

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA**

REGIONAL BENCH – COURT NO. 2

Service Tax Appeal No. 75327 of 2021

(Arising out of Order-in-Original No.09/CCE/S.Tax/RKL/2020-21 dated 30.12.2020 both passed by Commissioner of CGST & Excise, Rourkela)

M/s Wesco Utility : **Appellant**
(Burla, Dist.-Sambalpur, Odisha-768017)

VERSUS

Commissioner of CGST & Excise, Rourkela : **Respondent**
(KK-42, Civil Township, Rourkela-769004)

WITH

Service Tax Appeal No. 75655 of 2021

(Arising out of Order-in-Original No.Pr.Commr./BBSR/ST/16/2021 dated 27.05.2021 passed by Principal Commissioner of CGST & Excise, Bhubaneswar)

M/s Central Electricity Supply Utility of Odisha : **Appellant**
(IDCO Tower, Bhubaneswar-751022, Odisha)

VERSUS

Principal Commissioner of CGST & Excise, Bhubaneswar : **Respondent**
(C.R.Building, Rajaswa Vihar, Bhubaneswar-751007, Odisha)

WITH

Service Tax Appeal No. 75656 of 2021

(Arising out of Order-in-Original No. Pr. Commr. / BBSR/ST/13/2021 dated 30.04.2021 passed by Principal Commissioner of CGST & Excise, Bhubaneswar)

M/s SOUTHCO Utility : **Appellant**
(Courtpetta, Berhampur-760004, Dist.-Ganjam, Odisha)

VERSUS

Principal Commissioner of CGST & Excise, Bhubaneswar : **Respondent**
(C. R. Building, Rajaswa Vihar, Bhubaneswar-751007, Odisha)

AND

Service Tax Appeal No. 75749 of 2021

(Arising out of Order-in-Original No. Pr.Commr./BBSR/ST/16/2021 dated 27.05.2021 passed by Principal Commissioner of CGST & Excise, C.R. Building, Rajaswa vihar, Bhubaneswar-751007)

**Principal Commissioner of CGST & Excise,
Bhubaneswar**

(C. R. Building, Rajaswa Vihar, Bhubaneswar-751007, Odisha)

: Appellant

VERSUS

M/s Central Electricity Supply Utility of Odisha

(IDCO Tower, Bhubaneswar-751022, Odisha)

: Respondent

APPEARANCE:

Shri Niranjana Swain, Advocate for the Assessee

Shri Shambhu Nath & Mihir Ranjan, Special Counsel

Shri D. Sue, Authorized Representative for the Revenues

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOS. 77589-77592 / 2025

DATE OF HEARING: 19.09.2025

DATE OF PRONOUNCEMENT: 28.10.2025

ORDER: [PER SHRI R. MURALIDHAR]

M/s. WESCO Utility, SOUTHCO Utility and M/s Central Electricity Supply Utility of Odisha ("CESU"), ["DISCOMs" for short] are wholly owned undertakings of the Government of Odisha by virtue of holding 100% share capital and licensees under section 14 of Electricity Act 2003, engaged in the distribution of electricity in the licensed area of the State. The activities of the appellant are regulated and controlled by the Odisha State Electricity Regulation Commissions (OERC) and Central Regulatory Commission established both at Central and State levels under the Electricity Regulation Commissions Act, 1998. All the receipts from the activities of supply of electricity whether ancillary or incidental collected from the consumers of electricity as per tariff fixed by the OERC are accounted in the books

of accounts in compliance to the General Accepted Accounting Principles and provisions of Companies Act 2013 & Rules made there under. These power charges have been collected by the DISCOMs for the relevant years of dispute i.e 2014-15 to 2017-18 (up to June 2017) under Section 62 & 63 and other applied provisions of Electricity Act 2003 read with relevant provisions of OERC (Terms and Conditions for determination of Wheeling and Retail Supply Tariff) Regulations, 2014 and OERC (Conduct of Business) Regulations, 2004 and other Tariff related matters.

2. The DGGI, Bhubaneswar Zonal Unit issued show cause dated 19.09.2019 for the period 2014-15 to 2017-18 (up to June 2017) by invoking extended period of limitation as provided u/s 73 of the Finance Act 1994 on the ground of willful fraud, willful mis statement and suppression of facts to escape payment of tax. The demand of service tax was quantified by taking consolidated figures appeared in the audited financial statements without further analysis and determining the service tax receipt wise. The appellants made their detailed submissions, along with the documentary evidence, statutory provisions and cited relevant case laws. The Adjudicating Authority (here in after "AA") in the process of adjudication has confirmed the demand as to the extent given below and order for recovery u/s 73(1) of the Finance Act, 1994 with interest and penalty. Being aggrieved, the appellant is before the Tribunal.

2.1 In case of CESU, against the dropping of demand, the Revenue has filed their Appeal being aggrieved by part of the dropped demand. With the

consent of all these appeals have been taken up together for hearing since the issue is common.

3. The Ld Counsel appearing on behalf of the DISCOMS, makes the following submissions :

4. The details of the demand, dropped demand and confirmed demand is as per the following Table :

Particulars / Appellants	WESCO Utility	SOUTHCO Utility	CESU
Period of SCN	2013-14 to 2017-18 (up to June 2017)	2013-14 to 2017-18 (up to June 2017)	2013-14 to 2017-18 (up to June 2017)
Date of SCN	19.09.2019	19.09.2029	19.09.2029
Service Tax demand	Rs.39,40,55,055	Rs.7,40,54,340	Rs.62,33,90,975
Service Tax Demand dropped by Adjudicating Authority	Nil	Rs.21,24,492	Rs.28,32,91,301
Service Tax demand as per Order in Original	Rs.39,40,55,055	Rs.7,19,29,848	Rs.34,00,99,674
Adjudicating Authority	Commissioner, CGST & CE, Rourkela	Pr. Commissioner, CGST & CE, Bhubaneswar	Pr. Commissioner, CGST & CE, Bhubaneswar
Ref: Order in Original & date	09 / 2021 / 30.12.2020	13/2021 / 30.04.2021	16/2021 / 27.05.2021

Appeal Nos.: ST/75327, 75655, 75656, 75749/2021-DB

Discoms' Appeal Numbers	ST/75327/2021	ST/75656/2021	ST/75655/2021
Revenue's Appeal No.			ST/75749/2021 (Litigated amount : Rs.19,73,65,734)

5. The Ld Advocate submits that in all these cases, the Dept. has not bifurcated the income under various heads to quantify the demand. They have simply taken the Balance Sheet / P & L accounts figures, took the same as cum-tax figure and arrived at the assumed Assessable Value and quantified the Service Tax demand. However, in order to defend their case properly, the appellants have bifurcated the income, getting the same duly certified by the Chartered Accountant. The details of the receipts on which service tax demand is calculated and confirmed in the impugned orders of the DISCOMs based upon presumptions and assumptions are per the following Table:

Sl. No .	Activity / Receipts as per P/L Account	Receipts during the year 2014-15 to 2017-18 (up to June 2017) in Rs.			Reason for levy of Service Tax
		CESU	SOUTHCO Utility	WESCO Utility	
1	Penalties (LD) recovered from Supplier	64,212,825			declared services as defined under section 66E(e) of the Finance Act.
2	Penalties (LD) recovered from Contractor	36,910,309		3,752,414	
3	Deposits from suppliers & contractors forfeited for recovery of LD	4,818,500			
4	Recovery of theft power from consumers and others			28,558,611	all the services appeared to

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					be chargeable to service tax
5	Cross subsidy transferred	840,067,047			Collected from a
6	Cross Subsidy charges		63,019,196	1,416,741,335	section of consumers
7	Reliability surcharge	522,262,482	58,974,479	479,130,043	and outside purview of section 62 of Electricity Act 2003. It is a declared service u/s 66E(e) of Finance Act 1994
8	Recovery of meter cost	679,985,851	188,273,042	322,867,001	Declared Service as per Section 66E(f) of Finance Act - Transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods
9	Service connection fees	56,943,972	46,807,528	322,246,850	WESCO, CESU & SOUTHCO: service as defined in section 65B(44) and
10	Reconnection fees	27,813,677	13,039,124	15,296,468	

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					liable for service tax
11	Processing Fees			8,537,820	Service as defined under section 65B(44) of the Finance Act and liable for service tax
12	Customer charges & others	298,292,487			
13	Meter Testing Fees		1,436,349	7,723,482	
14	Other Misc Receipts	209,676,805	56,970,330	3,525,049	
15	Rental From Contractors	426,282			
16	Supervision / Other charges received from consumers		132,388,029	171,978,805	Service provided U/S 65B (44) of the Finance Act
17	Revenue collection from not traceable consumers			7,005,042	
18	Accounting Adjustment & other receipts			309,993,221	
	Gross Value [cum tax value]	2,741,410,237	560,908,078	3,097,356,142	
	Service Tax	34,00,99,674	7,19,29,848	39,40,55,055	

6. He submits that without any dispute, all the amounts received by the DISCOMs under the above different heads, are nothing but on account of services related to transmission or distribution of electricity. Notification No.11/2010 ST dated 27.02.2010 granted full Service Tax exemption for taxable service provided in relation to 'transmission of electricity'. Similarly, Notification No.32/2010 ST dated 22th June 2010 granted full Service Tax exemption for the services related to distribution of power under the Electricity Act, 2003(36 of 2003), for distribution of electricity. Overall, on this ground itself no Service Tax is payable by the appellants.

7. It is submitted that Section 66F (3) of Finance Act provides for taxability of a bundled service i.e

(a) if various elements of such service are naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which gives such bundle its essential character;

(b) if various elements of such service are not naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which results in highest liability of service tax.

8. He submits the issue had come up before the Hon'ble Gujrat High Court in the case of **TORRENT POWER LTD. Vs UNION OF INDIA - 2020 (34) G.S.T.L. 385 (Guj.)**, it has been held as under:

24. It has been contended on behalf of the respondents that sub-section (3) of Section 66F of the Finance Act would not apply where the single service which gives the bundle of services its essential character is exempt from the levy of service tax. In the opinion of this Court, there is nothing in the language employed in sub-section (3) to Section 66F to read into it a requirement that such service should not be exempt from tax. All that the sub-section provides is that taxability of bundled services shall be determined in the manner provided therein. The term taxability means liability to taxation. Thus the term taxability would take within its sweep not being taxable also inasmuch as liability to taxation would also mean not being liable to any tax. Thus, the liability to tax of a bundled service has to be determined in the manner provided under sub-section (3) of Section 66F of the

Finance Act. If the services are naturally bundled in the ordinary course of business, the bundle of services shall be treated as provision of the single service which gives the bundle its essential character and where the services are not naturally bundled in the ordinary course of business, the same is required to be treated as provision of the single service which results in highest liability of service tax. Accordingly, where the services are naturally bundled in the ordinary course of business and the single service which gives such bundle its essential character is exempt from tax, the entire bundle will have to be treated as provision of such single service.

25. Thus, insofar as the phase relating to the negative list regime is concerned, the services in question would fall within the ambit of bundled services as contemplated under sub-section (3) of Section 66F of the Finance Act, and would have to be treated in the same manner as the service which gives the bundle its essential character, namely, transmission and distribution of electricity and, would therefore, be exempt from payment of service tax.

9. From 1.7.2012, the issue is covered by Section 66D of the Finance Act provides for a negative list of services. This negative list comprises, amongst others, in sub-clause (k), 'transmission or distribution of electricity by an electricity transmission or distribution utility'. The Appellants are "electricity transmission or distribution utility" within the meaning of section 65B (23) and eligible for the exemption benefits as available under section 66D(k) of Finance Act 1994 during relevant period of dispute.

10. He submits that there is nothing to suggest in the SCN that the receipts of the DISCOMs are for any other activity, other than that of transmission and distribution of Electricity.

11. That the amount has been collected in terms of the Regulations and fixed by the OERC for the services bundled in the ordinary course of business for providing electricity. They are, therefore, required to be treated as a single service for providing services for transmission and distribution of electricity, which service is exempted under the negative list under section 66D(k) of the Finance Act.

12. Under the present GST regime, similar issues arose. The Govt of India has issued a notification vide No. 08/2024- Central Tax (Rate) dated 08.10.2024 effective from 10.10.2024 by inserting entry 25A to Notification No.12/2017 dated.28.06.2025 exempting the services that covered under circular no.34/2018 dated.1st March 2028 and abstract is given below.

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (%)	Condition
25 A	Heading 9969 or Heading 9986	Supply of services by way of providing metering equipment on rent, testing for meters/transformers/capacitors etc., releasing electricity connection, shifting of meters/service lines, issuing duplicate bills etc., which are incidental or ancillary to the supply of	Nil	Nil

		transmission and distribution of electricity provided by electricity transmission and distribution utilities to their consumers.		
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13. Further vide CBIC vide Circular No. 234/28/2024-GST dated 11.10.2024 it is clarified at Para – 9 that “*supply of services by way of providing metering equipment on rent, testing for meters / transformers / capacitors etc., releasing electricity connection, shifting of meters / service lines, issuing duplicate bills etc., which are incidental or ancillary to the supply of transmission and distribution of electricity provided by transmission and distribution utilities to their consumers* are exempted and past GST period has been regularized on ‘*as is where is*’ basis from 01.07.2017 to 09.10.2024.

14. He submits that the clarification issued under GST is equally applicable for the pre-GST period from 1.7.2012, since the activity is the same. He submits that the issue of Notifications in 2010, subsequent bringing in of the services under Negative List 66D (k) and issue of the present Notification dated 8.10.2024 and Board Circular dated 11.10.2024, clarifies that from the beginning the legislative intent is to fully exempt the tax on all the activities connected with transmission and distribution of electricity.

15. Without prejudice to the above submissions, further details of “*receipts under accounting adjustment / other receipts*” which are not a consideration against provision of any service are also reconciled and bifurcated figures along with

certificate issued by a Chartered Accountant was submitted which was accepted by Adjudicating authority in case of CESU & Southco and excluded in determination of service tax demand. However, in the case of WESCO the AA has not excluded such figures and taken as taxable. Therefore, such accounting adjustments / receipts by WESCO is not a consideration against any provision of service and not liable to service tax.

16. Without prejudice to the above submissions, it is argued that the issue as to whether the penalties recovered as Liquidated Damages are liable for Service Tax or not have been consistently answered by the Courts and Tribunals in favour of the assessee, holding that no Service Tax is payable for such receipts. Reliance is placed on such case laws.

17. The Appellate Authority for Advance Ruling, Uttarakhand in case of **Uttarakhand Power Corporation Ltd [2022] 142 taxmann.com 421 (AAAR-Uttarakhand)** ruled that charges for distribution and supply of electricity such as fixed charge, demand charge, energy charge, fuel charge, adjustment, excess load demand charge, low power factor surcharge, low voltage surcharge/high voltage rebate, wheeling charge, cross subsidy surcharge and additional surcharge, delayed payment surcharge, security deposits at time of release of new LT/HT/EHT connection and for enhancement in sanctioned load, checking and testing of meters, assessment against theft and unauthorized use of electricity, advance deposit by consumers with application for temporary LT/HT connection, service line charges and overhead line charges for release of new LT connection and for enhancement/reduction in

sanctioned load, works charges for release of new HT/EHT connection and for enhancement / reduction in sanctioned load, replacement of meters (installation of meters and its subsequent removal in case of temporary connections), etc., being closely or directly related to main service of distribution of electricity and registration-cum-processing fee which is mandatory requirement for obtaining electricity, fully exempted from GST in terms of Sl. No. 25 of Notification No. 12/2017-C.T. (Rate)

18. Coming to the individual receipt-wise demand, computed by the appellant, as per the Table given above, duly Certified by the Chartered Accountant, the reliance placed on the case laws / Circulars, because of which no Service Tax is required to be paid by the appellant:

For issues given at Sl No.1 to 3 of the Table :

(a) CBIC vide its Circular No. 178/10/2022-GST dated.3rd August 2022.

(b) M/s. Steel Authority of India Limited, vrs. Commissioner of G.S.T. and CX, ST Appeal No. 78393 of 2018, order dated. 05.09.2024

(c) M/s. National Aluminium Co. Ltd. v. Principal Commissioner, C.G.S.T. & Central Excise, Bhubaneswar [2024 (6) TMI 763 – CESTAT, Kolkata]

(d) Southern Power Distribution Company of Andhra Pradesh Ltd Vs Commissioner of Central Tax (CESTAT Hyderabad) in ST Appeal

No.30388 of 2019,

(e)M.P. Poorva Kshetra Vidyut Vitaran Company Ltd Versus Principal Commissioner, CGST & C. EX., Bhopal, 2021 (46) G.S.T.L. 409 (Tri. - Del.) / 126 taxmann.com 182 (Delhi CESTAT),

(f)Madhya Pradesh Poorva Kshetra Vidyut Vitaran Co. Ltd. versus Commissioner of CGST & Central Excise, Jabalpur, 2022 (67) G.S.T.L. 86 (Tri. - Del.)

(g)South Eastern Coalfields Ltd. Vs Commissioner of Central Excise and Service Tax (CESTAT Delhi) 2021 (55) G.S.T.L. 549 (Tri. - Del)

For issue given at Sl. No.4 of the Table :

(a)CBIC vide its Circular No. 178/10/2022-GST dated.3rd August 2022.

(b)Appellate Authority for Advance Ruling, Uttarakhand in case of Uttarakhand Power Corporation Ltd [2022] 142 taxmann.com 421 (AAAR-Uttarakhand)

(c)M.P. Poorva Kshetra Vidyut Vitaran Company Ltd Versus Principal Commissioner, CGST & C. EX., Bhopal, 2021 (46) G.S.T.L. 409 (Tri. - Del.) / 126 taxmann.com 182 (Delhi CESTAT),

For Issues given at Sl No.5 and 6 of the Table :

Book Entry [transaction relates to 2010-11 to 2012-13 made in 2016-17:

Futura Polyesters Ltd Versus Commissioner of Central excise, Chennai-I, 2013 (29) S.T.R. 371 (Tri. - Chennai).

Cross Subsidy Charges:

(a)Southern Power Distribution Company of Andhra Pradesh Ltd Vs Commissioner, Central Tax(CESTAT Hyderabad) in ST Appeal No.30388/2019,

(b)Monet Ispat & Energy Ltd Vs. C.C.E. & S.T.- Raipur in Appeal No. ST/52038/2018-SMC [CESTAT, New Delhi]

(c)Appellate Authority for Advance Ruling, Uttarakhand in case of Uttarakhand Power Corporation Ltd [2022] 142 taxmann.com 421 (AAAR-Uttarakhand)

For Issue given at Sl No.7 of the Table :

(a) Appellate Authority of Advance Ruling, Uttarkhanda in case of Uttrakhand Power Corporation Ltd, 2022 (142 taxmann.com 421 [AAAR- Uttarakhand] 2020 (33) G.S.T.L. 260 (A.A.R. - GST - UK)

(b)M/s Monnet Ispat & Energy Ltd Vrs. CCE & ST, Raipur, (Appeal No. ST/52038/2018-SMC [Arising out of Order-in-Appeal No. 073-2018-19 dated 20/04/2018

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(c) It is not Liquidated Damages / Sec 66(e) -
Circular No. 178 / 10/2022-GST dated.3rd
August 2022 as regards taxability of LD

**For Issue given at Sl No.8 to 15 and 17 of the
Table :**

(a)Circular No.131/13/2010-ST dated 7.12.2010
Notification No. 08/2024- CT (Rate)
dt.08.10.2024 effective from 10.10.2024,

(b)CBIC vide Circular No. 234/28/2024-GST
dated 11.10.2024

(c)Madhya Pradesh Poorva Kshetra Vidyut
Vitaran Co. Ltd. versus Commissioner of CGST &
Central Excise, Jabalpur 2022 (67) G.S.T.L. 86
(Tri. - Del.)

(d)Southern Power Distribution Company of
Andhra Pradesh Ltd Vs Commissioner of Central
Tax (CESTAT Hyderabad) in ST Appeal
No.30388 of 2019,

(e)Paschimanchal Vudyut Vitaran Nigam Ltd
Versus Commissioner of CE Meerut, 2012 (28)
S.T.R. 412 (Tri. - Del.)

(f)Paschimanchal Vdyut Vitran Nigam v.CCE
(2012) 36 STT 636 /24 taxmann.com 169
(CESTAT) and Paurvanchal Vdyut Vitran Nigam
v. CCE (2012) 37 STT 268 / 26 taxmann.com
148 (CESTAT).

(d)Southern Power Distribution Company of
Andhra Pradesh Ltd Vs Commissioner of Central

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Tax (CESTAT Hyderabad) in ST Appeal
No.30388 of 2019,

(d) Monet Ispat & Energy Ltd Vs. C.C.E. & S.T.-
Raipur in Appeal No. ST/52038/2018-SMC
[arising out of Order-in-Appeal No. OIA-BHO-
EXCUS-002-APP-073-2018-19 dated
20/04/2018 passed by Commissioner of CGST &
CE, Raipur (Appeal) – Part of Tariff

For issue given at SI No.16 of the Table :

(a)Madhya Pradesh Poorva Kshetra Vidyut
Vitaran Co. Ltd. versus Commissioner of CGST &
Central Excise, Jabalpur 2022 (67) G.S.T.L. 86
(Tri. - Del.)

(b)Chief Engineer Maharashtra State Electricity
Distribution Co. Ltd. v. Commissioner, Central
Excise, Customs & Service Tax, Aurangabad
[2016] 66 taxmann.com 117 (Mumbai -
CESTAT)

(c)Gujarat Energy Transmission Corporation
Limited Vs Commissioner of Central Excise & ST,
Anand in ST Appeal No. 10317 of 2017-
Supervision Charges

For issue given at SI No.18 of the Table :

Audit Certificate given should be accpted:
Commissioner of CE & ST Vrs M.J. Solanki
(2025) 26 Centax 122 (SC)

19. In view of the above submissions, it is prayed
that the appeals filed by the appellant Discoms may

be allowed on merits, by setting aside the confirmed demands.

20. The Ld Counsel, also takes the plea of time bar for the confirmed demand in respect of the extended period. He submits that the SCN was issued on 19.09.2019 for the period 2014-15 to 2017-18. The appellants are purely in the business of providing service relating to transmission and distribution of the electricity. Right from 2010 by way of Notifications, by way of Circulars, by way of amended Section 66 D and even under the present regime of GST by way of Notifications and Clarifications, it has been consistently clarified that no Service Tax / Tax is payable for the electricity transmission and distribution services. The relied upon case laws fortify the views taken by the appellant. This shows the bonafides of the appellant. Further the very fact that the litigation has been taken up to Tribunal / High Court levels, shows that the issue is that of interpretation. Apart from this, the entire shareholding of the DISCOMs rests with the State Government of Odisha. Therefore, these facts make it clear that there cannot be any intent to evade the Service Tax payment by the appellant DISCOMs.

21. The summary of the total demand, and the demand hit by time bar is given below :

Yearwise Service Tax Demand in Dispute - WESCO, CESU AND SOUTHCO

In Rs.

Sl. No.	Name of Utility	Financial Year 2014-15	Financial Year 2015-16	Financial Year 2016-17	Financial Year 2017-18 (up to June 2017)	Grand Total	Time barred STN demand [2014-15 & 2015-16]
1	CESU	8,31,54,062	6,77,43,324	17,07,01,533	1,85,00,643	34,00,99,563	15,08,97,387

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2	SOUTHCO	26,42,834	2,47,18,155	3,68,97,638	76,71,263	7,19,29,889	2,73,60,989
3	WESCO	2,80,35,788	15,81,12,684	17,19,15,455	3,59,90,884	39,40,54,811	18,61,48,473
	Total					80,60,84,263	36,44,06,848

22. Reliance is placed on the following case laws :

Pushpam Pharmaceutical Co. vs. Commissioner of Central Excise, Bombay, 1995 (78) E.L.T. 401 (S.C.),

Continental Foundation Joint Venture Holding vs. Commissioner of Central Excise, Chandigarh-I, 2007 (216) E.L.T. 177 (S.C.)

Mahanagar Telephone Nigam Ltd. vs. Union of India and others, 2023 (73) G.S.T.L. 310 (Del.)

23. In view of the above, the Ld. Counsel submits that the confirmed demand for the extended period is liable to be dismissed on account of time bar also.

24. In respect of the Appeal filed by the Revenue, the Ld Counsel submits that the Adjudicating authority, after due verification of the documentary evidence placed before him and after relying on the statutory provisions, has dropped the demand. He relies the detailed findings of the Adjudicating authority. Finally, it is prayed that the Revenue’s appeal may be dismissed.

25. The Ld Special Counsels, Shri Mihir Ranjan and Shri Shambunath, representing the Revenue

reiterate the detailed findings of the Adjudicating authority while confirming the demand. They also reiterate the Grounds of Appeal, taken by the appellant Revenue in their appeal. However, it is fairly submitted by them that most of the issues under the present litigation is covered by the decisions of the Tribunal and High Court. It is also on record that in the present GST regime, in order to put to rest the litigation, the CBIC has issued Circulars time and again.

26. Heard both the sides. Perused the Appeal papers and documentary evidence placed by the DISCOMs.

27. The basic fact is not in dispute. The DISCOMs are providing the service relating to transmission and distribution of power. They are wholly owned undertakings of the Government of Odisha by virtue of holding 100% share capital and licensees under Section 14 of Electricity Act 2003, engaged in the distribution of electricity in the licensed area of the State. The activities of the appellant are regulated and controlled by the Odisha State Electricity Regulation Commissions (OERC) and Central Regulatory Commission established both at Central and State levels under the Electricity Regulation Commissions Act, 1998.

28. The power charges have been collected by the DISCOMs for the relevant years of dispute 2014-15 to 2017-18 (up to June 2017) under Section 62 & 63 and other applicable provisions of Electricity Act 2003 read with relevant provisions of OERC (Terms and Conditions for determination of Wheeling and Retail Supply Tariff) Regulations, 2014 and OERC

(Conduct of Business) Regulations, 2004 and other Tariff related matters.

29. We also observe that while issuing the SCN on 19.09.2019, the Revenue has simply gone by the income shown in the P & L accounts and Balance Sheet of the appellant and has treated the entire income during the financial years as the income of the DISCOMs. The quantification is based on the total income less the Service Tax portion [in terms of Section 67(2) of the Finance Act 1994], which has been taken as the Assessable Value based on which the Service Tax liability has been worked out. The very fact that the transmission and distribution of electricity has been enjoying full exemption right from 2010 has not been considered at all while framing the allegation and quantifying the demand. On the other hand, the DISCOMs, so as to defend their case properly, have bifurcated the total demand under 18 different headings and have got the same certified by the Chartered Accountant.

30. We have gone through the relevant portion of the CA's Certificate, which is reproduced below:

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WESCO UTILITY						
Reconciliation of Other Operating Income with amount taken in "Demand cum Notice to Show Cause"						Amount in Rs.
A/c Code	Particulars / Financial Year	2014-15	2015-16	2016-17	2017-18 (01.04.17 to 30.06.2017)	Grand Total
62.903	Rental from Contractors		2,00,000			2,00,000
62.908	Water Rates recov.from Brd's Qrts.	744	11,573	11,615	3,417	27,349
62.918	Sale of Tender forms		7,37,300	8,03,756	4,36,800	19,77,856
62.924	Unpaid wages written off	3,540	1,34,124	14,940	78	1,52,683
	Sub Total - E -1	18,927	13,36,004	10,38,317	4,87,574	28,80,822
62.999	Details break up of Other Misc Receipts					
	Cross Subsidy Charges	11,69,966	4,64,350	3,60,89,916	1,08,03,143	4,85,27,375
	Revenue collection from not traceable consumers	2,88,968	14,71,880	47,13,586	1,82,974	66,57,408
	Procssing Fees	4,59,105	8,49,245	7,61,324	3,31,175	24,00,849
	Reconnection fees	3,69,218	15,800	8,085	650	3,93,753
	Meter/Transformer testing	2,77,017	13,50,683	9,99,470	1,199	26,28,369
	Service Connection fees	7,76,640	1,44,39,672	58,94,462	26,97,771	2,38,08,545
	Meter rent (Meter cost)	1,91,516	18,10,166	48,91,306	8,46,099	77,39,087
	Recoveries towards theft of power	6,20,295	3,02,611	59,40,282	-	68,63,188
	Supervision Charges	62,29,098	2,17,18,355	2,88,21,877	18,66,480	5,86,35,810
	Security Deposit	9,853	5,21,327	7,28,842	61,573	13,21,595
	Other Miscellaneous Receipt	-	17,76,420	16,56,331	24,982	34,57,733
	Recoveries From employees	1,89,181	8,86,178	11,66,619	38,707	22,80,685
	Insurance claim received	10,006	52,64,338	43,66,319	-	96,40,663
	Interest on Refund of Income Tax	-	45,98,939	-	-	45,98,939
	Deposit work	32,089	3,44,28,537	2,50,93,400	1,42,39,550	7,37,93,576
	Excess provision of interest Written Back.			48,07,985		48,07,985
	Prov for cash excess			38,43,934		38,43,934
	Sub Total E-2	1,06,22,952	8,98,98,501	12,97,83,738	3,10,94,303	26,13,99,494
	Total = E (E-1 + E-2)	1,06,41,879	9,12,34,505	13,08,22,055	3,15,81,877	26,42,80,316
	Total of F= (D + E)	1,24,64,116	9,30,56,192	13,25,00,040	3,18,08,782	26,98,29,130
	Gross Total as per Accounts - (C+F)	25,48,62,553	1,24,85,44,991	1,31,80,18,488	27,59,30,110	3,09,73,56,142



For TEJ RAJ & PAL
CHARTERED ACCOUNTANTS
[Signature]
(CA DINAKAR MOHANTY)
PARTNER
M. No.-059390
UDIN - 20059390AAAA54893

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31. It can be observed that the income is accounted for under several headings. Some of the incomes like 'insurance claim received', 'interest from bank', 'interests on refund of income tax', 'provisions made' etc. are outright not liable for any

Service Tax payment. The other likely taxable income, but exempted, has been listed by the appellant within the 18 categories, which tallies with the CA's Certificates. While we have reproduced one sample of Wesco Utility, such Certificates have been produced by the appellant in respect of the other two DISCOMs also.

32. Therefore, it is seen that the Revenue's allegation about the non-payment of Service Tax is without any proper verification so as to demand the same only for the purported services, but is based on the total turnover of the appellant, which is legally not sustainable.

33. Almost all the issues under the 18 categories [except for Liquidated damages / penalties] have been dealt by the Hon'ble Gujrat High Court in the case of ***Torrent Power Ltd Versus Union of India, 2020 (34) G.S.T.L. 385 (Guj.)***, wherein the High Court has held as under :

10. Insofar as the first phase is concerned, the respondents do not dispute that the related/ancillary services to transmission and distribution of electricity are exempt from payment of service tax. The dispute, therefore, relates to the period of the negative list regime and the CGST/SGST regime.

11. Insofar as the second phase, namely, the negative list regime is concerned, with effect from 1.7.2012, section 65B of the Finance Act, 1994 came to be amended and service tax became leviable on all services, other than those services specified in the negative list.

Admittedly, transmission and distribution of electricity by an electricity transmission or distribution utility, finds place in the negative list and, is therefore, not exigible to service tax.

12. The first question that arises for consideration is whether services relating to transmission and distribution of electricity fall within the ambit of clause (k) of section 66D of the Finance Act and, are therefore, exempt. In this regard, it may be noted that prior to the coming into force of the negative list regime, goods and services were exempted by virtue of notifications issued in exercise of powers under sub-section (1) of section 93 of the Finance Act. By virtue of Notification No. 11/2010 dated 27.2.2010, the Central Government exempted transmission of electricity from the whole of service tax leviable thereon under section 66 of the Finance Act; and by virtue of Notification No.32/2010-Service Tax dated 22.6.2010, distribution of electricity came to be exempted from the whole of service tax leviable thereon under section 66 of the Finance Act. Thus, what was exempt under those provisions was transmission and distribution of electricity, despite which, during the pre-negative list regime, the respondents have considered services related to transmission and distribution of electricity as exempted from service tax by virtue of those notifications. Insofar as electricity meters are concerned, vide circular No.131/13/2010-ST dated 7.12.2010, it was clarified that supply of electricity meters for hire to consumers being an essential activity, having direct and close nexus with transmission and distribution of electricity, the same is covered by the

exemption for transmission and distribution of electricity extended under relevant notifications.

14. It may be noted that insofar as the exemptions prior to the negative list regime as well as post the negative list regime are concerned, it is the transmission and distribution of electricity that has been exempted by virtue of notifications. During the negative list regime, transmission and distribution of electricity has been placed in the negative list. Therefore, in all the three phases, what was exempted was “transmission and distribution of electricity”. However, while for the pre negative list phase, the respondents considered the services related to transmission and distribution of electricity as exempt under the exemption notifications, for the negative list regime and the GST regime, they seek to exclude such services from the ambit of transmission and distribution of electricity. ***** The respondents having themselves considered the services in question as being covered by the exemption for transmission and distribution of electricity as such services were essential activities having a direct and close nexus cannot be now permitted to take a U-turn and seek to exclude such services without pointing out any specific change in the nature of the exemptions, except that they are provided under different statutory provisions. In the opinion of this court, the meaning of “transmission and distribution of electricity” does not change either for the negative list regime or the GST regime. If that be so, the services which stood included within the ambit of transmission and distribution of electricity

during the pre-negative list regime cannot now be sought be excluded by merely issuing a clarificatory circular, that too, with retrospective effect. By the clarificatory circular, the respondents seek to give a different interpretation of the very same services as against the clarification issued for the pre negative list regime.

15. Thus, from the very manner in which the respondents have treated the services related to transmission and distribution of electricity during the pre-negative list regime, such services would stand covered by the exemption granted to transmission and distribution of electricity by virtue of inclusion of such services in the list of negative services under section 66D (k) of the Finance Act as well as by virtue of exemption notification issued under the CGST Act.”

17. Section 66F of the Finance Act lays down the principles of interpretation of specified descriptions of services or bundled services and reads thus :-

“66F. Principles of interpretation of specified descriptions of services or bundled services. - (1) Unless otherwise specified, reference to a service (herein referred to as main service) shall not include reference to a service which is used for providing main service.

Illustration. - The services by the Reserve Bank of India, being the main service within the meaning of clause (b) of Section 66-D, does not include any agency service

provided or agreed to be provided by any bank to the Reserve Bank of India. Such agency service, being input service, used by the Reserve Bank of India for providing to main service, for which the consideration by way of fee or commission or any other amount is received by the agent bank, does not get excluded from the levy of service tax by virtue of inclusion of the main service in clause (b) of the negative list in Section 66-D and hence, such service is liable to service tax.

(2) Where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description.

(3) Subject to the provisions of sub-section (2), the taxability of a bundled service shall be determined in the following manner, namely :-

(a) if various elements of such service are naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which gives such bundle its essential character;

(b) if various elements of such service are not naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which results in highest liability of service tax.

Explanation. - For the purposes of sub-section (3), the expression "bundled service" means a bundle of provision of various

services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services.”

20. The facts of this case are required to be examined in the light of the above statutory provisions. In this case, we are concerned with transmission and distribution of electricity being the main services and application fee for releasing the connection for electricity; rental charges against metering equipment; testing fee for meters/transformers, capacitors etc.; labour charges from customers for shifting of meters or shifting of service lines; charges for duplicate bills provided by DISCOMS to consumers being related services. The question is whether an element of provision of these services is combined with an element or elements of provision of the main service of transmission and distribution of electricity. As noticed earlier, the respondents have themselves treated such related/ancillary services as part of the main service of transmission and distribution of electricity for the pre-negative list regime. Apart, therefrom, considering this issue independently, reference may be made to certain provisions of the Electricity Act. Sections 43 and 45 of the Electricity Act, which are relevant for the present purpose, read as under :-

“43. Duty to supply on request. - (1) *Save as otherwise provided in this Act, every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply :*

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Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission :

Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.

Explanation. - For the purposes of this sub-section, "application" means the application complete in all respects in the appropriate form, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances.

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1) :

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.

45. Power to recover charges. - (1) *Subject to the provisions of this section, the prices to be charged by a distribution licensee for the supply*

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of electricity by him in pursuance of section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his licence.

(2) The charges for electricity supplied by a distribution licensee shall be -

(a) fixed in accordance with the methods and the principles as may be specified by the concerned State Commission;

(b) published in such manner so as to give adequate publicity for such charges and prices.

(3) The charges for electricity supplied by a distribution licensee may include -

(a) a fixed charge in addition to the charge for the actual electricity supplied;

(b) a rent or other charges in respect of any electric meter or electrical plant provided by the distribution licensee.

(4) Subject to the provisions of section 62, in fixing charges under this section a distribution licensee shall not show undue preference to any person or class of persons or discrimination against any person or class of persons.

(5) The charges fixed by the distribution licensee shall be in accordance with the provisions of this Act and the regulations made in this behalf by the concerned State Commission.”

24. It has been contended on behalf of the respondents that sub-section (3) of Section 66F of the Finance Act would not apply where the single service which gives the bundle of services its essential character is exempt from the levy of service tax. In the opinion of this Court, there is nothing in the language employed in sub-section

(3) to Section 66F to read into it a requirement that such service should not be exempt from tax. All that the sub-section provides is that taxability of bundled services shall be determined in the manner provided therein. The term taxability means liability to taxation. Thus the term taxability would take within its sweep not being taxable also inasmuch as liability to taxation would also mean not being liable to any tax. Thus, the liability to tax of a bundled service has to be determined in the manner provided under sub-section (3) of Section 66F of the Finance Act. If the services are naturally bundled in the ordinary course of business, the bundle of services shall be treated as provision of the single service which gives the bundle its essential character and where the services are not naturally bundled in the ordinary course of business, the same is required to be treated as provision of the single service which results in highest liability of service tax. Accordingly, where the services are naturally bundled in the ordinary course of business and the single service which gives such bundle its essential character is exempt from tax, the entire bundle will have to be treated as provision of such single service.

25. Thus, insofar as the phase relating to the negative list regime is concerned, the services in question would fall within the ambit of bundled services as contemplated under sub-section (3) of Section 66F of the Finance Act, and would have to be treated in the same manner as the service which gives the bundle its essential character, namely, transmission and distribution of electricity and, would therefore, be exempt from payment of service tax.

29. TO SUMMARISE :

- The preliminary contention regarding the petition not being maintainable is rejected.

- As per the circular dated 7th December, 2010, the reason for saying that supply of electricity meters for hire to consumers is covered by the exemption notification is that such service is an essential activity having direct and close nexus with transmission and distribution of electricity. This circular only provides an interpretation of when a service would stand included in another service, namely, when such service is an essential activity having direct and close nexus with the exempted activity. Therefore, the fact that the exemption notifications came to be rescinded has no relevance inasmuch as all that the circular clarifies is what according to the Government of India would stand included in another service. Such interpretation would not change merely because such exemption is now granted under some other provision.

- The meaning of “transmission and distribution of electricity” does not change either for the negative list regime or the GST regime. Accordingly, the services which stood included within the ambit of transmission and distribution of electricity during the pre-negative list regime cannot now be sought be excluded by merely issuing a clarificatory circular, that too, with retrospective effect. By the clarificatory circular, the respondents seek to give a different interpretation of the very same services as against the clarification issued for the pre-negative list regime.

- From the very manner in which the respondents have treated the services related to transmission and distribution of electricity during the pre-negative list regime, the related/ancillary services would stand covered by the exemption granted to transmission and distribution of electricity by virtue of inclusion of such services in the list of negative services under Section 66D(k) of the Finance Act as well as by virtue of exemption notification issued under the CGST Act.

- Any line which is used for carrying electricity for any purpose as well as any apparatus connected to any such line for the purpose of carrying electricity is mandatorily required to be provided to the consumer by the licensee. The term “electrical plant” takes within its sweep any plant, equipment, apparatus or appliance or any part thereof used for, or connected with, the generation, transmission, distribution or supply of electricity, except for electric meter and any electrical equipment, apparatus or appliance under the control of a consumer. Sub-section (2) of Section 43 of the Electricity Act casts a duty upon the licensee to provide, if required, electric plant or electric line for giving electric supply to the premises. Therefore, providing electric line and electric plant are elements of service which are naturally bundled in the ordinary course of business, with the single service of transmission and distribution of electricity which gives the bundle its essential character. The only related service which does not fall within the ambit of the definitions of electric line and electric plant is the meter used for ascertaining the quantity of electricity supplied to any premises. However, insofar as installation of electricity meter and hire

charges collected in respect of electricity meters are concerned, by the circular dated 7th December, 2010 the Government of India has clarified that supply of electricity meters for hire to the consumers is an essential activity having direct and close nexus with transmission and distribution of electricity, and, therefore, is covered by the exemption for transmission and distribution of electricity extended under the relevant notifications. Therefore, all the services related to transmission and distribution of electricity are naturally bundled in the ordinary course of business of the petitioner and are required to be treated as provision of the single service of transmission and distribution of electricity which gives the bundle its essential character.

- The term “taxability” means liability to taxation. Thus, the term taxability would take within its sweep not being taxable also inasmuch as liability to taxation would also mean not being liable to any tax. Thus, the liability to tax of a bundled service has to be determined in the manner provided under sub-section (3) of Section 66F of the Finance Act. If the services are naturally bundled in the ordinary course of business, the bundle of services shall be treated as provision of the single service which gives the bundle its essential character and where the services are not naturally bundled in the ordinary course of business, the same is required to be treated as provision of the single service which results in highest liability of service tax. Accordingly, where the services are naturally bundled in the ordinary course of business and the single service which gives such bundle its essential character is

exempt from tax, the entire bundle will have to be treated as provision of such single service.

- In respect of the period falling under the negative list regime, the services in question would fall within the ambit of bundled services as contemplated under sub-section (3) of Section 66F of the Act, and would have to be treated in the same manner as the service which gives the bundle its essential character, namely, transmission and distribution of electricity and, would therefore, be exempt from payment of service tax.

- The services provided by the petitioner are in the nature of composite supply and therefore, in view of the provisions of clause (a) of Section 8 of the CGST Act, the tax liability thereof has to be determined by treating such composite same as a supply of the principal supply of transmission and distribution of electricity. Consequently, if the principal supply of transmission and distribution of electricity is exempt from levy of service tax, the tax liability of the related services shall be determined accordingly.

34. The Hon'ble High Court was dealing with the issue pertaining to the period from 2010 to June 2012, July 2012 to June 2017 [both under Service Tax regime] and July 2017 onwards [under GST regime], while coming to the above conclusion.

35. From this judgement, it is seen that all the ancillary activities connected the transmission and distribution have been taken as a part of the '*bundled service*' in terms of Section 66 F and the exemption has been taken as eligible for all such

services. Therefore, the ratio laid down by the High Court is squarely applicable to the facts of the present case. Hence, we have no hesitation to apply the same.

36. In the case of **MADHYA PRADESH POORVA KSHETRA VIDYUT VITARAN CO. LTD. Vs COMMISSIONER OF CGST & CENTRAL EXCISE, JABALPUR - 2022 (67) G.S.T.L. 86 (Tri. - Del.)**, the Tribunal has held as under :

5. *Southeastern Coalfields* was followed in several other decisions by this Tribunal. In short, the view constantly held by this Tribunal is that there is a distinction between a consideration under a contract and the compensation for failure to fulfil the contract. While the consideration is something done by one party at the desire of the other party. Compensation or damages are paid when one party fails to perform. Consideration is the result of the performance of the contract. Compensation/damages are the result of frustration of contract or not performing the contract as per the conditions laid down in it.

6. Compensation can be of two forms : unliquidated damages or liquidated damages. If the suffering party sues the other in a Court and damages are awarded by the Court such damages are unliquidated damages. The quantum of damages is decided by the Court taking into account the facts and circumstances of the case and the damage suffered. Liquidated damages are those damages which are built into the contract itself. They provide that the defaulting party shall pay to the other a certain amount in case of default. The purpose of the liquidated damages in a

contract is to dissuade the parties from reneging from the contract. In other words the liquidated damages are *in terrorem*, i.e., to strongly dissuade the party from defaulting. What is chargeable to service tax under Section 66E(e) as a declared service is where the very purpose of the contract is tolerance of an Act or a situation. If (A) agrees with (B) to tolerate an act or situation for a consideration, it is covered under Section 66E(e) as declared service. However, if A agrees with B to do something and fails to do so and pays liquidated damages for his failure, it is not covered under Section 66E(e) as a declared service. What is chargeable to service tax is where the tolerance itself is the purpose of the contract. Liquidated damages are a compensation for failure of the defaulting party to perform as per the contract. Therefore, no service tax can be levied on liquidated damages received under any contract. We find no reason take a different view in this case.

28. It is clear from the aforesaid judgment of the Gujarat High Court that the activities that are related/ancillary to transmission and distribution of electricity would be exempt from payment of service tax since transmission and distribution of electricity is exempted. It is also clear from aforesaid decision that all services related to transmission and distribution of electricity are bundled services, as contemplated under section 66F(3) of the Finance Act, and are required to be treated as a provision of a single service of transmission and distribution of electricity, which service is exempted from payment of service tax.

29. Thus, for all the reasons stated above, it is not possible to sustain the levy of service tax on the

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amount collected by the appellant for late payment surcharge, meter rent and supervision charges.

37. We find that this case has dealt with various issues pertaining to transmission and distribution of electricity and also the issue of Liquidated damages. On all issues, the appeal has been allowed.

38. In the case of **Southern Power Distribution Vs The Commissioner of Central Tax, Tirupati, GST Commissionerate APPEAL NO. 30388 of 2019 - FINAL ORDER NO. A/30087/2022 dated 14.09.2022**, the Tribunal held as under:

3. The details of the demands confirmed in the impugned order and the reasons, in brief, are as follows:

Sl. No.	Activity/Consideration	Service Tax demanded (In Rs.)	Reason for levy of Service Tax
1.	Penalties from contractors	4,18,02,647/-	Collection of penalty for late delivery is a declared services as defined under section 66E(e) of the Finance Act.
2.	Wheeling Charges	14,47,746/-	Collection of wheeling charges is a declared service
3.	Cross subsidy surcharge	3,57,35,819/-	Collection of cross subsidy charges is a declared service
4.	Supervision/Incidental Charges	2,38,62,159/-	Service as defined under section 65B

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			(44) of the Finance Act.
5.	Transformer & Meter Testing Charges	38,55,243/-	Same
6.	Rental amounts collected from contractors	5,20,266/-	Same
Total		10,72,23,880/-	

12. The issue as to whether the charges collected in connection with transmission of electricity even after 01.07.2012 would be subjected to service tax, as according to the Department they would not be exempted under section 66D(k) of the Finance Act, came up for consideration before the Gujarat High Court in **Torrent Power**. After referring to the position prior to the introduction of the negative list and the notifications referred to above and the introduction of the negative list regime w.e.f. 01.07.2012, the Gujarat High Court observed as follows

14. It is clear from the aforesaid judgment of the Gujarat High Court that the activities that are related/ancillary to transmission and distribution of electricity would be exempt from payment of service tax since transmission and distribution of electricity is exempted. It is also clear from aforesaid decision that all services related to transmission and distribution of electricity are bundled services, as contemplated under section 66F(3) of the Finance Act, and are required to be treated as a provision of a single service of transmission and distribution of electricity, which service is exempted from payment of service tax.

15. The aforesaid judgment of the Gujarat High Court was followed by the Rajasthan High Court in **Jodhpur Vidyut Vitran Nigam Ltd.**

16. A Division Bench of the Tribunal in **M.P. Poorva Kshetra Vidyut Vitran Co. Ltd.** also followed the aforesaid judgment of the Gujarat High Court and held that all services related to transmission and distribution of electricity are exempted from service tax.

25. It also needs to be noted that section 65B(44) defines 'service' to mean any activity carried out by a person for another for consideration. Explanation (a) to section 67 provides that 'consideration' includes any amount that is payable for the taxable services provided or to be provided. The recovery of liquidated damages/penalty from the other party cannot be said to be towards any service per se, since neither the appellant is carrying on any activity to receive compensation nor can there be any intention of the other party to breach or violate the contract and suffer a loss. The purpose of imposing compensation or penalty is to ensure that the defaulting act is not undertaken or repeated and the same cannot be said to be towards toleration of the defaulting party. The expectation of the appellant is that the other party complies with the terms of the contract and a penalty is imposed only if there is non-compliance.

26. Two Division Benches of the Tribunal in **M.P. Poorva Kshetra Vidyut Vitran Co. Ltd.** and **South Eastern Coalfields** have held that the amount recovered towards penalties/liquidated damages cannot be included as 'consideration' towards any service or declared service.

28. 'Wheeling' is nothing but transmission of electricity undertaken by the appellant Discom using its infrastructure as the power producer is not permitted to transmit electricity. Transmission is not leviable to service tax. Even assuming that the 'wheeling charges'

are collected as charges for permitting the power producer to transmit its electricity using the infrastructure of the appellant, since it is an activity related to transmission of electricity and also that the main activity of transmission is done by the appellant, 'wheeling charges' would not be leviable to service tax in view of the decision of the Gujarat High Court in **Torrent Power**.

29. Collection of **cross subsidy charges** is provided under the Electricity Act and the Regulations to meet the requirements of current level of cross subsidy within the area of supply of the distribution licensee. It is also in relation to transmission and distribution of electricity and cannot be treated as a 'declared' service since it is not for agreeing to tolerate an act of any other person. The cross-subsidy surcharges are determined under sections 39, 40 and 42 of the Electricity Act and are collected from the consumers who opt for Open Access power purchases. It is not generated out of any service provided by the appellant and, therefore, service tax cannot be levied.

30. The appellant collects supervision charges in relation to service connection or any other works as a part of the amount paid by it to the contractors to ensure that the network being provided is as per the standards fixed under the Electricity Act and Regulations framed thereunder. Under rule 45 of Indian Electricity Rules, 1956, no electrical insulation work shall be carried out for the purpose of distribution of electricity except by the licensed contractor under the direct supervision of a Department person to ensure that the quality of line/ instrument and safety checks for protection/ safety of consumers. These charges have been considered at length by Division Bench of the Tribunal in the decision rendered on 14.01.2021 in **M.P. Poorva Kshetra Vidyut Vitran Co. Ltd.** It has been held that the amount collected towards these charges cannot be subjected to

levy of service tax. The same would be the position for the other charge under this head.

35. In **Pushpam Pharmaceutical Co. vs. Commissioner of Central Excise, Bombay**, the Supreme Court examined whether the Department was justified in initiating proceedings for short levy after the expiry of the normal period of six months by invoking the proviso to section 11A of the Excise Act. The proviso to section 11A of the Act carved out an exception to the provisions that permitted the Department to reopen proceedings if the levy was short within six months of the relevant date and permitted the Authority to exercise this power within five years from the relevant date under the circumstances mentioned in the proviso, one of which was 'suppression of facts'. It is in this context that Supreme Court observed that since 'suppression of fact' had been used in the company of strong words such as fraud, collusion, or willful default, suppression of facts must be deliberate and with an intent to escape payment of duty.

38. It is, therefore, clear that even when an assessee has suppressed facts, the extended period of limitation can be evoked only when 'suppression' is shown to be willful and with an intent to evade payment of service tax.

39. In the present case, the Department could not establish conclusively that the appellant had suppressed material facts with an intention to evade payment of service tax. Only a general statement has been made by the Commissioner that the appellant had willfully misstated that the consideration received by the appellant for providing the services was not leviable to service tax. Thus, it is not possible to sustain the demand made for the extended period of limitation.

39. We find that most of the issues like cross-subsidy charges, wheeling charges, penalties [Liquidated damages], bundled services etc., raised in the present proceedings are squarely covered by this detailed order of the Hyderabad Tribunal.

40. We also observe that in the present GST regime, **Circular No. 234/28/2024-GST dated 11th October 2024** has been issued. The relevant portion is reproduced below:

9. Regularizing payment of GST on certain support services provided by an electricity transmission or distribution utility:

9.1 GST Council in its 54th meeting held on 09th September, 2024 has recommended to exempt supply of services by way of providing metering equipment on rent, testing for meters/ transformers/capacitors etc., releasing electricity connection, shifting of meters/service lines, issuing duplicate bills etc., which are incidental or ancillary to the supply of transmission and distribution of electricity provided by transmission and distribution utilities to their consumers.

9.2 The same have been exempted vide notification No. 08/2024- Central Tax (Rate) dated 08.10.2024 effective from 10.10.2024.

9.3 The GST Council in its 54th meeting has also recommended to regularize the payment of GST for supply of such services for the period i.e., from 01.07.2017 to 09.10.2024 on '*as is where is*' basis.

9.4 Therefore, as recommended by the 54th GST Council, the payment of GST on services provided by an electricity transmission or distribution utility which are incidental or ancillary to the supply of transmission and distribution of electricity by such utility, such as those listed in para 9.1 above is hereby regularized on '*as is where is*' basis from 01.07.2017 to 09.10.2024.

41. This shows the legislative intent of the Govt of India, not to levy GST for the power transmission and Distribution activities including the ancillary activities. Vide Notification Nos.11/2010 ST dated 27.10.2010 and 32/2010 ST dated 22.06.2010 prior to 1.7.2012, full exemption has been granted for power transmission and distribution services. From 1.7.2012, the Negative List under 66D (k) provides for full exemption for Service Tax in relation to Transmission and Distribution of the electricity. This clearly shows the legislative intent not levy any Service Tax. Therefore, it can be fairly concluded that the right from 2010 till 2024, no Service Tax / GST was ever required to be paid on any direct or ancillary service related to transmission or distribution of electricity.

42. Relying on the Notifications, Circulars and amendments carried out the Section 66 and relying on the cited case laws, we set aside the confirmed demand on merits allow the appeals of the DISCOMs.

43. The appellant has also argued on the time-bar aspect of the demand on various grounds. We observe that the appellant is a Public Sector

Undertaking working under the Odisha Government. They have recorded all the transactions in the books of accounts, from wherein the Revenue has gathered the data to issue the SCN. Further, the issue has been decided in favour of the appellant in several cases. Therefore, they could have entertained Bonafide belief that they are not required to pay any Service Tax. The Revenue has not brought in any evidence to the effect that the appellants have charged the Service Tax on their clients. All these, point out that rather than suppressing any activity or data, the appellant has been transparent in their dealings. Hence, we find that the Revenue has failed to back their allegation of suppression with any cogent evidence. We have already seen that in the cited case of **Southern Power Distribution Company of Andhra Pradesh Ltd Vs Commissioner of Central Tax (CESTAT Hyderabad) in ST Appeal No.30388 of 2019**, cited supra, the Tribunal dealing with identical issue, has relied on **Pushpam Pharmaceutical Co. vs. Commissioner of Central Excise, Bombay, 1995 (78) E.L.T. 401 (S.C.)** and **Continental Foundation Joint Venture Holding vs. Commissioner of Central Excise, Chandigarh-I, 2007 (216) E.L.T. 177 (S.C.)**, to hold that the allegation of suppression cannot be sustained and accordingly, set aside the confirmed demand for the extended period.

44. In view of the aforesaid observations, relying on the cited case law, we set aside the confirmed demand for the extended period on account of time-bar.

45. Coming to the appeal filed by the Revenue, we find that the Adjudicating authority has dropped the demand after going through the documentary

evidence and the statutory provisions. We also have given detailed findings in the above paragraphs as to why and how even the confirmed demands are not sustainable in respect of the services falling under transmission and distribution of electricity. Therefore, we do not see the necessity to interfere with the order passed by the Adjudicating authority. As a result, we dismiss the appeal filed by the Revenue.

46. To summarize :

- (a) The Revenue has failed to quantify the demand properly, which has been done on a lumpsum basis, wherein several non-taxable incomes were also included. The appellant DISCOMs have taken up the work of bifurcation of demand under 18 different heads, which has been properly certified by the Chartered Accountant.
- (b) The taxability on the issues worked out by the DISCOMs is no more *res integra*. The cited case laws fully support the case of the DISCOMs.
- (c) The Notifications, Circulars, amendment to Section 66, amendments carried out in the GST regime, all point out the clear legislative intent to grant full waiver of tax for the providers of service towards transmission and distribution of electricity.
- (d) In view of (a) to (c) above, the Appeals filed by the DISCOMs are allowed on merits

- (e) No case of suppression, whatsoever, has been made out by the Revenue. Hence, the confirmed demand for the extended period is set aside on account of time bar.
- (f) The Adjudicating authority has correctly gone through the factual details and the statutory provisions to drop part of the demand in respect of CESU-DISCOM. Hence, the appeal filed by the Revenue is dismissed.

47. The Appeals filed by the DISCOMs are allowed with consequential relief, if any, as per law. The Appeal filed by the Revenue is dismissed.

(Order Pronounced in Open court on 28.10.2025)

Sd/-
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP