

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

Service Tax Appeal Nos. 443 to 445 of 2012

(Arising out of Order-in-Original No. 5 to 7/2012 dated 31.1.2012 passed by the Commissioner of Service Tax, Chennai)

M/s. Operational Energy Group India Pvt. Ltd. Appellant

No. A, 5th Floor, Gokul Arcade, East Wing
No. 2 and 2A, Sardar Patel Road
Adyar, Chennai- 600 020.

Vs.

Commissioner of GST & Central Excise

Chennai South Commissionerate
MHU complex
692, Anna Salai, Nandanam
Chennai – 600 034.

Respondent

APPEARANCE:

Shri T.R. Ramesh, Advocate for the Appellant
Shri R. Rajaraman, AC (AR) for the Respondent

CORAM

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

Final Order Nos. **40047-40049 / 2023**

Date of Hearing : 14.02.2023
Date of Decision: 14.02.2023

Per M. Ajit Kumar,

These appeals are filed by M/s. Operational Energy Group India Pvt. Ltd. against Order in Original No. 5 to 7/2012 dated 31.1.2012.

2. The facts are that the appellant undertakes to operate and maintain power plants of various clients in terms of the agreements entered with them. As per the agreements, the appellant is receiving maintenance charges and operational charges. Revenue has contended that the appellant is paying service tax only on the maintenance charges and they have not discharged the service tax on the

operational charges received from their clients. Hence the issue to be decided is (i) whether the assessee is liable to pay service tax on the operational charges provided by them to the owners of the power plants and (ii) whether penalty is imposable or otherwise.

3. We have heard the learned counsel Shri T.R. Ramesh for the appellant and learned AR Shri R. Rajaraman for the Revenue. We have perused the Appeal, Order in Original and all connected documents. The appellant's counsel has stated that this issue is already covered in the appellant's own case for the earlier periods in ST/103/2008 which was allowed by the Tribunal in the case of Shapoorji Pallonji Infrastructure Capital Co. Ltd. Vs. Commissioner of Service Tax, Chennai reported in 2017 (5) GSTL 65 (Tri. Mad.). He further drew attention to the subsequent appeals in their own case which was also decided in their favour vide Final Order No. 40104/2019 dated 9.1.2019. Hence the impugned order is not sustainable in law. The learned AR Shri R. Rajaraman while reiterating the facts given in the Order in Original has also fairly conceded that these are matters covered by the decisions referred to by the appellant's counsel.

4. We have perused the matter in detail and are of the opinion that the issue whether service tax is required to be discharged on operational charges by the appellant has already been examined and decided in favour of the appellant by this Bench in the appellant's own case vide Final Order No. 40104/2019 dated 9.1.2019. This Tribunal at para 4 had stated as follows:-

"4. After hearing both sides, we find that the learned Advocate is correct in his assertion. The issue as to whether activity of production of electricity in power plant would amount to management of immovable property or otherwise has been analyzed and discussed by this Bench in the case

of Shapoorji Pallonji Infrastructure (supra) and held in favour of assessee.....”

5. In the facts and circumstances, the issues stated at para 2 also are answered as follows:-

(i) The assessee is not liable to pay service tax on the operational charges provided by them to the owners of the power plants and (ii) in the light of (i), imposition of penalty does not arise.

6. Hence the appeals are allowed with consequential relief, if any, as per law.

(Operative portion of the order was pronounced in open court)

(P. DINESHA)
Member (Judicial)

(M. AJIT KUMAR)
Member (Technical)