. Prior to 01.07.2012, the service provided by the party appeared to be covered under maintenance and repair service, whereas for the period from 01.07.2012, the party failed to submit any evidence that the service provided by them, involved material on which VAT was paid or payable. Therefore, for the period from 01.07.2012, in the absence of fulfillment of condition, the service provided by the party cannot be termed as works contract service', as defined under section 65B(54) of the Act and appeared to be a taxable service as per section 65B(51) of the Act. Therefore, for the period prior to 01.07.2012, the service provided by the party appeared to be classifiable under 'maintenance & repair service', as defined under clause (zzg) of section 65(105) of the Act whereas w.e.f 01.07.2012, the same appeared to be a taxable service, as per section 65B(51) of the Act.

6.3 The party have on their part, contested the allegation mainly on the ground that they have provided works contract service" to various divisions of UPPCL, and PVVNL. The scope of work provided by the noticee as a Contractor is for execution of (1) Shifting of overhead cables/wires for any reason such as widening/renovation of roads; (II) Laying of cables under or overhead or alongside roads; (iii) Laying of Electric cables between grids/sub-stations/transformer stations in route; (iv) Laying of electric cables upto distribution points of residential or commercial locality/complexes; and (v) Supervision and maintenance of sub-stations. Prior to 01.07.2012, the services relating to transmission and distribution of Electricity were exempt from payment of Service Tax as per provisions of Notification No. 11/2010-ST dated 27.02.2010 and Notification No. 32/2010-ST dated 22.06.2010. The transmission and distribution of electricity

were exempted from payment of Service Tax with retrospective effect vide Notification No. 45/2010-ST dated 20.07.2010. W.e.f. service tax in respect of said services was payable under partial reverse charge in terms of Sl.No.9 of Notification No. 30/2012-ST dated 20.06.2012.

7.0 Amidst allegations raised in the SCN and the defence submitted by the party, I find that the following points need to be determined by me in the instant case:

(i) whether there has been any short payment of service tax by the party and whether the Service Tax being demanded has been correctly quantified in the Show Cause Notice?

(II) whether the party have suppressed material facts from the department with intent to evade payment of service tax and whether the demand is liable to be confirmed and recovered from the party under proviso to sub section (1) of Section 73 of the Finance Act, 1994, by Inking extended period of limitation alongwith appropriate interest Section 75 of the Act?

(iii) Whether penalty is liable to be imposed upon the party under the provisions of Section 76,77 and 78 of the Act for violation of various provisions of Finance Act, 1994 read with Rules made thereunder, as alleged in the Show Cause Notice?

8.0 Firstly, with regard to the party's taxability under "management, maintenance or repair service" or "works contract service", I proceed to examine the facts of the instant case, inasmuch as, the nature and contents of the contracts executed by the party, which have been referred to and relied upon as RUD 4 in the impugned SCN. The same is illustrated as under:

S. No	Contract No. & Date	Description of Job	Contract Amount(Rs.)	Contractee/Service Receiver
1.	268/EDD(M)/08-09	Shifting & Erection of electric poles by digging trench, grouting at Kazipur, Bhadohi	121875.00	EE, PVVNL, Bhadohi
2.	269/EDD(M)/08-09	Shifting & Erection of electric poles by digging trench, grouting at Azimullah Crossing, Bhadohi	129330.00	EE, PVVNL, Bhadohi
	269/EDD(M)/08-09	Replacement & re-laying of new 11KV XLPE cable at 33/11 KV sub-station at Magahar	135200.00	EE, PVVNL, Bhadohi
4.	269/EDD(M)/08-09	Replacement & re-laying of new 11KV XLPE cable at 33/11 KV sub-station at Magahar to Girdbadgaon	145450.00	EE, PVVNL, Bhadohi
5.	270/EDD(M)/08-09	Erection of 12 PCC poles, 20 nos. insulators, 900 m. HT line at Jiyanpur, Jhowa & Mukundpur villages	129990.00	EE, PVVNL, Bhadohi
6.	272/EDD(M)/08-09	Replacement & re-laying of new 11KV XLPE cable at 33/11 KV sub-station at Pakari Railway crossing	136510.00	EE, PVVNL, Bhadohi
7.	160/EDC(M)/10-11 dt.7.8.10	Operation of 33/11 KV sub-station at Carpet City, Bhadohi	387000.00	SE, PVVNL, Mirzapur
8.	165/EDC(M)/10-11 dt.7.8.10	Maintenance of 11KV feeder at Ramnagar	186000.00	SE, PVVNL, Mirzapur
9.	166/EDC(M)/10-11 dt.7.8.10	Maintenance of 11KV feeder at Nibi Chowk	186000.00	SE, UPPCL, Mirzapur
10.	291/EDC(M)/10-11 dt.8.12.10	Maintenance of 11KV feeder at Mamhar	407400.00	SE, UPPCL, Mirzapur

8.1 From the above mentioned contracts, it is observed that the contracts have been issued by the Superintending Engineer, Purvanchal Vidyut Vitaran Nigam Ltd. and the Superintending Engineer, UPPCL for erection, fixing wiring, construction, installation, charging, commissioning, shifting etc. and relocation of electrical lines/poles, towers, transformers, crossing lines etc.

8.2 Now the question arises whether the activity performed by the party, as mentioned hereinabove and relied upon in the SCN, shall be classified as "management, maintenance or repair service" or "works contract service" for the purpose of levy of service tax. The said question needs to be examined in light of the statutory provisions contained in the Finance Act, 1994.

8.3 MANAGEMENT, MAINTENANCE OR REPAIR SERVICE:
Section 65(64) of the Act defines 'Management, Maintenance or Repair Service w.e.f 01.05.2006 as follows:

"management, maintenance or repair" means any service provided by –

(i) any person under a contract or an agreement, or

(ii) a manufacturer or any person authorised by him, relation to-

(a) management of properties, whether immovable or not,

(b) maintenance or repair of properties, whether immovable or not, or

(c) maintenance or repair including reconditioning or restoration, or servicing of any goods, excluding a motor vehicle;

[Explanation. For the removal of doubts, it is hereby declared that for the purposes of this clause, -

(a) "goods" includes computer software;

(b) "properties" includes information technology software:]

8.4 *The term maintenance is defined as the upkeep or preservation of condition of property including cost of ordinary repairs necessary from time to time for that purpose 'Maintenance' is to keep a machine, building, etc. in a good condition by periodically checking and servicing or repairing, whereas 'repair' is a one time activity. Maintenance is a continuous process whereas repairing may be incidental or ancillary Further, the term 'Immovable property Includes roads, airports, railways, buildings, parks, electrical installations. Further, as per*

Sec.65 clause 105 sub clause (zzg) the taxable service means service rendered by any person in relation to management, maintenance or repair.

8.5 WORKS CONTRACT SERVICE Section 65(105)(zzzza) of the Act

defines the 'Works Contract Service' w.e.f (01.06.2007) as follows: "taxable service" means any service provided or to be provided to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways,

transport terminals, bridges, tunnels and dams. Explanation. For the purposes of this sub-clause, "works contract means a contract wherein, -

transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and such contract is for the purposes of carrying out, -

(a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or airconditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or (b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or (c) construction of a new residential complex or a part thereof; or

(d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or (e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects;

8.6 For ascertaining the correct category of service rendered by the party, it is necessary to examine in detail the exact work executed by the party. From details of the work orders/ work agreements entered into between the party and the service recipient, as illustrated in the chart above, I find that the party were specifically contracted under composite contract by PVVNL/UPPCL for work relating to erection of PCC poles by way of digging of trenches, grouting, installing cross-arm and insulators, laying of HT/ LT lines from sub-station to feeders, operation and maintenance of electric sub-stations, laying of underground cables etc. I, thus find that the work executed/ service rendered by the party qualifies the definition of "works contract service" as defined under the Section 65(105)(zzzza) of the Act. Notwithstanding that the goods used in execution of such contracts have been supplied free by the service receiver ie. PVVNL/ UPPCL.

8.7 A question has been raised that in respect of the contracts mentioned above, since no works contracts tax specified in the State VAT laws has been deducted by the service recipient, hence the service shall not qualify as "works contract service". Contrary to the said allegation, I find that a Central legislation like the Finance Act, 1994, cannot be subordinate and subject to applicability of a State legislation ie. the State VAT Act. It is true that in respect of the contracts which are subject to levy of State "works contract tax WCT" shall necessarily be classified as "works contract service" as defined under the Section 65(105)(zzzza) of the Act. However, if State "works

contract tax WCT" has not been charged or deducted in respect of a particular contract, the same shall not be classified as "works contract service" under the Finance Act, 1994, is not true. State Vat laws operate under separate set of exemptions.

8.8 Notwithstanding the above, Notification No. 11/2010-S.T., dated 27-2-2010, seeks to grant exemption to services provided for transmission of electricity. The said notification reads as under:

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.

8.9 Notification No. 32/2010-S.T., dated 22-6-2010 seeks to grant exemption to taxable service provided for distribution of electricity. The said notification reads as under: 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 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, from the whole of service tax leviable thereon under section 66 of the said Finance Act.

8.10 Notification No. 45/2010-S.T., dated 20-7-2010 seeks to grant exemption to all taxable services relating to transmission of electricity till 26-2-2010 and distribution of electricity till 21-6-2010. The said notification reads as under: Whereas, the Central Government is satisfied that a practice was generally prevalent regarding levy of service tax (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 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;

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

8.31 For applying the provisions of the notifications enumerated above, it is imperative to examine the purport of the terms "transmission and "distribution". Section 2 (74) of the Electricity Act, 2003, defines-"transmission means conveyance of electricity by means of transmission

lines and the expression transmission shall be construed accordingly." Section 2 (70) of the Electricity Act, 2003, defines "distribution means supply in relation to electricity and means the sale of electricity to a licensee or consumer".

8.12 Furthermore, CBEC vide Circular No. 123/5/2010-TRU, dated 24-5-2010, Issued under F.No. 332/5/2010 TRU regarding applicability of Service tax on laying of cables under or alongside roads and similar activities wherein it has been clarified by the Board that-

"Disputes have arisen in some parts of the country regarding applicability of service tax on certain activities such as shifting of overhead cables to underground on account of renovation/widening of roads, laying of electrical cables under or alongside roads/railway tracks; between grids/sub-stations/transformers the distribution points of residential or commercial complexes and such activities as electrification of railways, installation of street-lights, traffic lights, flood-lights. This clarification takes into account the taxability of different activities taking into account the scope of all services (such as site formation/excavation/ earth. moving service, commercial or industrial construction services; erection, commissioning or installation services; or works-contract service) that are presently taxable as well as those which are covered under the Finance Act, 2010.

2.Scope of certain taxable services in brief;

(i) 'Commercial or industrial construction services', in brief, cover construction of and the completion, finishing, repair, alteration, renovation, restoration or similar activities pertaining to buildings, civil structures, pipelines or conduits Therefore, only such electrical works that are

parts of (or which result in emergence of a fixture of) buildings, civil structures, pipelines or conduits, are covered under the definition of this taxable service. Further, such activities undertaken in respect of roads, railways, transport terminals, bridges, tunnels and dams are outside the scope of levy of service tax under this taxable service.

(ii) Under 'Erection, commissioning or installation services', the activities relevant to the instant issue are (a) the erection, commissioning and installation of plant, machinery, equipment or structures; and (b) the installation of electrical and electronic devices, including wiring or fitting there for. Thus, if an activity does not result in emergence of an erected, installed and commissioned plant, machinery, equipment or structure or does not result in installation of an electrical or electronic device (i.e. a machine or equipment that uses electricity to perform some other function) the same is outside the purview of this taxable service.

(iii) 'Works Contract' Incorporates the inclusions and exclusions of the aforementioned two taxable services (amongst others) and it is the nature of the contract (i.e. a contract wherein the transfer of property in goods involved is leviable to a tax as sale of goods) rather than the nature of activities undertaken, that distinguishes it from the previously statud taxable services. Thus, even in the case of 'works contract if the nature of the activities is such that they are excluded from aforesaid two services then they would generally remain excluded from this taxable service as well.

(iv) Site formation and clearance, excavation, earthmoving and demolition services are attracted only if the service providers provide these services independently and not as

part of a complete work such as laying of cables under the road.

3. The taxable status of various activities, on which disputes have arisen.

Based on the foregoing, the following would be the tax status of some of the activities in respect which disputes have arisen,

<i>S.No.</i>	<i>Activity</i>	<i>Status</i>
<i>1.</i>	<i>Shifting of overhead wires for any reasons such as widening/renovation of roads</i>	<i>cables/Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994.</i>
<i>2.</i>	<i>Laying of cables under or alongside roads</i>	<i>Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994.</i>
<i>3.</i>	<i>Laying of electric cables between grids/sub-stations/ transformer stations en route</i>	<i>Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994.</i>
<i>4.</i>	<i>Installation of transformer/substations undertaken independently</i>	<i>Taxable service, namely Erection, commissioning or installation services (section 65(105)(zzd)).</i>
<i>5.</i>	<i>Laying of electric cables up to distribution point of residential or commercial localities/ complexes</i>	<i>Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994.</i>
<i>6.</i>	<i>Laying of electric cables beyond the distribution</i>	<i>Taxable commercial service, or namely</i>

	<i>residential or point of commercial localities/complexes.</i>	<i>industrial construction' or 'construction of complex' service (section 65(105)(zzq)/(zzzh)], as the case may be.</i>
7.	<i>Installation of street lights, traffic lights flood lights, or other electrical and electronic appliances/devices or providing electric connections to them</i>	<i>Taxable service, namely Erection, commissioning or installation services (section 65(105)(zzd)).</i>
8.	<i>Railway electrification, electrification along the railway track.</i>	<i>Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994.</i>

4. The conclusions drawn above are essentially general in nature and would have to be applied in an individual case depending upon its facts and circumstances. The pending disputes/cases may be decided based on the clarifications contained in this circular.

8.13 In view of the above stated legal position, I hold that the party are not liable to pay any service tax on the activity undertaken by them and the service provided by them prior to 01.07.2012 to PVVNL and UPPCL in light of Notification No. 11/2010-S.T., dated 27-2-2010 and conditions mentioned at 1, 2, 3 and 5 of the Circular above, However, I further hold that the said exemption remained in force only upto 30.06.2012.

9.0 The service tax statutory provisions underwent a substantial change w.e.f. 01.07.2012, with the introduction of the Negative List and the Mega Exemption. The term 'Works contract' has been defined in section 65B(44) of the Act, which read as follows: "works contract" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, Installation, completion, fitting out, improvement, repair, renovation, alteration of any building or structure on land or for carrying out any other similar activity or apart thereof in relation to any building or structure on land;

9.1 Also, w.e.f 01.07.2012, section 65B(44) of the Act defines "service" means any activity carried out by person for another for consideration, and includes a declared service, Also, clause (h) of section 66E specifies service portion in execution of works contract as a 'Declared Service.

9.2 On examination of the scope and nature work undertaken by the party with regard to supply, erection, fixing wiring, construction, installation charging, commissioning, shifting etc. and relocation of electrical lines/poles, towers, transformers, crossing lines etc, as illustrated in the chart above, I find that such service provided by the party shall be classified under the "works contract service". Therefore, for the period after 01.07.2012, the service tax liability of the party shall be determined in light of the provisions, as existed after 01.07.2012. I hold that the service tax liability of the party for the period after 01.07.2012 needs to be re-computed.

10.0 With regard to the computation of their service tax liability under 'works contract service' for the period

01.07.2012 to 31.03.2013 and 2013-14, the party have made submissions that:

(i) that in respect of the gross receipts for the period 01.07.2012 to 31.03.2013, the period during which service tax was leviable under "works contract service, an amount of Rs. 5,11,12,972.00 relates to services provided to PVVNL and UPPCL during the period prior to 01.07.2012 but the payments were received after 01.07.2012. The said receipts may be excluded for the purpose of computation of demand.

(ii) that in respect of the gross receipts for the period 2013-14, an amount of Rs. 7,93,00,718.00 relates to services provided to PVVNL and UPPCL during the period prior to 01.07.2012 but the payments were received during 2013-14. All the said receipts may be excluded for the purpose of computation of demand.

The party have submitted certificates issued by the Executive Engineer, Electricity Distribution Division, Bhadohi, certifying the details of payments received by the party after July, 2012 to 2013-14 in respect of the job/work done/ completed before 01.07.2012.

10.1 I now proceed to examine the party's contentions made hereinabove, as with regard to taxability in respect of amounts received after 01.07.2012 in lieu of service provided prior to 01.07.2012. I have already held that the service provided by the party to PUVVNL and UPPCL relating to supply, erection, fixing wiring, construction, installation charging, commissioning, shifting etc. and relocation of electrical lines/poles, towers, transformers, crossing lines etc. was not taxable O prior to 01.07.2012. For the period after 01.07.2012, the party have stated that an amount Rs. 5,11,12,972.00 received during 01.07.2012

to 31.03.2013 pertains to the service provided to PVVNL and UPPCL period prior to 01.07.2012. Similarly, an amount Rs. 7,93,00,718.00-received during 2013-14 also pertains to the service provided to PVVNL and UPPCL period prior to 01.07.2012. The party have submitted relevant certificates issued by the Executive Engineer, Electricity Distribution Division, Bhadohi, certifying the details of payments received by the party after July, 2012 to 2013-14 in respect of the job/ work done/ tompleted before 01.07.2012 to substantiate their claim. I have examined the documents submitted by the party.

10.2 In light of the explicit evidence that the payment amounting to Rs. 5,11,12,972.00 received during 01.07.2012 to 31.03.2013, and payment amounting to Rs. 7,93,00,718.00 received during 2013-14 pertains to the service provided by the party to PVVNL and UPPCL during the period period prior to 01.07.2012, I hold that the said amounts shall not be included in the eventual demand.

10.3 In view of the above, I hold that the service tax liability of the party for the period 01.07.2012 needs to be re-computed as under:

<i>Period</i>	<i>Gross amount received towards providing works contract service (Rs.)</i>	<i>Deduction of amounts received after 01.07.2012 in respect of job done prior to 01.07.2012 (Rs.)</i>	<i>Net Taxable Value received towards providing works contract service excluding Rent (Rs.)</i>	<i>Rate of Service Tax (%)</i>	<i>Service Tax Payable (Rs.)</i>
<i>01.07.2012to 31.03.2013</i>	<i>53732982</i>	<i>51112972</i>	<i>2620010</i>	<i>12.36</i>	<i>323833</i>
<i>2013-14</i>	<i>124454467</i>	<i>79300718</i>	<i>45153749</i>	<i>12.36</i>	<i>5581003</i>
<i>TOTAL</i>	<i>178187449</i>	<i>130413690</i>	<i>47773759</i>		<i>5904836</i>

10.4 From the above chart, it is observed that the party, during the period 01.07.2012 to 31.03.2014, have provided "works contract service" valued at Rs. 4,77,73,759/- on which service tax amounting to Rs.

59,04,836/- is payable. However, it is also pertinent to mention herein that w.e.f. 01.07.2012, vide provisions contained in 2 (1) (d) (i) (F) (c) readwith Notification No. 30/2012-ST dt.20.06.2012, partial reverse charge of 50% equally on the service provider as well as the service receiver was imposed in respect of the works contract service. It has been stipulated that for the purpose of payment of service tax on execution of a work contract, the service provider and the service receiver shall share 50-50 percent liability. Thus, I find that in the instant case, the noticee party being a proprietorship firm, were liable to pay only 50% of the gross service tax liability in respect of the works contracts executed by them after 01.07.2012. The remaining liability shall be borne by the service receiver ie. PVVNL, and UPPCL who are al business entity registered as body corporate. I hold that since this mechanism has been statutorily provided in the statute, the liability of the service receiver cannot be fastened on the service provider. In view of the provisions contained in Notification No. 30/2012-ST (supra), I hold that the party are liable to pay service tax amounting to Rs. 29,52,418/- in respect of the "works contract service" provided by the party to M/s.Purvanchal Vidyut Vitaran Nigam Ltd. and M/s. UP Power Corporation Ltd. during the period 01.07.2012 to 31.03.2013 and 2013-14, which is liable to be recovered from them.

11.0 Now coming to the issue regarding the alleged suppression of facts by the party, I observe that had the documents of the party not been examined and checked by the departmental officers, the Department would never have come to know the details of actual receipts that accrued to the party which were only exhibited in their profit & loss account and which were deliberately not shown in the relevant ST-3 returns. The party did not furnish correct information to the department. Had the

department not examined the records of the party, the party would have succeeded in evading service tax. Therefore, I hold that the present case is a case of deliberate non-declaration and suppression of vital facts from the department with willful intention to evade payment of service tax. Accordingly, I hold that the invocation of the extended period for demand of service tax, under proviso of Section 73 (1) of the Act in this case is fully justified and therefore I confirm the demand of service tax (including cess) of Rs. 29,52,418/- under proviso to section 73 (1) of Finance Act, 1994.

11.1 I find it pertinent to mention herein that the Hon'ble CESTAT, in the case of M/s. Ideal Security Vs. CCE, Allahabad [2011 (23) STR 66], while examining identical issues, as involved in the instant case, interalia held:

9. We do agree with the Id. Appellate Authority in the matter of the discrepancy noticed by him in respect of the considerations received and appearing in different manner in two different statutory documents. While the ST 3 return was statutory document under Finance Act, 1994, the balance-sheet and profit and loss account were statutory documents under Companies Act, 1956. Therefore, when the public documents bring the discrepancy, the onus of proof was on the assessee to come out with clean hand to prove its stand. When we did not find any merit on the part of appellant, we agree with Id. appellate authority that invoking Section 73 is appropriate. So far as the valuation aspect is concerned, whether the statutory dues which form part of gross value of the service shall be included or excluded is not a prescription of law. But the consideration that shall contribute to render the services shall essentially form part of the gross value of the taxable service.

12.0 As regards issue with regard to charging of interest on the service tax amounts being confirmed, I find that Section 75 of the Finance Act, 1994 provides that every person, liable to pay the tax in accordance with the provisions of section 63 or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest at such rate not below ten per cent and not exceeding thirty-six per cent per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, for the period by which such crediting of tax or any part thereof is delayed. I find that the Hon'ble Bombay High Court (DB) in the case of CCE vs. Padmashri VV Patil SSK Ltd. reported, in 2007 (215) ELT 23 (Bom.-HC-DB) held that- Interest is civil liability of assessee who has retained amount of public money. Interest is mandatory, even if evasion of duty is not mala fide or intentional..... The CESTAT in the case of Sree Vadivambigai Textile Mills Ltd vs. CCE [2005] 1 STT 72 (Chen.- CESTAT) held that levy of interest under section 75 is mandatory and no leniency can be shown merely because appellant has been declared as sick company. I also find that CESTAT in the case of Ballarpur Industries Ltd vs. Commissioner of C.Ex. Nagpur 2007 (5) STR-197 (Tri.-Mumbai) held that the provisions of section 75 prescribing interest on service tax paid belatedly are mandatory and therefore the appellants are liable to pay interest. I also find that CESTAT in the case INMA International Security Academy (P) Ltd. vs. CCE [2005] 1 STT 31 (Chennai-CESTAT) held that the liability to pay interest at prescribed rate, for delayed payment of dues, was inescapable as the law did not confer any discretion in the matter of levying interest. From the above it is clear that interest is liable to be paid by the party at appropriate rates under the provisions of Section 75 of the Finance Act, 1994, on the amount of service tax being confirmed.

33:0 Further, I find that in the present case, the party has contravened the provisions of Section 68 of the Act read with Rule 6 of the Rules, in as much as they have failed to pay deposit the due amount of service tax with the Government in the time and in the manner prescribed under the law. For the said contravention the party is liable for imposition of penalty under the provisions of Section 76 of the Act.

*13.1 I also find that in the present case, the party has contravened the provisions of Section 69 of the Act read with Rule 4 of the Rules in as much as they have not obtained appropriate service tax registration during the relevant period in the manner and time prescribed and are thus liable for imposition of penalty under Section 75A of the Act read with Section 77 of the Act, *ibid*.*

13.2 Furthermore, I find that in the present case the party has contravened the provisions of Section 70 of the Act read with Rule 7 of the Rules in as much as they have not filed statutory ST-3 Returns in the manner and time prescribed under the law and are thus liable for imposition of penalty under Section 77 (2) of the Act.

13.3. As regards issue with regard to the proposal of imposition of penalty on the party under Section 78 of the Act for contravening various provisions of the Act and/or Rules made thereunder, the provisions of Section 78 of the Finance Act, 1994 stipulate that -Penalty for failure to pay service tax for reasons of fraud, etc. (1) Where any service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served

notice under the proviso to sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty which shall be equal to hundred per cent. of the amount of such service tax:

Provided that in respect of the cases where the details relating to such transactions are recorded in the specified records for the period beginning with the 8th April, 2011 upto the date on which the Finance Bill, 2015 receives the assent of the President (both days inclusive), the penalty shall be fifty per cent. of the service tax so determined:

Provided further that where service tax and interest is paid within a period of thirty days of -(0) the date of service of notice under the proviso to sub-section (1) of section 73, the penalty payable shall be fifteen per cent. of such service tax and proceedings in respect of such service tax, interest and penalty shall be deemed to be concluded; (ii) the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty payable shall be twenty-five per cent. of the service tax so determined:

Provided also that the benefit of reduced penalty under the second proviso shall be available only if the amount of such reduced penalty is also paid within such period:

14.0 In view of the foregoing discussion, in conclusion I hold that service tax amounting to Rs. 29,52,418/- is liable to demanded and recovered from the party under proviso to Section 73 (1) of the Finance Act, 1994. I further hold that interest at the appropriate rate is chargeable from the party under Section 75 of the Finance Act, 1994. I also hold that the party is liable for imposition of penalties under Sections 77 and 78 of the Finance Act, 1994.

15.0 Coming to the issue of imposing penalty on the party under the provisions of Section 76 of the Act, I refrain from imposing penalty under Section 76 of the Act in view of the fifth proviso to Section 78 of the Act, inserted vide Finance Act, 2008, w.e.f. 10.05.2008, which reads as under:

"Provided also that if the penalty is payable under this section, the provisions of section 76 shall not apply."

4.3 The legal provisions as they existed during the period of dispute are reproduced below:

A Prior to 01.07.2012, Section 65(64) of the Finance Act, 1994 defined the management, maintenance or repair" to mean any service provided by-

- (i) any person under a contract in an agreement; or
 - (ii) a manufacturer or any person authorized by him,
- in relation to,-
- (a) management of properties, whether immovable or not,
 - (b) maintenance or repair of properties, whether immovable or not; or
 - (c) maintenance or repair including reconditioning or restoration, or servicing of any goods, excluding a motor vehicle;

Also, sub clause (zzg) of Section 65(105) define the "taxable service" as any service provided or to be provided to any person, by any person in relation to management, maintenance or repair.

B. W.e.f 01.07.2012, section 65B (44) of the Act defined "service" to mean any activity carried out by a person for another for consideration, and Includes a declared service, but shall not include-

- (a) an activity which constitutes merely,--
 - (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

- (ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution, or
- (iii) a transaction in money or action able claim;
- (b) a provision of service by an employee to the employer in the course of or in relation to his employment;
- (c) fees taken in any Court or tribunal established under any law for the time being in force.

C. As per Section 65 B (51) of the Act, "taxable service" means any service on which service tax is leviable under section 66B of the Act. Further, section 66B of the Act states that 'there shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

Thus all "services", including declared services under Section 66E but excluding those specified in negative list under Section 66D of the Act, are leviable to service tax, unless exempted by a notification issued under the Act.

4.4 The issue with regard to period prior to 01.07.2012 is squarely covered by the following decisions:-

- i. In the case of M/s Noida Power Co. Ltd. 2014 (33) STR 383 (Tri.-Del.) by holding as follows:-

"2. *The assessee is a company, registered under the Companies Act, 1965 and is a distribution licensee under the Electricity Act, 2003. The business of the assessee is sale of electricity which is wholly regulated by provisions of the Electricity Act. In pursuant of its business, the assessee has to develop and maintain an efficient, coordinated and economical distribution network within its area of supply. To supply electricity to its consumers a network is first created. The assessee established a distribution network for providing connections to consumers within its jurisdiction. 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 periodically, an area which is also regulated by law. Revenue initiated proceedings against the assessee for recovery of Service Tax under the taxable head "Erection, Commissioning & Installation Service", defined in Section 65(39a) read with Section 65(105)(zzb) of the Act. The assessee claimed immunity to tax on the basis of Notification No. 45/2010-S.T., dated 20-7-2010. This notification issued in the exercise of the power conferred by Section 11C of the Central Excise Act, 1944 read with Section 83 of the Act provided that Service Tax payable under all 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 service relating to the transmission of electricity during the period till 26-2-2010 and in respect of all taxable services relating to distribution of electricity provided by persons till 22-6-2010. The preamble to this notification states that a practice was generally prevalent regarding levy of Service Tax (including non-levy thereof), under Section 66 of the Finance Act, 1994 in respect of taxable services relating to transmission and distribution of electricity provided by a person to any other person and though all such services were liable to Service Tax under the Act. In this appeal Distribution of electricity is the demonstrated business of the assessee. Under Notification No. 32/2010-S.T., dated 22-6-2010 [issued in exercise of powers conferred under Section 93(i) of the Act] the Central Government has exempted the taxable service provided to any person, by a distribution licensee, a distribution franchisee, or any other

person authorized to distribute power under the Electricity Act, 2003, for distribution of electricity, from the whole of the Service Tax leviable thereon under Section 66 of the Act. This exemption Notification applied prospectively, from the date of its publication in the official Gazette. The Gazette publication was on 22-6-2010. The exemption was issued as a policy choice, to exempt distribution of electricity, a taxable service from the liability to Service Tax, in larger public interest. Since the exemption notification dated 22-6-2010 was prospective, the period prior to 22-6-2010 was covered by issuing Notification No. 45/2010-S.T., dated 20-7-2010, in exercise of powers under Section 11C of the Central Excise Act, to cover the period extension exterior to 22-6-2010 (date of exemption notification), by the immunity to tax cover.

3. *In issuing Exemption Notification dated 22-6-2010 read with the Notification No. 45/2010-S.T., dated 20-7-2010, the Central Government signalled the clear policy choice that levy of Service Tax on activities in relation to the distribution of electrical energy by a distribution agency is exempt from levy of Service Tax.*

4. *The analysis of the Adjudication Authority in relation to the assessee's claim for immunity to Service Tax is predicated on the Notification dated 20-7-2010 vide paragraph 5.1 of the order-in-original under title "Discussion and Findings". The Adjudicating Authority held that the notifications do not exempt the activity/service of installation of various equipments at the consumers premises, as this service is different from and in addition to service of distribution of electricity; that equipment installed by the assessee is not in lieu of hire charges; that the infrastructure (established by the assessee) is used to supply electricity to various consumers and the consumers do not have ownership of the transformers. The contention by the assessee that installation of the various equipment,*

establishing the network is an essential component of his business of distribution of electricity which is carried out in terms of the provisions of the Electricity Act, 2003 was rejected on the ground that all duties required to be delivered by a distribution licensee under provisions of Electricity Act are not exempt from payment of Service Tax. Other contentions were urged on behalf of the assessee has were also rejected by the Adjudicating Authority.

5. *On true and fair analysis of the Exemption Notification dated 22-6-2010 and the immunity Notification dated 20-7-2010, 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 sub-stations, transmission towers and installation of meters to record electricity consumption for periodic billing and recovery of charges.*

6. *In M.P. Power Transmission Co. Ltd. v. CCE, Bhopal - [2011 \(24\) S.T.R. 67](#) (Tri.-Del.) Revenue demand of Service Tax on transmission and distribution of electricity was declared unsustainable in view of Notification No. 45/2010, dated 20-7-2010. Again in Paschimanchal Vidyut Vitran Nigam Ltd. v. CCE, Meerut - 2012-TIOL-1175-CESTAT-DEL = [2012 \(28\) S.T.R. 412](#) (Tri.-Del) after analyzing the provision of Notification No. 45/2010-S.T., dated 20-7-2010 it was held that for the purpose of billing the consumer for electricity consumed it is essential to install the electricity meter having capacity to withstand the load provided to the customer; any activity or service like erection, commissioning and installation of transmission towers and meters as also technical testing and analysis*

would constitute the activity of transmission and distribution by the service provider to the service receiver; and such service would be squarely covered under exemption provided under this notification. The earlier decision in M.P. Power Transmission Co. Ltd. was affirmed.

- ii. In the case of M/s Kedar Constructions 2015 (37) STR 631 (Tri.-Mum.) by holding as follows:-

"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 45/2010-S.T., 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. - [1988 \(36\) E.L.T. 201](#) (S.C.). 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 27-2-2010.*

6. *As regards the demand for the period w.e.f. 27-2-2010, 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 1-6-*

2007 or under works contract service on or after 1-6-2007, 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. Therefore, the confirmation of Service Tax demand in respect of the construction, maintenance or repair activities undertaken by the appellant so far as it relates to the transmission/distribution of electricity cannot be sustained in law. As regards the other demands which has been confirmed in respect of construction of transformer station for the sugar factory or GTA service etc. the appellant is not disputing the tax liability and therefore, in respect of the other activities of the appellant which are not related to either transmission or distribution of electricity, the demands confirmed are upheld along with interest."

- iii. In the case of M/s UP Rajkiya Nirman Nigam Ltd. 2016 (41) STR 967 (Tri.-Del.) by holding as follows:-

"4. *We have considered the contentions of the appellant. Notification No. 45/2010-S.T., dated 20-7-2010 reads as under : -*

"Electricity - Exemption to all taxable services relating to transmission of electricity till 26-2-2010 and distribution of electricity till 21-6-2010

Whereas, the Central Government is satisfied that a practice was generally prevalent regarding levy of service tax (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 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;

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.

[Notification No. 45/2010-S.T., dated 20-7-2010]”

Thus, the service tax payable on all services relating to transmission and distribution of electricity provided by the service provider to the service recipient is not required to be paid. We have seen the related contracts entered by the appellant with M/s. UPCL. It is evident from there that the service rendered by the appellant is squarely relating to transmission and distribution of electricity and therefore in the light of the Notification No. 45/2010-S.T., dated 20-7-2010 no service tax is recoverable in respect thereof. Indeed CESTAT in the case of NOIDA Power Co. v. CCE, NOIDA [[2014 \(33\) S.T.R. 383](#) (Tri.-Del.)] has beld that “the expression ‘in relation to’ is of wide import and indicates all activities having a direct and proximate nexus with distribution of electrical energy. Distribution of electrical energy cannot be effectively accomplished

without installation of sub-station, transmission towers and installation of meters.” Indeed similar demands against M.P. Power Transmission Co. Ltd. raised by CCE, Bhopal and Paschimanchal Vidut Vitran Nigam Ltd. raised by CCE, Meerut were set aside by CESTAT in the cases of M.P. Power Transmission Co. Ltd. v. CCE, Bhopal [[2011 \(24\) S.T.R. 67](#) (Tri.-Del.)] and Paschimanchal Vidyut Vitran Nigam Ltd. v. CCE, Meerut [2012-TIOL-1175-CESTAT-DEL] respectively, in the wake of provisions of Notification No. 45/2010-S.T., dated 20-7-2010.”

- iv. In the case of M/s N. Srinivasula Reddy [2017 (4) GSTL 26 (Tri.-Hyd.)] following has been held:-

"6.1 Notification No. 45/2010-S.T., dated 20-7-2010 decreed that all taxable services relating to transmission of electricity shall not be levied during the period up to 26-2-2010, and, for the period up to 21-6-2010 for all taxable services relating to distribution of electricity. Thus, after 21-6-2010, any such services provided relating to distribution of electricity would be taxable at applicable rates unless they have been further exempted by any Notification issued in that regard.

6.2 The appellant has provided services to APSPDCL, which is a power distribution company. The Notification No. 11/2010-S.T., dated 27-2-2010 relied upon by the appellant extends exemption only to taxable services provided relating to transmission of electricity w.e.f. 27-2-2010. It is only on this ground that the original authority as well as lower appellate authority have denied the exemption benefit on the services provided by them from 27-2-2010 onwards. Hence, reliance on said notifications by Id. Advocate will not help the case of the appellant.

6.3. Nonetheless, it is seen that the Government had subsequently issued another Notification No. 32/2010-S.T., dated 22-6-2010, which reads as under :-

New Delhi 22nd June, 2010

Notification No. 32/2010-Service Tax

"GSR (E) 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 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, from the whole of Service Tax leviable thereon under section 66 of the said Finance Act."

Thus, the exemption provided in earlier Notification No. 45/2010-S.T., dated 20-7-2010 for services provided in relation to distribution of electricity upto 21-6-2010 have been further continued vide Notification No. 32/2010-S.T., dated 22-6-2010. In consequence, the demand of tax liability beyond 21-6-2010, on the appellant, for 2011-12, also cannot sustain. Accordingly, appeal is allowed with consequential benefits, if any, as per law."

4.5 As we find that the issue for the period prior to 01.07.2012 is squarely covered by the above referred decisions, we do not find any merits in the appeal filed by the revenue.

4.6 In respect of period post to 01.07.2012 we find that from this date the scheme of taxation has been changed and services provided are taxable unless and until exempted or covered by the negative list of services. In the present case, Commissioner has after due analysis, concluded that the services provided by the appellant do not fall either under the category of exempted services or under negative list. As appellant is engaged in providing the services along with the supply of material, undisputedly the services are covered under the category of Work Contract Services and/or liable to pay service tax in this category.

4.6 Similar views have been expressed by the Tribunal in the case of M/s Arvindra Electricals Final Order No.62732/2018 dated 31.08.2018 by holding as follows:-

"5. Heard the parties and considered the submissions. On careful consideration of the submissions made by both sides, we find that in this case, demand is sought to be confirmed under the category of 'Erection, Commissioning and Installation Services'. It is fact on record that the appellant has provided the services in question along with material. Therefore, the classification of the services is Works Contract as per the decision of Hon'ble Apex Court in the case of Larsen & Toubro (supra) wherein the Hon'ble Apex Court held that any service provided along with material falls under the category of Works Contract, therefore, prior to 01.07.2012, the service tax liability is not sustainable against the appellant under the category Services.)"

4.7 Appellant has claimed that they have provided these services under the license from a transmission company and hence these services are exempt from payment of service tax. A Copy of the license is reproduced below:-

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बिजली के ठेकेदारों को लाइसेन्स

सुकेत लखन सिंह (रत्नापीठ)

सुविधि संग्रहो २२०० २२०० २२०० २२००

राजपूताना गोपबिंद तसः उदयगढ ग कोही

को विद्यमान संख्या 1135 ई. एन. XXIII की को 04-50एचए0-50, दिनांक 11 मई, 1967 के अधीन उत्तर प्रदेश सरकार
 का कानूनी मदे विधियों के अन्तर्गत 37C(2) में विहित
 अभिलेखन कार्य करने के लिए, एतद्वारा प्रमाणित किया जाता है।

लक्ष्मण सख्या 85-586
निर्माण करने का दिनांक 16-09-2009
अन्तिम शिफारिश का दिनांक 31-03-2010

परिचय विविधता गुल्म के वातावरण प्रत्येक वर्ष 30 सितम्बर तक तथा
 अन्तर्गत गुल्म के वातावरण के साथ अनुसंधान 11 मार्च तक विविधता विमुक्त
 गुल्म के वातावरण के साथ अनुसंधान 11 मार्च तक विविधता विमुक्त
 गुल्म के वातावरण के साथ अनुसंधान 11 मार्च तक विविधता विमुक्त

Figure 1. The effect of the concentration of the inhibitor on the rate of polymerization of α -methylstyrene in the presence of SnCl_4 at 25°C .

$\frac{d}{dt} \left(\frac{\partial L}{\partial \dot{x}} \right) = \frac{\partial L}{\partial x}$

निदेशान्तरानुसारं निदेशान्तरानुसारं
निदेशान्तरानुसारं निदेशान्तरानुसारं

वर्षोत्सव का दिनांक	अवधि समाप्ति का दिनांक	सरकार के निदेशों के हस्ताक्षर	वर्षोत्सव का दिनांक	अवधि समाप्ति का दिनांक	संस्कार के निदेशों के हस्ताक्षर
1-4-2011	31-3-2011				
1-4-2011	31-3-2012				
1-4-2012	31-3-2013				
1-4-2013	31-3-2014				
1-4-2014	31-3-2015				
1-4-2015	31-3-2016				

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[Signature]

4.8 From perusal of the above license it is evident that said license is for the appellant to act as a contractor for providing

services to various clients of the PVVNL and UPPCL. The clients of PVVNL and UPPCL are neither any government organization or local government authority. Thus the services provided by the appellant to these service recipients cannot be said to be provided by to government organization or local authority to be eligible for the exemption under Notification no 25/2012-ST as claimed by the appellant. Accordingly, the claim of the appellant that their services will be exempted under the said notification is not justifiable. On perusal of the order in the case of M/s Arvindra Electricals which we have relied earlier for holding that the services provided by the appellant are "work contract service", we find that while granting the benefit of exemption under this notification, the bench was not seized with the matter wherein the service recipients were other than government organizations or local authority. As such on this ground this order of Chandigarh Bench is distinguishable.

4.9 The decision of the Ahmedabad bench in case of Gujarat Energy Transmission Corporation limited, is also distinguishable for the reason that the said case is in respect of the power supply company itself and not in case of the person providing certain services to the clients of such company.

4.10 Commissioner has dully analyzed the definition as it existed before and after 01.07.2012 and he concluded that the services provided by the appellant are in nature of Work Contract Services both prior and post of 01.07.2012. However, vide Notification No.11/2010, 32/2012, 145/2012 referred earlier these services has to be held exempted till 01.07.2012 similar exemption notification do not accept post to 01.07.2012. Hence, order of Commissioner for period post to 01.07.2012 cannot be faulted with.

4.11 While keeping the demand higher granted the benefit that was available to the appellant with regards to 50% liability to be discharged by the appellant and 50% by the service recipient on reverse charge basis, has been granted and demand has been restricted only to 50% of the amount, we also find merits in the said findings recorded by the adjudicated authority. On the issue

of limitation also, Commissioner has categorically recorded his findings. It is a fact on record that even after repeated inquiries appellant failed to provide the requisite details what was called for. They were also not registered, nor were filing service tax returns, during the relevant period it is only on the basis of enquiry and investigation made that case of none payment of service tax has been made out by way of none declaration and separation of facts. Accordingly, extended period of limitation for making this demand has been rightly invoked.

4.12 To the above extent, we uphold the demand of tax by invoking the extended period of demand along with interest under section 75.

4.13 For various points leading evasion of taxes penalty imposed under Section 77 (1), 77 (2) and Section 78 are also justified.

5.1 In result, we find no merits in the appeal of appellant and the same is dismissed.

5.2 Appeal filed by the revenue has also no merits and the same is also dismissed.

(Order pronounced in open court on-03 March, 2025)

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

akp