



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Writ Petition No. 9397/2018

Jodhpur Vidyut Vitran Nigam Ltd., having its registered Office at New Power House, Jodhpur through its Senior Accounts Officer Shri Koushal Parihar S/o Shri Anand Singh Parihar, Resident of 43, Bhanu Bunglow, Nayapura, Mandore, Jodhpur- 342001 (Rajasthan).

----Petitioner

Versus

1. Union Of India, Ministry of Finance, Department of Revenue (Tax Research Unit), Room No. 46, North Block, New Delhi-110 001 through its Revenue Secretary.

2. Central Board of Excise and Customs, North Block, New Delhi- 110 001 through its Chairperson.

3. Commissioner, Central Taxes Department, Government of Rajasthan, Jodhpur,

4. Rajasthan Electricity Regulatory Commission, Vidyut Viniyamak Bhawan, Sahakar Marg, New State Motor Garage, Jaipur- 302 001 Rajasthan through its Chairman.

----Respondents

For Petitioner(s) : Mr. Anjay Kothari

For Respondent(s) : Mr. Rajvendra Saraswat

HON'BLE THE CHIEF JUSTICE MR. INDRAJIT MAHANTY

HON'BLE MR. JUSTICE DINESH MEHTA

Judgment

05/02/2021

1. The petitioner is a Public Sector Undertaking engaged in distribution and supply of electricity in various Districts of Rajasthan.

2. According to the petitioner, the services of distribution and supply of electricity fall in negative list of the services as declared by the Central Government vide Notification No.12/2017 dated 28.06.2017. Relevant entry reads thus :



25	Heading 9969	Transmission or distribution of electricity by an electricity transmission or distribution utility.	Nil	Nil
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3. The petitioner has challenged Circular dated 01.03.2018, particularly Clause 4(1) thereof, which was issued by the Department of Revenue on the basis of recommendations of GST Council made in its meeting held on 9th, 10th and 13th January, 2018. It is to be noted that by way of this clarification following services provided by the DISCOMS have been held to be taxable:-

- (i) application fee for releasing connection of electricity;
- (ii) Rental Charges against metering equipment;
- (iii) Testing fee for meters/ transformers, capacitors etc.;
- (iv) Labour charges from customers for shifting of meters or shifting of service lines; and
- (v) charges for duplicate bill.

4. Mr. Anjay Kothari, learned counsel for the petitioner argued that by way of statutory notification dated 28.06.2017, issued in exercise of powers under Section 11(1) of the Central Goods & Services Tax Act, 2017 (hereinafter referred as as "the CGST Act"), the Central Government has exempted services of transmission or distribution of electricity, as such, the circular impugned carving out an exception and excluding some of the services, which are essential and integral part of the main function of supply and distribution of electricity is arbitrary.

5. He further argued that once the parent exemption Notification exempts the very supply and distribution of electricity, the Department of Revenue or even CGST Council cannot exclude



certain services by way of clarificatory circular. He added that all the services enumerated in para No.3 above are nothing but a part of complete package/bundle of services, namely supply and distribution of electricity.

6. Learned counsel submitted that the issue involved in the present case has been dealt with by a Division Bench of Gujarat High Court and vide its judgment dated 19.12.2018 in case of Torrent Power Ltd. Vs. Union of India, has struck down para 4(1) of the impugned circular No.34/8/2018-GST dated 1.3.2018 being contrary to the Notification No.12/2017-CT (R) and ultra vires the provisions of Section 8 of the CGST Act.

7. Mr. Rajvendra Saraswat, learned counsel for the respondents, on the other hand, argued that the services mentioned in para No.4(1) of Circular dated 01.03.2018 cannot be said to be services relating to transmission or distribution of electricity and thus, the petitioner is liable to pay tax on such services.

8. He informed that against the judgment of Gujarat High Court in Torrent Power Ltd. (Supra), a SLP has been filed by the Union of India and leave has been granted by Hon'ble the Supreme Court.

9. Heard.

10. A simple reading of Sl.No.25 of exemption Notification dated 28.06.2017 and the corresponding notification leaves no room for ambiguity that entire package of services namely transmission or distribution of electricity has been exempted.

11. Whereas a perusal of impugned Circular dated 01.03.2018, particularly para No.4(1) reveals that the CGST Council has sought to bring in tax-net five services enumerated therein, regardless of the fact that complete bundle or package of services namely



transmission and distribution of electricity by an electricity transmission or distribution utility have been exempted.

12. Attempt of chipping out some of the services, out of the complete package and treating them to be taxable is not only arbitrary and unreasonable but such exercise is also violative of provisions of Section 8 of the CGST Act.

13. A circular cannot seek to clarify provisions of statutory notification dated 28.06.2017, which is otherwise unequivocal. There is no room for ambiguity or doubt, for which the GST Council was required to issue the circular. Respondents have as a matter of fact, levied tax on some of the services by carving them out that too by way of a circular under the cloak of a clarification.

14. Gujarat High Court in the case of Torrent Power Ltd. (supra), after deliberating the issue in great detail has held thus :-

"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 to be excluded by merely issuing a clarificatory circular, that too, with retrospective effect. By the clarificatory circular, the

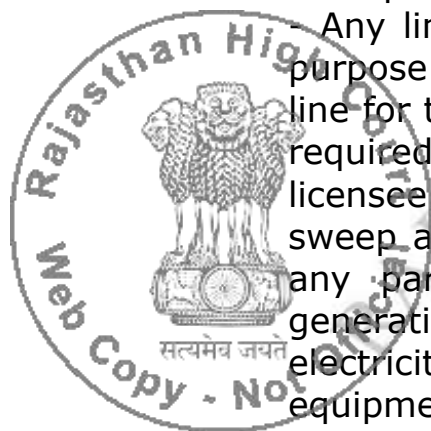


respondents seek to give a different interpretation of the very same services as against the clarification issued for the pre-negative list regime.

- 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.

30. For the foregoing reasons, the petition succeeds and is, accordingly, allowed to the following extent:

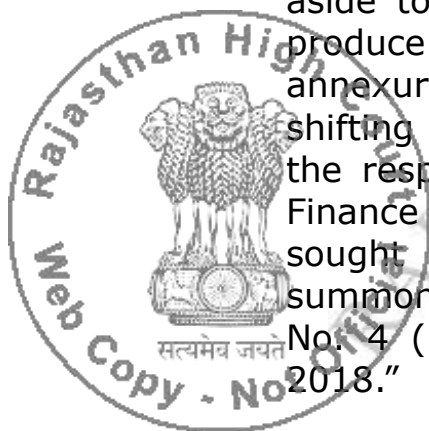
Paragraph 4 (1) of the impugned circular No. 34/8/2018-GST dated 1.3.2018 to the extent the same reads as under is hereby struck down as being ultra vires the provisions of section 8 of the Central Goods and Services Tax Act, 2017 as well as Notification No. 12/2017- CT (R) : MANU/GSCT/0013/2017 serial No. 25:

4.	(1) Whether the activities carried out by DISCOMS against recovery of charges from consumers under the State Electricity Act are exempt from the GST	(1) Service by way of transmission or distribution of electricity by an electricity transmission or distribution utility is exempt from GST under notification No.12/2017-CT (R), SI.No.25. The other services such as- i. Application fee for releasing connection or electricity; ii. Rental Charges against metering equipment;p
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		<p>iii. Testing fee for meters/transformers, capacitors etc.;</p> <p>iv. Labour charges from customers from shifting meters or shifting of service lines;</p> <p>v. charges for duplicate bill;</p> <p>provided by DISCOMS to consumer are taxable.</p>
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The impugned summons dated 28.3.2018 is hereby set aside to the extent the petitioners are called upon to produce the documents listed at serial No. 5 of the annexure thereto, except clause - (vi); income from shifting of HT lines received from MEGA. Consequently, the respondents shall drop the proceedings under the Finance Act, 1994 as well as under the CGST/SGST Acts sought to be initiated by virtue of the impugned summons to the extent the same is based upon item No. 4 (1) of the impugned circular dated 1st March, 2018."



15. For what has been noticed above, we are in total agreement with the view taken by Gujarat High Court in case of Torrent Power Ltd. (supra).

16. The writ petition, therefore, succeeds; para 4(1) of the impugned Circular dated 01.03.2018 is hereby quashed.

17. By way of mandatory injunction, the respondents are hereby restrained from raising any demand and/or taking any coercive measures to recover any tax on the basis of impugned circular dated 01.03.2018.

18. Stay application stands disposed of.

(DINESH MEHTA),J

(INDRAJIT MAHANTY),CJ

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