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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

ST/586 /2008,133 /2008 - CU[DB]
Appeal No. ST/M/781,792-93/10

Date **01/03/2011**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S M.P.POWER TRANSMISSION CO. LTD.

SHAKTI BHAWAN,JABALPUR, (M.P.)

M/S M.P.POWER TRANSMISSION CO. LTD. Appellant

Vs

C.C.E BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/66-67/ 2011 CU[DB]** dated 24.02.11

passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Alongwith misc order No. ST/35-37/11

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E BHOPAL
HOSHANGABAD ROAD, 48,
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HILLS, BHOPAL (M.P.) 462011
2. Adv. / Consult : Mr. G.Umapathy, Adv
D-104 Yamuna Apartment
Alaknanda, New Delhi – 19
3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
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,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-DB

Date of Hearing:15.2.2011

Service Tax Misc. Appn. No. 781, 792-793/2010
Service Tax Appeal No. ST/133/08 & ST/586/08

[Arising out of Order-in-Original No.05/COMMR/ST/2007 dated 14.01.2008 passed by the Commissioner of Customs & Central Excise, Bhopal].

For approval and signature:

HON'BLE Mr. ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR. MATHEW JOHN, MEMBER (TECHNICAL)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

M.P. Power Transmission Co. Ltd. ..Appellant

Vs.

Commissioner of Customs & Central Excise, Bhopal ... Respondent

Present for the Appellant :Shri.G.Umapathy, Advocate
Present for the Respondent:Shri.B.L. Soni, SDR

Coram:HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR. MATHEW JOHN, MEMBER (TECHNICAL)

Misc. No. ST/35-37/11
Final **ORDER NO.** ST/66-67/11 **DATED:** 24.2.11

PER: ASHOK JINDAL

Today these appeals are listed for final disposal before us alongwith Miscellaneous Applications filed by the appellants.

2. Miscellaneous application No.781/2010 was filed by the applicant for early hearing of their appeal, as the appeals are listed today for final disposal. Hence, this application for out of turn hearing has become infructuous and rejected.

3. The Misc. application No.792/10 and 793/10 filed by the appellants to bring certain facts on record which are very much relevant in deciding the issue in hand. Hence, the same are taken on record and considered.

4. By the impugned orders a service tax liability have been confirmed against the appellants for transmission and distribution of electricity under the category of business support service provided to various Vidyut Vitaran companies in the State of Madhya Pradesh and penalties were also imposed on the appellants.

5. The ld. Advocate for the appellants submits that vide Notification No. F 334/1/10-TRU dated 27th February, 2010 and F No.336/13/2010 – TRU dated 20th July, 2010 issued by the Govt. of India Ministry of Finance the Central Government has exempted service tax on taxable services relating to transmission and distribution of electricity provided by service provider to service receiver with retrospective effect. Hence,

the demands confirmed by the impugned order are not sustainable.

6. On the other hand, the ld. SDR submitted that as the appellants are public sector undertaking, a clearance from Committee on Disputes is required to file appeal before this Tribunal, as held by the Hon'ble Apex Court in the case of ONGC.

7. Heard and considered.

8. We are not on agreement with the argument advanced by the ld. DR as on perusal of the record, we find that at the preliminary stage of the appeals, this objection was not raised by the Revenue. Further more, the stay applications were dealt in both the appeals. Thereafter, the matters travelled upto Hon'ble High Court of Madhya Pradesh and as per directions of the Hon'ble High Court of Madhya Pradesh, this Tribunal has to dispose of these appeals in time bound period. Hence, the preliminary objection raised by the ld. DR is rejected.

9. We find that Notification No.11/10-ST 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 27.02.2010. Further for the past period upto 26.02.10, Ministry has issued Notification No.45/2010 dated 20.07.10 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.

10. Appeals are allowed with consequential relief, if any. The Misc. Application Nos.ST/Misc./792 & 793/2010 are disposed of in the above terms.

[Pronounced in the open Court on 15.02.2019].

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(MATHEW JOHN)
MEMBER (TECHNICAL)

Anita