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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**

**Appeal No. :** ST/85/2010-CU[DB], ST/135/10, ST/S/119/10, ST/CO/114/10

Dated: **13/07/2012**

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

**PURVANCHAL VIDUT VITRAN**
**NIGAM LTD.**
DLW, VIDUT NAGAR, VARANASI.

**PURVANCHAL VIDUT VITRAN NIGAM LTD.** (Appellant)

**VS**

**C.C.E Allahabad** (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **ST/A/522-523/2012-CU[DB]**, Stay/MISC Order No. and **ST/SO/805/2012** dated **02/07/2012** passed by the Tribunal under section **01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.**

**Assistant Registrar**
**CUSTOMS Appeal Branch**

**Copy To,**
**1. Respondent**
**C.C.E Allahabad**
38,M.G.Marg, civil Lines, Allahabad

**2. Advocate(s) / Consultant(s):**
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**3. C.D.R**
4. Bar Association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence Colony, New Delhi-3

7. Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8. Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9. Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15

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

11. TaxIndiaOnline.com Pvt. Ltd., Unit No. 1, 2nd Floor, Vasant Arcade, Nelson Mandela Road, Vasant Kunj, New Delhi - 110070

12. Office Copy

13. Gaurd File

**Assistant Registrar**
**CUSTOMS Appeal Branch**

**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,**
West Block No.2, R.K.Puram, New Delhi
**COURT-I**

**Date of hearing/ decision: 02.07.2012**

**Hon'ble Sh. Justice Ajit Bharihoke, President**
**Hon'ble Sh. Rakesh Kumar, 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? | |

**Service Tax Appeal No. 85 of 2010**
**and Service Tax Stay No. 119 of 2010**
(Arising out of order-in-Original No. (S.Tax-40/2009)70 of 2009 dated 21.1.2009 passed by the Commissioner, Central Excise & Service Tax, Allahabad).

M/s Purvanchal Vidyut Vitran Nigam Ltd. Appellants

Vs.

CCE, Allahabad Respondent (Assessee)

**Service Tax Appeal No. 135 of 2010 and**
**C.O. No. 114 of 2010**
(Arising out of order-in-Original No. (S.Tax-40/2009)70 of 2009 dated 21.1.2009 passed by the Commissioner, Central Excise & Service Tax, Allahabad).

CCE, Allahabad/ Meerut Appellant (Assessee)

Vs.

M/s Purvanchal Vidyut Vitran Nigam Ltd. Respondent

Present Sh. J.K. Mittal & Sh. Arun Gulati, Advocates for the assessee.
Present Shri B.L. Soni, AR for the Revenue.

CORAM : **Hon'ble Shri Justice Ajit Bharihoke, President**
**Hon'ble Shri Rakesh Kumar, Member (Technical)**

Stay order No. ST/S/805/12-Cus
Final Order No. ST/A/522-523/12-Cus

**Per Justice Ajit Bharihoke:**

By this order, we propose to dispose cross appeals filed by the appellant M/s Purvanchal Vidyut Vitran Nigam Ltd. (hereinafter referred to as assessee) and Commissioner of Central Excise, Allahabad against the impugned order in original dated 30.10.2009 whereby jurisdictional Commissioner dropped substantial demand raised vide show cause notice and confirmed service tax demand of Rs. 50775/- against assessee under Section 73(1) and (2) of Finance Act, 1994 and also imposed penalty of Rs. 10,15,514/- under Section 78 of Finance Act, 1994 and further penalty of Rs. 1,000/- under Section 77.

2. Briefly put the facts relevant for disposal of these appeals are that the appellant assessee is engaged in the purchase of electricity from Uttar Pradesh Power Corporation Ltd. and transmitting it to various consumers within its jurisdiction.

3. The department pursuant to the intelligence received came to know that apart from transmission of electricity, the appellant assessee was also engaged in the business of "erection, commissioning and installation" as also "technical testing and analysis" which according to the department, were subject to levy of service tax in terms of provisions of Finance Act, 1994.

4. During the enquiry, the appellant assessee furnished balance sheets for the year 2003-04 and 2004-05 which revealed that income of the appellant assessee comprised of revenue from, sale of power – less electricity – internal consumption - revenue, subsidies and grants and other income. The department was of the view that the income shown under the head "other income" in the balance sheet

for the relevant financial years was in respect of amounts received by the assessee appellant for providing taxable service i.e. "erection, commissioning and installation" as also "technical testing and analysis". Accordingly, based on profit and loss statement, the appellant assessee was served with show cause notice dt. 17.10.2008 raising demand of service tax amounting to Rs.6,45,83,235/- for the period 2003-04 and 2004-05.

5. The appellant contested the show cause notice and claiming that the income shown in the statement of account for the years 2003-04 and 2004-05 under the head "other income" comprised of-

a. Interest on loan to staff
b. Interest on fixed deposits
c. Amount charged from customers for delayed payment
d. Rebate for timely payment of Loan / interest
e. Sale of scrap
f. Penalty charges from the contractors and suppliers for delay of work
g. Rebate relating to power purchase
h. Rental income charges from the staff
i. Excess found of physical verification of stores
j. Miscellaneous receipts

There can not be any service tax on any of the above heads of "other income" mentioned above.

They further submitted that the allegation in the show cause notice the "other income" is relating only to receipts against taxable services is based on presumption and assumption as the details of "other income" where already given in the audited balance sheet provided by them.

On merits the appellant also raised the plea of limitation on the ground that there was no justification for invoking extended period of five years.

6. The jurisdictional Commissioner vide the impugned order dropped substantial portion of the demand raised vide show cause notice. He, however, confirmed service tax demand of Rs. 5,07,757/- with interest against the appellant and also imposed penalty of Rs. 10,15,514/- and further penalty of Rs. 1,000/-.

7. The assessee M/s purvanchal Vidyut Vitran Nigam Ltd in his appeal No. ST/85/10 has challenged the demand confirmed by impugned order in original as also penalty imposed on the ground that the appellant assessee is not engaged in the business r activity which may call for levy of service tax.

8. Revenue, being aggrieved of dropping of substantial portion of demand and preferred appeal No. ST/135/2010.

9. Shri J.K. Mittal, ld. Counsel appearing for the appellant assessee has placed reliance upon the Notification No. 45/2010-ST dt. 20.07.2010 and submitted that vide this notification Central Government has exempted persons engaged in transmission and distribution of electricity from levy of service tax in respect of taxable service relating to transmission and distribution of electricity retrospectively. Thus, it is pleaded that in view of exemption notification, impugned order confirming demand and imposing penalty is not sustainable in law.

10. Shri B.L. Soni, learned AR for the revenue on the contrary has submitted that benefit of notification No. 45/2010-ST would be available to the appellant assessee only if it is established that the service on which service tax is levied are related to transmission and distribution of electricity. Sh. B.L. Soni, AR submitted that income under the head "other income" detailed in the statement of account of the assessee relates to the services other than transmission and distribution of electricity as such adjudicating authority has wrongly dropped substantial portion of demand raised vide the show cause notice. Learned AR thus argued as to allow

the appeal preferred by the department and modify the impugned order to confirm the demand raised in show cause notice.

11. We have considered the rival submissions and perused the record.

12. The only issue for determination in these appeals is whether or not the services provided by the assessee in respect of erection, commissioning and installation as also technical testing and analyses and installation of meters at the premises of electricity consumers would be covered under the exemption benefit provided by Notification No. 45/2010-ST dated 20.07.2010.

13. Notification No. 45/2010-ST dated 20.07.2010 reads thus:-

> "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."

14. On careful reading of the aforesaid notification we find that this notification exempts the services relating to transmission and distribution of electricity provided by the service provider to the service receiver from the incidence of levy of service tax. Admittedly, the assessee is engaged in transmission and distribution of electricity after purchasing the same from U.P. Power Corporation Limited. Since the assessee is selling electricity to the consumer, in our view for

billing the consumer for electricity consumed it is essential to install the electricity meter having capacity to withstand the load provided to the consumer. Thus, any activity or service like erection, commissioning and installation of meters as also technical testing and analysis can easily be termed as the service relating to the transmission and distribution of electricity provided by the service provider to the service receiver. Thus, in our considered view such service, which is subject matter of this appeal, would be squarely covered under the exemption provided under Notification referred to above. We may note that similar view was taken by the coordinate Bench of this Tribunal in the matter of M.P. Power Transmission Company Limited vs. CCE, Bhopal in relation to interpretation of similar exemption Notification No. 11/2010-ST dated 27.02.2010 which is parimateria to the Notification No. 45/2010-ST dated 20.07.2010. In view of the discussion above, we do not find any merit in the appeal of the Department which is accordingly dismissed. The appeals as well as stay applications filed by the assessee are allowed and the demand confirmed by the impugned order are set aside.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Pant