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

REGIONAL BENCH – COURT NO. 2

Service Tax Appeal No. 75112 of 2022

(Arising out of Order-in-Original No. 07/Pr. Commr./ST/GHY/2021-22 dated 22.11.2021 passed by the Principal Commissioner of G.S.T. & Central Excise, Guwahati, G.S.T. Bhawan, Kedar Road, Machkhowa, Guwahati – 781 001)

Assam Electricity Grid Corporation Limited (AEGCL) : Appellant
Bijulee Bhawan, 1st Floor, Paltan Bazar,
Guwahati – 781 001

VERSUS

Principal Commissioner of C.G.S.T. and C.X. : Respondent
G.S.T. Bhawan, Kedar Road, Machkhowa,
Guwahati – 781 001

APPEARANCE:

Shri Sanjib Das, Cost and Management Accountant (C.M.A.),
For the Appellant

Shri Argho Mukherjee, Authorized Representative,
For the Respondent

CORAM:

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

FINAL ORDER NO. 76201 / 2026

DATE OF HEARING: 15.09.2026

DATE OF DECISION: 22.09.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed by Assam Electricity Grid Corporation Limited (AEGCL) [hereinafter referred to as the "appellant" / "AEGCL"] against Order-in-Original No. 07/Pr. Commr./ST/GHY/2021-22 dated 22.11.2021, passed by the Principal Commissioner of Goods and Services Tax & Central Excise, Guwahati, whereby the demand of Service Tax amounting to Rs.23,93,22,230/- (inclusive of cesses) for the period from October, 2013 to 2016-17, along with applicable interest and penalties, including an equal penalty under Section 78 and a penalty of Rs.10,000/- under Section 77(2) of the Finance Act, 1994, came to be confirmed against the appellant.

2. The facts of the case are that the appellant/AEGCL is the State transmission utility responsible for transmission of electrical energy in the State of Assam. During the course of audit of the books of account and financial records of the appellant, including its Profit and Loss Account, the Department noticed certain receipts which, according to the Audit, represented consideration towards taxable services and had not suffered Service Tax. The receipts were broadly noticed under two heads, namely, SLDC charges recovered from Assam Power Distribution Company Ltd. (APDCL) and amounts received from various entities namely, Power Grid Corporation of India Ltd. (PGCIL), Indian Energy Exchange Ltd. (IEX) and Power System Operation Corporation Ltd. (POSOCO), towards use of the appellant's transmission network/infrastructure for wheeling of electrical energy under Short-Term Open Access (STOA) and Mid-Term Open Access (MTOA).

3. In respect of the first category, it was noticed that, during the period from October, 2013 to March, 2017, the appellant had collected amounts described as SLDC charges, aggregating to Rs.8,45,50,000/-, from APDCL along with wheeling charges. The State Load Despatch Centre (SLDC), Assam, operates under the aegis of AEGCL and performs functions relating to monitoring, recording and maintaining the flow of electrical energy within the State, besides scheduling and despatch, supervision and control of the intra-State transmission system and maintenance of accounts relating to electricity transmitted through the State grid. The appellant had explained before the Audit that SLDC was established by the State Government and functioned as a field unit under the umbrella of AEGCL, and that the expenditure incurred in relation to SLDC was recovered from APDCL in

terms of the approved Transmission Annual Revenue Requirement and the tariff orders issued by the Assam Electricity Regulatory Commission. According to the appellant, transmission of electricity constituted its core activity and the functions performed by SLDC were integral thereto, and consequently the SLDC charges formed part of the transmission-related charges and were not liable to Service Tax.

3.1. The Department, however, took the view that the functions performed by SLDC, such as monitoring, maintaining accounts/data and supervising and controlling the wheeling/transmission of electricity, were separable from the actual transmission or wheeling of electrical energy. It was accordingly alleged that the charges recovered from APDCL represented consideration for a 'service' within the meaning of Section 65B(44) of the Finance Act, 1994 and did not qualify for the exclusion applicable to transmission or distribution of electricity under the negative list. On this basis, Service Tax liability, including applicable cesses, amounting to Rs.1,15,39,599/- was worked out on the SLDC charges received by the appellant during the relevant period.

4. The second limb of the dispute concerned amounts received by AEGCL for permitting other entities to utilise its transmission network/infrastructure for wheeling of electrical energy under the Open Access mechanism. The Audit noticed that, during the period from October, 2013 to March, 2017, the appellant had received Rs.131,98,48,351/- from Power Grid Corporation of India Ltd. (PGCIL) and Rs.31,75,79,561/- from Indian Energy Exchange Ltd. (IEX) and Power System Operation Corporation Ltd. (POSOCO) towards use of

its transmission network/infrastructure for Short-Term Open Access (STOA) and Mid-Term Open Access (MTOA). The appellant explained that the said receipts arose from Open Access transactions and represented amounts received in relation to the use of its transmission network for transmission/wheeling of electrical energy.

4.1. The Department however treated the permitting of such use of the appellant's transmission network/infrastructure as a service distinct from the actual transmission or wheeling of electrical energy. It was alleged that while transmission or wheeling of electrical energy by the concerned entities was covered by the negative list, the use of AEGCL's network/infrastructure by such entities constituted a taxable service under Section 65B(51) read with Section 66B of the Finance Act, 1994. The Audit accordingly computed Service Tax liability, including cesses, of Rs.18,28,02,970/- on the amounts received from PGCIL and Rs.4,49,79,661/- on the amounts received from IEX and POSOCO during the relevant period.

5. On the basis of the aforesaid audit objections, a Demand-cum-Show Cause Notice dated 05.04.2019 was issued to the appellant proposing recovery of Service Tax totally amounting to Rs.23,93,22,230/- for the period October, 2013 to 2016-17 on the aforesaid receipts, together with applicable interest and penalties under the Finance Act, 1994.

5.1. The proceedings initiated pursuant to the said notice culminated in the impugned Order-in-Original No. 07/Pr. Commr./ST/GHY/2021-22 dated 22.11.2021, whereby the proposed Service Tax demand aggregating to Rs.23,93,22,230/- for the period October, 2013 to 2016-17 was confirmed along with applicable interest. An equal amount of penalty was imposed under Section 78 of the Finance Act, 1994, besides a penalty of Rs.10,000/- under Section 77(2) thereof.

6. Being aggrieved by the aforesaid order, the appellant has preferred the present appeal before the Tribunal.

7. During the course of hearing, the Ld. Consultant appearing on behalf of the appellant has tendered various submissions, which inter alia are as follows: -

(i) The SLDC charges, wheeling charges, lie., use of Network/ infrastructural facilities for wheeling of electrical energy, never brought under the levy of Service Tax and placed under the category of "Exempted Service" as these kinds of services energy which is the main activity of Power Transmission and power distribution Companies.

(ii) The State Load Dispatch Centre (SLDC) is an agency to monitor, record & maintain the wheeling energy (power) flow within the state. The data collected for the daily energy (power) flow is forwarded to the North Eastern Regional Load Despatch Centre (NERLDC) stationed at Shillong, Meghalaya for proper monitoring of energy (power) for the North Eastern Region. It was also stated that SLDC is a part of AEGCL for performing & maintenance of wheeling energy and that all cost of SLDC are billed to APDCL as per approved Transmission Annual Revenue Requirement (ARR) which is allowed by Assam Electricity Regulatory Commission (AERC) from time to time vide its Tariff Orders. the activity of transmission of electricity is in the negative list. Accordingly, service tax on SLDC charges is not leviable.

(iii) The responsibility & functions of SLDC, Assam, amongst others are to monitors & operate the State Grid of Assam on real time basis for grid control, optimum scheduling and dispatch of electricity within the State, supervise and control the intra-state transmission system, keep account of the quantity of electricity transmitted through the state grid including the energy exchanged through Power Exchange Entities and comply with the operational guidelines of NERLDC for overall system stability and security.

(iv) SLDC Charges are levied on Long-Term Open Access and Medium-Term Open Access users in terms of Rs./MW in accordance with the GERC (MYT) Regulations, 2016 and the Tariff Orders issued by the Commission. Charges from Short-Term Open Access users are recovered from Parties as per the guidelines outlined in the Open Access Regulations. As regards GST on SLDC Charges, as per the provision of Section 8 of the Central Goods and Services Tax Act, 2017 as well as Notification No.12/2017- CT (R) Serial No. 25 dated 28.06.2017, Transmission and Distribution of electricity are exempted under GST. Hence, GST is not collected on SLDC Charges.

(v) Transmission or distributions of electricity by an electricity transmission or distribution utility falls under the negative list of services in terms of Section 66 D of the Finance Act, 1994 as amended. But the "Audit Team" interpreted as "Since the said specific functions of AEGCL do not constitute wheeling or transmission of electricity, it becomes a Taxable Services in terms of Section 65 B (51) of the Act on which service tax is leviable in terms of Section 66B of the Act.

(vi) Open Access means "Non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the appropriate commission". The Noticee, therefore, asserted that Open Access Transaction are component of the Transmission & Distribution Services and as such it comes under the Negative List of Services.

(vii) Transactions held with IEX (Indian Energy Exchange, is an Indian government owned electronic system-based power trading exchange regulated by the Central Electricity Regulatory Commission) & POSOCO (Power System Operation Corporation Limited, is a wholly owned Government of India enterprise under the Ministry of Power. It is responsible to ensure the integrated operation of the Grid in a reliable, efficient, and secure manner.) in consideration to the meaning of Open Access as defined in the Electricity Act, 2003, providing transmission network/infrastructure for wheeling of electrical energy by IEX & POSOCO for Short term & Mid-term open Access.

(viii) Above functions, as alleged are highly and exclusively in relation to the supply of electricity and not the transactions made like ordinary business transactions as held adding value for furtherance of business. Moreover, Any State Govt. cannot charge any amount for the use of said facilities. The tariff order issued by the State Electricity Regulatory Commission only [like AERC-Assam State Electricity Regulatory Commission] and it functions as per the provisions of the Electricity Act, 2003.

(ix) In view of above, the Notification No. 12/2017-Central tax (rate) dated 28th June, 2017 the activity of Transmission or distribution of electricity by an electricity transmission or distribution utility is NIL rate of GST.

(x) Service by way of transmission or distribution of electricity continued to be kept out of the tax net even post 1.7.2012, and, therefore, neither collected nor paid any tax under the Finance Act on charges collected in connection with transmission of electricity even post 1.7.2012.

(xi) Wheeling Charges, Open Access Charges or Transmission Charges by whatever name it may be called, Income Tax Authorities have tried to cover it under TDS obligations whether as technical services u/s 194J, rent u/s 1941 or as transport services u/s 194C. It is a contentious issue from a long time that transmission services for power should be considered under which section to deduct the TDS or these services are not liable for any TDS deduction at all.

(xii) In support of their contentions, the appellant places reliance on the following: -

- *CIT v. M/s Delhi Transco Ltd (ITA No. 323 to 325/2015, 341/2015, 384/2012, 566/2013 & 570/2013) [Delhi High Court];*
- *M/s Southern Power Distribution Company of Andhra Pradesh Ltd. [CESTAT, Hyderabad];*
- *M/s WESCO UTILITY Vs. Commr. CGST & Excise, Rourkela, orissa [Final Order No. 77589-77592/2025 dated 28.10.2025 [CESTAT, Kolkata];*
- *CIT (TDS), Mumbai v. Maharashtra State Electricity Distribution Co. Ltd. [2015] 58 taxmann.com 339 (Bombay*
- *Bangalore Electricity Supply Co. Ltd v. ITO [2013] 33 taxmann.com 641 (Bangalore ITAT), it was held that*
- *Madhya Pradesh Poorva Kshetra Vidyut Vitran v. Commissioner. [CESTAT, Delhi]*
- *Torrent Power Ltd. Vs Union of India [2020 (34) G.S.T.L. 385 (Guj.)]*

(xiii) 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. 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

(xiv) 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)

(xv) Service tax liability of Rs. 14.11 lakhs charged more in comparison to the Appellants'

Calculation. (Annexure is attached). Moreover, the liability calculated is not based of Service tax liability on CUM-basis.

(xvi) Time-barred considering the normal period of issuance of SCN. A detailed statement is attached herewith.

(xvii) Suppression of facts does not arise at all as the Appellant is a most important wing of the State of Assam rendering essential services like 'transmission of electricity' across the State of Assam. And there cannot be any motive of suppression of facts with an intent to devoid from paying statutory taxes like Service tax. Penalty proposed to impose u/s 78 of the Finance act, does not stand tenable in the eye of law, in view of above submission of facts.

7.1. In view of the above submissions made, the appellant seeks for quashing of the demand, along with interest, and imposition of penalties, as confirmed vide the impugned order.

8. The Learned Authorized Representative of the Revenue, reiterating the findings recorded in the impugned order, submits that while the transmission/wheeling of electrical energy is covered by the negative list and is consequently not liable to Service Tax, the activities giving rise to the receipts in question constitute distinct taxable services. It is contended that the SLDC charges recovered by the appellant from APDCL represent consideration for the monitoring, supervision, scheduling and related functions performed by the State Load Despatch Centre and are not charges towards the actual transmission or wheeling of electricity. Likewise, it is his argument that the amounts received by the

appellant from PGCIL, IEX and POSOCO for permitting use of its transmission network/infrastructure under STOA/MTOA are, as held by the adjudicating authority, consideration for providing such infrastructure and constitute a taxable service independent of the actual transmission or wheeling of electrical energy. The Revenue accordingly seeks to justify the demand and consequential penalties confirmed under the impugned order and prays for rejection of the appeal.

9. Heard both the sides and perused the available records.

10. Having considered the submissions advanced by both sides and perused the records of the case, it can be observed that the dispute, in essence, turns upon the true and proper character of the activities in respect of which the impugned receipts were realised by the appellant. Although the Revenue has sought to identify the said activities namely, the collection of SLDC charges and the permitting of use of the appellant's transmission network/infrastructure under the Short-Term Open Access (STOA) and Mid-Term Open Access (MTOA) arrangements, as two distinct taxable activities, it is trite that such segregation cannot be made merely by separately identifying the functions or the manner in which the corresponding charges have been recovered. The activities have to be examined in the context of the statutory and functional framework governing transmission and distribution of electrical energy.

10.1. At this stage, we have taken cognizance of the nature and functions of the State Load Despatch Centre and the statutory concept of 'Open Access', which have a direct bearing upon the controversy. The constitution and functioning of SLDC arise from the Electricity Act, 2003. Section 31 the said Act, which relates to constitution of SLDC, provides that: -

> *"(1) The State Government shall establish a Centre to be known as the State Load Despatch Centre for the purposes of exercising the powers and discharging the functions under the Part V of the said Act which relates to Transmission of Electricity.*
>
> *(2) The State Load Despatch Centre shall be operated by a Government company or any authority or corporation established or constituted by or under any State Act, as may be notified by the State Government: provided that until a Government company or any authority or corporation is notified by the State Government, the State Transmission Utility shall operate the State Load Despatch Centre."*

10.1.1. Further, functions of the State Load Despatch Centres are defined under Section 32 of the Electricity Act, 2003, which provides that: -

> *"(1) The State Load Despatch Centre shall be the apex body to ensure integrated operation of the power system in a State.*
>
> *(2) The State Load Despatch Centre shall-*
>
>> *(a) be responsible for optimum scheduling and despatch of electricity within a State, in accordance with the contracts entered into with the licensees or the generating companies operating in that State;*
>>
>> *(b) monitor grid operations;*
>>
>> *(c) keep accounts of the quantity of electricity transmitted through the State grid;*
>>
>> *(d) exercise supervision and control over the intra-State transmission system; and*
>>
>> *(e) be responsible for carrying out real time operations for grid control and despatch of electricity within the State through secure and economic operation of the State grid in accordance with the Grid Standards and the State Grid Code.*

> *(3) The State Load Despatch Centre may levy and collect such fee and charges from the generating companies and licensees engaged in intra-State transmission of electricity as may be specified by the State Commission."*

10.2. Likewise, the statutory meaning and scope of 'Open Access', which is relevant for appreciating the nature of the amounts received by the appellant from PGCIL, IEX and POSOCO, can be perceived from Clause (47) of Section 2 of the Electricity Act, 2003, as per which: "Open Access" means the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Commission. It transpires from the above provisions that the appellant/AEGCL which is a State Transmission Utility is providing open access or allowing use of their transmission lines or distribution system or associated facilities to PGCIL, IEX and POSOCO for transmission of electricity by these organizations.

11. The aforesaid statutory and functional position makes it evident that the activities in question cannot be viewed in isolation from the transmission and distribution system of electrical energy. The functions performed by the SLDC are directly concerned with the integrated operation, regulation, supervision and control of the State power system and with maintaining the orderly flow of electricity through the State grid. Similarly, Open Access is a mechanism by which the transmission network is made available for the movement of electrical energy through the transmission system. The use of the appellant's transmission network/infrastructure under STOA or

MTOA is, therefore, not an activity having an independent commercial existence divorced from transmission of electricity; rather, it constitutes an integral component of the very mechanism through which such transmission takes place.

12. In this context, we find considerable substance in the contention that the activities impugned in the present proceedings are intrinsically connected with, and form part of, the transmission and distribution of electricity. Transmission of electrical energy through a State-wide grid cannot be perceived merely as the physical movement of electricity through transmission lines. It necessarily involves the coordinated operation and supervision of the grid, monitoring of power flows, scheduling and despatch, maintenance of accounts relating to energy transmitted, regulation of access to the transmission system and the provision and utilisation of the infrastructure through which such electrical energy is transmitted. The functions of the SLDC and the provision of access to the transmission network are thus not extraneous activities which can be severed from the principal activity of transmission and distribution and independently subjected to Service Tax. They are components of, and are intrinsically linked to, the functioning of the transmission and distribution system itself.

13. The fact that certain charges are separately identified or recovered under a particular nomenclature, such as 'SLDC Charges', 'Wheeling Charges', 'Open Access Charges' or 'Transmission Charges', cannot alter the essential character of the underlying activity. A distinction drawn for accounting or tariff purposes cannot, by itself, result in the creation of a separate taxable service when the activity giving rise to such charges is functionally and

statutorily an integral part of transmission and distribution of electricity. What is required to be examined is the substance and nature of the activity and its relationship with the transmission and distribution of electrical energy, rather than the nomenclature assigned to the consideration recovered therefor. We are thus unable to accept the approach of the Revenue in seeking to treat the functions of SLDC as a service independent of transmission merely because the SLDC performs functions such as monitoring, supervision, scheduling, control and maintenance of records. Such functions are not undertaken as ordinary commercial or business activities yielding an independent value-added service to the recipient. They are functions performed within the statutory and operational framework of the State electricity grid and are exclusively connected with ensuring the safe, stable and integrated transmission and distribution of electrical energy. Without the performance of such functions, the transmission system in the State cannot operate in the manner contemplated under the electricity regulatory framework. Equally, the use of the appellant's transmission network/infrastructure under the Open Access mechanism cannot be artificially divorced from transmission of electricity. The network constitutes the physical infrastructure through which electrical energy is wheeled or transmitted, and the permission or arrangement enabling its utilisation is itself a necessary incident of such transmission. The consideration received for such utilisation, therefore, retains its intrinsic character as a charge arising in connection with the transmission of electrical energy. Merely because the Department has conceptually separated the 'transmission of electricity' from the 'use of the transmission network' does not mean that the latter thereby becomes an independent taxable service for the purposes of the Finance Act, 1994.

14. During the relevant period commencing from October, 2013 and extending up to 2016-17, transmission or distribution of electricity by an electricity transmission or distribution utility was specifically covered by the negative list under Section 66D(k) of the Finance Act, 1994**.** The legislative exclusion was intended to take the specified activity of transmission or distribution of electricity outside the levy of Service Tax. Where an activity is so integrally connected with, and constitutes an inseparable component of, the transmission and distribution of electricity, it would be incongruous to subject the ancillary or indispensable components of that very activity to Service Tax by artificially disaggregating them from the principal service. In our considered view, therefore, the impugned activities cannot be subjected to Service Tax merely by assigning them a separate description or by treating the corresponding receipts as consideration for independent services.

15. The aforesaid view also finds support from the judicial pronouncements which have considered the scope of the exemption in relation to activities related or ancillary to transmission and distribution of electricity. The Hon'ble Gujarat High Court, in the case of *Torrent Power Ltd. v. Union of India [2020 (34) G.S.T.L. 385 (Guj.)],* while analysing a similar issue, made the following observations: -

> *"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****."*
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> [Emphasis supplied]

15.1. Further, a similar issue has been dealt with by the CESTAT, Principal Bench, New Delhi in the case of *Madhya Pradesh Power Transmission Co. Ltd. v. Principal Commissioner of C.G.S.T. & C. Ex., Bhopal [2023 (385) E.L.T. 152 (Tri. - Del.)]* wherein the Bench observed that services incidental to or in connection with transmission of electricity cannot be subjected to the levy of Service Tax. The relevant portion of the said order reads thus: -

"9. The appellant provides consultancy services to contractors and power DISCOMS while laying the power or electricity transmission lines, erection of electricity poles and construction of electricity sub-stations. The appellant collects the amount for consultation services which are incidental to the transmission activities as the appellant has the expertise in power transmission. If the poles, lines or sub-stations are not erected or constructed as per the specifications, it will not be possible to transmit electricity.

10. The issue that arises for consideration is as to whether service tax could be levied on the amount collected by the appellant towards consultancy charges. This issue was examined by a Division Bench of the Tribunal in Madhya Pradesh Poorva Kshetra Vidyut Vitran Company Ltd. decided on 14-1-2021 and after placing reliance upon the decision of the Gujarat High Court in Torrent Power Ltd. v. Union of India [Special Civil Application No. 5443 of 2018, decided on December 19, 2018] [2020 (34) G.S.T.L. 385 (Guj.) = [2019] 101 taxmann.com 303 (Guj.)], the Tribunal observed as follows :-

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.

11. In the present case the amount collected towards consultation services is in connection with services which are incidental to the transmission activities carried out by the appellant. The demand, therefore, cannot be sustained in the view of the aforesaid decision of the Tribunal."

15.2. The same view has again been expressed by the Tribunal in the case of *Gujarat Energy Transmission Corporation Ltd. v. Commissioner of C.Ex. & S.T., Anand [Final Order Nos. 10331-10332 of 2024 dated 06.02.2024 in Service Tax Appeal No. 10317-10318* *of 2017 – CESTAT, Allahabad],* wherein, after considering the submissions made and the judicial precedents on the issue, the Tribunal has set aside the demand raised on activities undertaken in relation to transmission of electricity.

16. In the light of the above and upon a holistic consideration of the nature of the activities, their statutory setting and their inseparable nexus with transmission and distribution of electrical energy, we hold that the activities undertaken by the appellant cannot be subjected to Service Tax by treating them as independent taxable services, being services integrally or essentially in relation to transmission of distribution of electricity and thus, exempt under the Negative List of Services in terms of Section 66D(k) of the Finance Act, 1994. The impugned demand, therefore, does not sustain on merits.

17. We have also considered the arguments advanced in respect of the invocation of the extended period of limitation in the present case. The Show Cause Notice has been issued on 05.04.2019 covering the period from October, 2013 to 2016-17. The invocation of the extended period under the proviso to Section 73(1) of the Finance Act, 1994 necessarily requires the presence of the requisite ingredients, such as fraud, collusion, wilful misstatement, suppression of facts or contravention of the statutory provisions with intent to evade payment of Service Tax. Mere non-payment of tax, particularly where the dispute concerns the very taxability of the activity, cannot, in the absence of the necessary accompanying circumstances, by itself justify invocation of the extended period.

17.1. In the present case, the activities in question relate to transmission and distribution of electrical energy and the appellant is the State transmission utility of Assam. The receipts sought to be taxed arose in the course of activities intrinsically connected with the functioning of the State transmission system and were duly reflected in the appellant's books and financial records. The dispute raised by the Department is essentially one of interpretation as to whether the particular receipts forming part of such activities would fall within the exemption applicable to transmission and distribution of electricity. In such circumstances, the bona fides of the appellant cannot be doubted, nor can an allegation of suppression or wilful misstatement be sustained merely on the basis of non-payment of Service Tax, without definitive and cogent material establishing the statutory ingredients necessary for invoking the extended period.

17.2. We accordingly find that the extended period of limitation was not invocable in the facts of the present case and the demand, to the extent falling beyond the normal period of limitation, would independently fail on this ground as well.

18. In view of the foregoing discussion and findings, we hold that the Service Tax demand of Rs.23,93,22,230/-, along with the consequential interest and penalties imposed under Sections 77 and 78 of the Finance Act, 1994, is unsustainable on facts and in law.

19. The impugned order thus stands set aside in its entirety.

20. The appeal is allowed, with consequential relief, if any, as per law.

(Order pronounced in the open court on **22.09.2026**)

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd