



सत्यमेव जयते

आयुक्त का कार्यालय,
Office of the Commissioner,
केंद्रीय जीएसटी, अहमदाबाद अपील आयुक्तालय
Central GST, Appeal Commissionerate- Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

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क फाइल संख्या : File No : **V2/82/GNR/Appeal/19-20 / 15870 T-15874**
DIN - 20201064SW000031E499
ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-35/020-21**
दिनांक Date : 31.08.2020 जारी करने की तारीख Date of Issue: 12/10/2020
आयुक्त (अपील) द्वारा पारित
Passed by Commissioner (Appeals) Ahmedabad

ग Arising out of Order-in-Original: 16/AC/HMT/NRM/2018-19 Date: **19.03.2019**
Issued by: Assistant Commissioner, Central GST & C.Ex., Himmatnagar Division,
Gandhinagar Commissinerate.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

Appellant- M/s Gujarat Energy Transmission Corporation Ltd.

Respondent- Assistant Commissioner, Central GST & C.Ex., Himmatnagar Division,
Gandhinagar Commissinerate.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

I. Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।



- (c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

- (d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35- ण0बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में दूसरा मंजिल, बहूमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियों सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।



In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टैट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1998 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क " में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores, Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(6)(i) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.



ORDER-IN-APPEAL

M/s. Gujarat Energy Transmission Corporation Ltd., 66 KV S/S Compound, Construction Division Office, Agiyol, Motipura Circle, Near City Corner Restaurant, Himmatnagar-383001, (hereinafter referred to as the "appellant") has filed the present appeal against the Order-in-Original No. 16/AC/HMT/NRM/2018-19 dated 19.03.2019 (hereinafter referred to as the "impugned order") passed by the Assistant Commissioner of CGST & Central Excise, Himmatnagar Division, Gandhinagar Commissionerate (hereinafter referred to as the "adjudicating authority").

2. The facts of the case, in brief, are that the appellant is engaged in the activity of providing and receiving various services viz. Erection, Commissioning and Installation Service (as Service Provider) and Work Contract Service (as Service Receiver) etc. and holding Service Tax Registration No.AABCG4029RSD090. During the course of audit, conducted for the period from March-2012 to March-2016, it was noticed that the appellant is engaged in erection, commissioning and installation of new sub-station and transmission lines, shifting and realignment of electric line and catering work of various capacity power & feeder bays and its erection, commissioning and installation work and also in supervision of all the above work. It was noticed that the appellant was collecting various charges in the form of estimated cost of materials, Erection Charges, Contingency Charges, Supervision Charges, Development Charges, Pro-rata Charges, Revenue Loss Charges and Other Charges etc. It was found that prior to 01.07.2012, the service of erection, commissioning and installation was a taxable service in view of erstwhile Section 65(39a) and Section 65(105)(zzd) of the Finance Act, 1994. Subsequently, w.e.f. 01.07.2012, a new system of service tax levy was introduced under which service tax were made applicable on all the services, except on those which were falling under Section 66D of the Finance Act, 1994 under negative list. It was further noticed that the appellant was receiving the money towards their service, but were paying service tax only on certain charges and not on the gross amount as prescribed under the provisions of Section 67 of the Finance Act, 1994.

3(i). Accordingly, a Show Cause Notice dated 01.09.2017 (hereinafter referred to as "SCN") was issued by the Asstt. Commissioner (Circle-VIII), CGST & Central Excise Audit Comm'rate, Ahmedabad proposing (i) demand of Service Tax to the tune of Rs.31,34,126/- , for the period 2013-14 to 2015-16, under proviso



to Section 73(1) by invoking extended period alongwith interest under Section 75 of the Finance Act, 1994 (ii) penalty under Section 77 of the Finance Act, 1994 for failure to show correct taxable value in their ST3 returns and (iii) penalty equivalent to the demand of service tax amount under Section 78 of the Finance Act, 1994.

3(ii). Adjudicating Authority, after hearing the appellant, vide the impugned order (i) confirmed the demand alongwith interest under Section 73(1) and Section 75 respectively (ii) imposed penalty of Rs.10,000/- upon the appellant under Section 77(2) and (iii) imposed Penalty equivalent to the amount of service tax under Section 78 of the Finance Act, 1994.

4. Being aggrieved with the impugned order, the appellant preferred an appeal and submitted that their main business activity is transmission of electricity and are operating as State Transmission Utility and submitted following grounds of appeal :

- (i) gross amount charged to consumers, is nothing but contribution/recovery of cost of capital expenditure and the same was capitalized and reduced from capital expenditure of company;
- (ii) work carried out by them under the deposit scheme of the company;
- (iii) in all major cases, all portion of deposit work, except supervision work, are being mainly carried-out by their sub-contractors, who, in turn, pay service tax and they have not availed cenvat credit of service tax paid by their sub-contractors; however demand has been raised on the entire deposit work value without considering the cenvat credit of service tax reimbursement made by them to sub-contractors on deposit work undertaken by sub-contractor;
- (iv) gross amount charged by them includes cost of material, erection charges, contingency charges, supervision charges, development charges, pro-rata charges, revenue-loss charges and other charges;
- (v) cost of material is actually the reimbursement of actual cost of material and service tax is not payable;
- (vi) erection charges are related to construction of new feeder bays as well as transmission lines and shifting of overhead cables/wires and only actual cost is recovered. Service tax is not payable in view of CBEC Circular No.123/5/2010-TRU dated 24.05.2010;
- (vii) contingency charges are collected as deposit for future variation which may arise in the cost of labour and material and in case there is no fluctuation/variation, the amount is paid back to the consumers;
- (viii) service tax is paid on supervision charges;
- (ix) for smooth flow of electricity from generating station to the load centre with minimum losses and interruption they recover cost from new as well as existing customers in case of their demand for additional load which is in the form of Pro-rata and Development charges;
- (x) vide Notification no.11/2010-ST dated 27.02.2010, transmission of electricity was exempted from whole of service tax and vide Notification No.45/2010-ST dated 20.07.2010 all taxable services relating to transmission of electricity till 26.02.2010 and distribution of electricity till 21.06.2010 were exempted; transmission and distribution of electricity by an Electricity Transmission or Distribution Utility are under Negative List w.e.f. 01.07.2012 under Section 66D(k)



- of the Finance Act, 1994 and thus service tax is not payable by them on various charges collected from consumers;
- (xii) transmission and distribution service also include creation of necessary infrastructure facilities and thus there can not be levy of service tax;
 - (xiii) reliance is placed on the case of M/s. UP Rajkiya Nirman Nigam Ltd. reported at 2016(41)STR 967(Tri-Del.) and M/s. Noida Power Co. Ltd. reported at 2014(33)STR 383(Tri-Del.);
 - (xiv) reliance is also placed on Circular No.123/5/2010-TRU dated 24.05.2010 of CBEC for exemption of service tax in case of the service rendered by them;
 - (xv) as per Notification No.12/2003-ST dated 20.06.2003 (which was in force upto 20.06.2012), service tax is not payable on the value of all the taxable services;
 - (xvi) pro-rata charges and development charges are part of deposit, received under accounting code shown in estimate sheet and after completion of work, pro-rata charges portion amount was transferred to new account code;
 - (xvii) deposit amount received from consumers for the work are booked under Consumer Contribution towards Capital Assets and the Transmission Lines so erected etc. were booked as their fixed assets and thus such deposits amount is not their income and hence not chargeable to service tax;
 - (xviii) they have right to use such service line for supply of electricity, to any person, even though the cost of erection of lines are borne by any one applicant and Erected Service Lines/Transmission Lines shall be their property;
 - (xix) they rely upon (i) CESTAT Order No.A/11422-11423/2014 dated 24.07.2014 in case of Shri Dayalal R. Dhabhi; (ii) M/s. MP Power Transmission Co. Ltd. reported at 2011(24)STR 67(Tri-Del.) and (iii) M/s. Paschimanchal Vidyut Vitran Nigam Ltd. reported at 2012(28)STR 412(Tri-Del.);
 - (xx) SCN dated 01.09.2017 covering the period from March-2012 to March-2016 is time barred;
 - (xxi) SCNs on similar issue were issued to their other units and hence larger period can not be invoked;
 - (xxii) since they are not liable to pay service tax, there is no question of suppression and thus can not be penalized;

5. Personal hearing in the case was accorded to the appellant on 24.07.2020. Shri Dhaval K. Shah, Advocate, on behalf of the appellant, attended the hearing. He reiterated the submissions made in the Appeal Memorandum. He also submitted a compilation of Board's instruction as well as case law for consideration.

6. I have carefully gone through the facts of the case, grounds of appeal in the Appeal Memorandum, records/documents available in the matter, and the submissions made during the course of personal hearing. It is observed that the issue to be decided in the present appeal is whether the appellant is liable to pay the service tax on all the charges collected by them from the consumer/customers under various heads in relation to services relating to erection, commissioning and installation of new sub-stations and transmission of electrical lines and whether the demand for extended period can be sustained. The demand pertains to period 2013-14 to 2015-16.



7. The appellant has submitted that they are the construction division of the GETCO (i.e. M/s. Gujarat Energy Transmission Corpn. Ltd.). They undertake the erection, commissioning and installation of electricity transmission lines and cable network through which electricity transmission service is provided. Being construction division, entire expenditure work of construction division is capitalized in the books of account of GETCO and thus the gross amount charged to consumers is nothing but contribution/recovery of cost of capital expenditure and the work is carried out under the Deposit Scheme. It is their contention that in major cases, all portion of deposit scheme work (except supervision work) are being mainly carried out by sub-contractors of GETCO, who in turn pays service tax. Gross Amount charged by them for erection work includes Cost of Material, Erection Charges, Contingency Charges, Supervision Charges, Development Charges, Pro-rata Charges, Revenue Loss Charges and Other Charges. The appellant has explained these charges as per details below :

Cost of Material : *the payment is received towards reimbursement of actual cost of material (Para-5, Page-13 of Appeal Memorandum).*

Erection Charges : *it relates to construction of new feeder bays as well as transmission lines and shifting of overheads cables/wires which is reimbursement of actual cost (Para-6, Page-13 of Appeal Memorandum).*

Contingency Charges : *collected from consumers as Deposit on account of Shifting/height rising of lines and new/additional load demand for the future variation which may arise on account of Cost of Labour & Material. At the time of final bill, the differential amount between actual cost (as per final bill) and advance received (as per estimate sheet) is refunded/recovered. (Para-7 at Page-14 and Para-18 at Page-25 of Appeal Memorandum).*

(It is pertinent to mention that the erected service lines/transmission lines become property of GETCO, and though consumer has borne the expenses for that, the consumer has no right over the property).

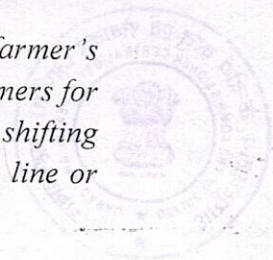
Supervision Charges : *Service tax is paid by them on supervision charges.*

Pro-rata and Development Charges : *for smooth flow of electricity from Generating Station to the Load Centre with minimum transmission losses and interruption GETCO undertakes Network Expansion for which it recovers the cost, from new consumers as well as existing consumers in case of their demand for additional load. This do not include cost of lines. (Para-9 at Page-16 of Appeal Memorandum).*

The appellant in the appeal memorandum has not made any submission regarding the Revenue-Loss Charges and Other Charges. However, the appellant, before the adjudicating authority, has submitted regarding that as under :

Revenue-Loss Charges : *to recover losses due to line outage required to carry out work i.e. shifting & realignment of electrical line (Para-18(xiv) at Page-11 of the impugned order).*

ROW Charges : *crop compensation to farmers due to erection of lines on farmer's land, welfare cess, TDS adjustment and other charges collected from consumers for payment to third party for loss which occurred to carry out such work viz. shifting and realignment of electrical line that for installation of new transmission line or*



shifting and realignment of lines they had to pass the line through different farm lands and for utilization of such space they had to pay the charges to landholders which in turn recovered from consumers (Para-18(xv) at Page-11 & 12 of the impugned order).

Ancillary Charges : collected on provision of service of erection work of shifting and realignment of the electrical line (Para-18(xvi) at Page-12 of the impugned order).

8(i). It is observed from the SCN that there is no differential service tax for the period 2012-13 and hence effectively the demand pertains to period 2013-14 to 2015-16. Hence, in effect demand pertains to period under Negative List Regime where every service was made liable to service tax other than those defined under Negative List under Section 66D of the Finance Act, 1994.

8(ii)(a) The term 'Service' has been defined under Section 65B(44) of the Finance Act, 1994 (w.e.f. 01.07.2012) and the relevant part of the same is reproduced below for the sake of convenience :

"(44) 'service' means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include"

(b) 'Declared Service' has been defined under Section 65B(22) of the Finance Act, 1994 as under :

"(22) 'Declared service' means any activity carried out by a person for another person for consideration and declared as such under section 66E";

(c) 'Taxable Service' has been defined under Section 65B(51) of the Finance Act, 1994 as under :

"(51) 'taxable service' means any service on which service tax is leviable under section 66B;

(d) Section 66B of the Finance Act, 1994 reads as under :

"SECTION 66B. Charge of service tax on and after Finance Act, 2012.—
There shall be levied a tax (hereinafter referred to as the service tax) at the rate of percent on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed".

(e) Negative list has been defined under Section 66D of the Finance Act, 1994 as under :

"SECTION 66D. Negative list of services.—

The negative list shall comprise of the following services, namely :—

(a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere—

- (i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;*
- (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;*
- (iii) transport of goods or passengers; or*



- (iv) Any service, other than services covered under clauses (i) to (iii) above, provided to business entities;
- (b) services by the Reserve Bank of India;
- (c) services by a foreign diplomatic mission located in India;
- (d) services relating to agriculture or agricultural produce by way of—
- (i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or [* * *] testing;
- (ii) supply of farm labour;
- (iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;
- (iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
- (v) loading, unloading, packing, storage or warehousing of agricultural produce;
- (vi) agricultural extension services;
- (vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;
- (e) trading of goods;
- (f) [****].;
- (g) selling of space for advertisements in print media;
- (h) service by way of access to a road or a bridge on payment of toll charges;
- (i) betting, gambling or lottery;
- Explanation. - For the purposes of this clause, the expression "betting, gambling or lottery" shall not include the activity specified in Explanation2 to clause (44) of section 65B;
- (j) [* * * *]

(k) transmission or distribution of electricity by an electricity transmission or distribution utility;

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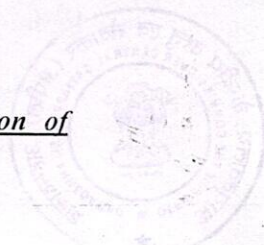
(emphasis supplied)

9. In view of above, it is clear that w.e.f. 01.07.2012 service tax is not leviable only on the Transmission or Distribution of Electricity Service provided by the Electricity Transmission or Distribution Utility and is leviable on the services carried out in relation to transmission or distribution. It is further observed that the appellant has been paying service tax on various activities undertaken by them as alleged in SCN and only dispute pertain to the inclusion of certain charges in the taxable value.

10. It is further observed that the following Notifications have been referred by the appellant in support of their contention :

- (i) Notification No.12/2003-ST dated 20.06.2003;
- (ii) Notification No.11/2010-ST dated 27.02.2010;
- (iii) Notification No.32/2010-ST dated 22.06.2010;
- (iv) Notification No.45/2010-ST dated 20.07.2010, which says

Electricity — Exemption to all taxable services relating to transmission of electricity till 26-2-2010 and distribution of electricity till 21-6-2010



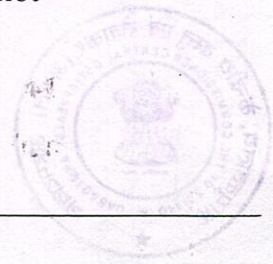
11(i). All the notifications referred in para-10 above including the Notification No.1/2006-ST dated 01.03.2006 were rescinded w.e.f. 01.07.2012 vide Notification No.34/2012-ST dated 20.06.2012 and hence they can not be taken into consideration for deciding this case looking into the fact that the period of demand is 2013-14 to 2015-16.

11(ii). It is further observed that the appellant has also referred Circular No.123/5/2010-TRU dated 24.05.2010 for various service in relation of transmission and distribution of electricity. However, it is observed the said Circular has lost its effect w.e.f. 01.07.2012 with the introduction of Negative List Regime and the demand involved in the present case pertain to the period starting from 2013-14 as the Annexure-A to SCN reveal that there is no differential tax liability for the period 2012-13.

11(iii). It is further observed that the appellant has themselves admitted that whatever they charge from their consumers for the work done or to be done becomes the property of them and the consumers have no right over the said material or things or service. This is nothing but the consideration which they receive for their services mentioned above. Such services are distinct from transmission and distribution of electricity and in no way the same can be considered to be transmission and distribution of electricity. Moreover, the appellant has submitted that their sub-contractor is paying the service tax for all such work, therefore also there is no scope for them to skip payment of service tax for the same services when done by them.

11(iv). The records of the case reveal that there are certain charges which the appellant is required to pay to the farmers for crop compensation due to erection of lines on farmer's land and to the landholders due to the shifting and realignment of electrical line that for installation of new transmission line or shifting and realignment of lines that had to pass through different farm lands and for utilization of such space. This is the amount which can not be considered as consideration for the sake of levy of service tax and is required to be deducted from the gross amount received by the appellant and service tax can not be levied on such charges.

11(v). Similarly, the appellant has to shut down the electricity for carrying out the work of shifting and realignment of electric line which result in revenue loss to them due to such shut down of electricity which would have been consumed/supplied if the supply was not disrupted. Therefore, service tax can not be levied on such charges also.



11(vi). It is further observed that the adjudicating authority in para-24 of the impugned order come to a conclusion that certain charges like material cost should not be included while quantification of service tax but the appellant has not provided such value for deduction.

11(vii). It is pertinent to mention here that whenever some exemption from payment of service tax is claimed, the burden of proof lies on the person claiming such exemption. In the case on hand also, if the appellant wish to claim the exemption, it was required on part of them to produce/submit proper documents for claiming such exemption. In absence of such documents, it is obvious for the adjudicating authority not to consider their oral submission.

11(viii). In view of the above, the service tax liability require re-quantification so as to exclude certain charges while computation of taxable value. The appellant is required to provide necessary documents for such re-quantification. The matter is required to be remanded back to the adjudicating authority for the same.

12. The appellant has contended that in the same issue they have been issued the SCN in case of other units of GETCO and as such since the Department was aware of it, the SCN is time barred. Such argument of the appellant goes against them, as though they were aware that such issue is in dispute in other units of them, then also they sit silently and did not do anything till it was brought out by the Audit team. Over and above, vide NotificationNo.47/2012-ST dated 28.09.2012 the Government declared that of ST-3 return required to be submitted by 25.10.2012 shall cover the period from 01.04.2012 to 30.06.2012 only. From this, it is clear that the date of filing of ST-3 return for the period 01.04.2012 to 30.06.2012 was extended upto 25.10.2012, and the SCN has been issued on 01.09.2017 which is within the extended period. Thus I do not find any infirmity in this respect. In view of above discussion the penalty imposed under the impugned order under Section 77(2) of the Finance Act, 1994 is upheld.

13. Moreover, the service tax amount requires re-quantification in view of the discussion made above and the same would also affect interest and penalty amount under Section 75 and 78 of the Finance Act, 1994 respectively.

In view of the above, the matter is remanded back to the adjudicating authority to pass the order afresh in view of above discussion and appellant is also



directed to produce the relevant document before the adjudicating authority in support of their contention for availing such exemption. With this direction appeal is remanded back to adjudicating authority.

Date: .08.2020

Attested

(D. A. Parmar)
Superintendent (Appeal)
CGST, Ahmedabad.

Akhil Kumar
31st August,
2020.
Akhil Kumar
Commissioner (Appeals)



BY R.P.A.D. / SPEED-POST TO :

M/s. Gujarat Energy Transmission Corporation Ltd.,
66 KV S/S Compound,
Construction Division Office, Agiyol,
Motipura Circle, Near City Corner Restaurant,
Himmatnagar-383001

Copy to :-

1. The Principal Chief Commissioner, CGST & Central Excise, Ahmedabad Zone.
2. The Commissioner/Commissioner, CGST & Central Excise, Gandhinagar Comm'rate.
3. The Asstt. Commissioner (System), CGST & Central Excise, Gandhinagar Comm'rate.
4. The Asstt. Commissioner, CGST & Central Excise, Himmatnagar Divn, Gandhinagar Comm'rate.
5. Guard File.
6. P.A. File.