CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

Dated: **30/06/2015**

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. **ST/A/52026/2015-CU[DB]** dated **07/05/2015**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.**

Asstt. Registrar(CUSTOMS Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	ST/623/2009	**U.P.RAJKIYA NIRMA NIGAM LIMITED** 152, Old nehru colony, Dehradun(Uttrakhand)
		Name and Address of Respondent
2		-C.C.E. MEERUT I Excise Chowk,Opposite Choudhary Charan Singh University Mangal Panday Nagar, Meerut - 250005.

Copy To
3Advocate(s) / Consultant(s): **Shri. R.M. Saxena, Consultant**

4 Additional Party's Name & Address :
5 Bar Association, CESTAT, Delhi
6 Director Publications, Customs, Excise. I.P. Estate, Delhi
7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

14 C.D.R. **15** Office Copy **16** Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI – 110 066.

Date of Hearing: 07.05.2015

For Approval &Signature :

Hon'ble Hon'ble Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

Appeal No.ST/623/2009-CU[DB]

[Arising out of Order-in-Original No.18/Comm./MRT-I/2009, dated 12.05.2009 passed by the C.C.E., Meerut-I]

M/s. U.P. Rajkiya Nirman Nigam Ltd. Appellants

Vs.

C.C.E., Meerut-I Respondents

Appearance
Shri R.M. Saxena, Consultant - for the appellants

Shri Amresh Jain, DR - for the respondents

CORAM: **Hon'ble Justice G. Raghuram, President**
Hon'ble Mr. R.K. Singh, Member (Technical)

Final Order No. 52026/2015, **dated 07.05.2015**

Per Mr. R.K. Singh:

The appeal has been filed against the Order-in-Original No.18/Comm./MRT-I/2009, dated 12.05.2009 in terms of which service tax demand of Rs.1,33,95,159/- was confirmed along with interest and penalties under Erection, Commissioning or Installation Service (ECIS) provided to M/s. Uttranchal Power Corporation Ltd. (UPCL).

2. The appellant signed a contract dated 12.01.2006 with UPCL to undertake the assignment work of rural electrification within the state of Uttranchal under Rajeev Gandhi Grameen Vidyutikaran Yojna on turnkey basis for a sum of Rs.37,22,20,407/-. The scope of work under the said contract included "complete rural electrification as per UPCL / REC (Rural Electrification Corporation) Constructions/erection manuals, design given in the tender document, manufacture, testing and supply of all the required material on and for destination/site basis including transportation, insurance, storage, erection, dismantlement, testing and commissioning of 11kv lines, LT lines erection testing and commissioning of distribution transformers at single source responsibility on turnkey basis". The above sum was inclusive of excise duty, sales tax, WCT, etc. The adjudicating authority after discussing the definition of ECIS as given in Section 65 (39a) of the Finance Act, 1994 held that the service rendered was covered under ECIS and confirmed the impugned demand along with interest and penalties.

3. The appellant has contended that the said demand is no longer sustainable in the wake of Notification No.32/2010-ST, dated 22.06.2010 read with Notification No.45/2010-ST.

4. We have considered the contentions of the appellant. Notification No.45/2010-ST, dated 20.07.2010 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-ST, dated 20.07.2010 no service tax is recoverable in respect thereof. Indeed CESTAT in the case of ***Noida Power Co. Vs. CCE, Noida [2014 (33) STR 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 Pachimanchal Vidut Vitran Nigam Ltd. Raised by CCE, Meerut were set aside by CESTAT in the cases of ***M.P. Power Transmission Co. Ltd.. Vs. CCE, Bhopal [2011 (24) STR 67 (Tri.-Del.)]*** and ***Paschimanchal Vidut Vitran Nigam Ltd. Vs. CCE, Meerut [2012-TIOL-1175-CESTAT-DEL]*** respectively, in the wake of provisions of Notification No.45/2010-ST, dated 20.07.2010.

5. In the light of the foregoing, the impugned demand is not sustainable and is accordingly quashed and the appeal is allowed.

(Justice G. Raghuram)
President

(R.K. Singh)
Member (Technical)

SSK