

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. III

Service Tax Appeal No. 41904 of 2014

(Arising out of Order-in-Appeal No. 132/2014-ST dated 15.05.2014 passed by Commissioner of Customs and Central Excise (Appeals), No. 1, Foulk's Compound, Annai Medu, Salem – 636 001)

M/s. Tamilnadu Electricity Board

Mettur Workshop,
Mettur Dam – 636 401.

...Appellant

Versus

Commissioner of GST and Central Excise

Salem Commissionerate,
No. 1, Foulk's Compound,
Annai Medu,
Salem – 636 001.

...Respondent

APPEARANCE:

For the Appellant : Shri Manoj Niranjana, Advocate

For the Respondent : Shri Harendra Singh Pal, Assistant Commissioner / A.R.

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

DATE OF HEARING : 25.09.2023

DATE OF DECISION : 30.10.2023

FINAL ORDER No. 40963 / 2023

Order : [Per Mr. VASA SESHAGIRI RAO]

Service Tax Appeal No. ST/41904/2014 has been filed by Tamil Nadu Electricity Board, Mettur, assailing the Order-in-Appeal No. 132/2014-ST dated 15.05.2014 passed by the Commissioner of Customs and Central Excise (Appeals), Salem, who have upheld the Order-in-Original No. 06/2014 dated 27.02.2014 of the Assistant Commissioner of Central Excise, Division II, Salem confirming the demand of Service Tax of Rs.97,886/- under proviso to Section 73(1) of the Finance Act, 1994 by invoking the extended period and also demand of

interest and imposing penalties under Section 77(1)(a), 77(2) and 78 of the Finance Act, 1994.

2.1 Brief facts are that the appellant is engaged in the manufacture of Line materials and Tower parts which are transported to various distribution circles of M/s. Tamil Nadu Electricity Board (TNEB), Mettur by engaging the transport services of two contractors viz., Mr. S. Natarajan and M/s. Annai Enterprises for the period from February 2010 to July 2011. Towards transportation of these materials, Freight amount of Rs.38,01,381/- was paid to these two transport contractors.

2.2 As the appellant has not obtained the Service Tax registration and have not filed the returns, Show Cause Notice Sl.No. 02/2013 (AC) dated 20.03.2013 was issued demanding the Service Tax and proposing penalties which was adjudicated confirming the demand of Service Tax along with interest and also imposing the penalties.

2.3 As their appeal to the Commissioner of Customs and Central Excise (Appeals), Salem was rejected, the appellant came in appeal before this forum.

3.1 Being a recipient of GTA Services for transportation of Line materials and Tower parts to various distribution circles of TNEB, the Department has found the appellant liable for payment of Service Tax in terms of Section 65(50b) of the Finance Act, 1994 read with Rule 2(1)(d)(v) of Service Tax Rules, 1994. In terms of the above legal provisions, the person who is liable to pay Service Tax is the consignor or a consignee, in case he falls under any of the below seven categories and the appellant being a company registered under the Companies Act, 1956 will be liable to pay Service Tax for GTA Services received. For ease of reference, the statutory provisions are extracted below:-

" Section 65(50b) of Finance Act, 1994 defines 'goods transport agency' means any (person who) provides service in relation to transport of goods by road and issues consignment note, by whatever name called;

Section 65(105) (zzp) of Finance Act, 1994 defines 'taxable service' means (to any person), by a goods transport agency, in relation to transport of goods by road in a goods carriage;

Rule 2(1)(d)(v) of Service Tax Rules, 1994 mentions person liable for paying service tax as-

in relation to taxable service provided by a goods transport agency, where the consignor or consignee of goods is,-

- a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);*
- b) any company formed or registered under the Companies Act, 1956 (1 of 1956);*
- c) any corporation established by or under any law;*
- d) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India;*
- e) any co-operative society established by or under any law;*
- f) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder, or*
- g) anybody corporate established, or a partnership firm registered, by or under any law, any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage;"*

3.2 In the instant appeal, the goods transport services were rendered by two contractors viz., Mr. S. Natarajan and M/s. Annai Enterprises and consignor or consignee was TNEB as the transportation services were utilized for shifting various materials from their work shop to various distribution centers.

3.3 The appellant being a company registered under the Companies Act is required to take registration under the Finance Act, 1994 for payment of Service Tax and should have paid

applicable Service Tax for the GTA Services received apart from filing periodical returns under the Finance Act, 1994.

3.4 During the course of the verification of the records for the year 2010-2011 and 2011-2012 and the issue of Service Tax liability was brought to the notice of the appellant. It appears the appellant have persuaded the transporters to pay the applicable Service Tax for the GTA Services rendered. A scrutiny of the appellate records has revealed that M/s. Annai Enterprises have remitted a sum of Rs.64,860/- *vide* Challan No. 03 dated 12.06.2012 and another contractor Mr. S. Natarajan have remitted a sum of Rs.43,613/- *vide* Challan No. 01 dated 09.05.2013. As the full Service Tax amount has been paid, the appellant has requested to drop the proceedings initiated in the Show Cause Notice. As the Show Cause Notice in the instant case was issued *vide* Sl.No. 02/2013 (AC) dated 20.03.2013, it is to be commented that major part of the Service Tax of Rs.64,860/- was paid by M/s. Annai Enterprises on 12.06.2012 before the issuance of the Show Cause Notice. Whereas Mr. S. Natarajan have remitted a sum of Rs.43,613/- on 09.05.2013 which was within less than two months from the time of issuance of the Show Cause Notice.

3.5 The Ld. Advocate Shri Manoj Niranjana appeared and argued for the appellant. It was submitted that the entire amount of Service Tax demanded has already been paid and as such there is no merit in the impugned order No. 132/2014-ST dated 15.05.2014, that as a distribution and the transmission utility, they are exempted to pay Service Tax in relation to related services in terms of the exemption Notification No. 11/2010-ST dated 27.02.2010 that entire amount of Service Tax demanded was paid and as such the impugned order dated 15.05.2014 is not maintainable and invoking of the extended period is not justified as there is no violation of provisions of the Finance Act, 1994.

3.6 The Ld. Advocate has adverted to the Notification No. 11/2010-ST dated 27.02.2010 and also Notification No. 45/2010-ST dated 20.07.2010 which are extracted below:-

Notification No. 11/2010-ST dated 27.02.2010:-

"In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service provided to any person, by any other person for transmission of electricity, from the whole of service tax leviable thereon under section 66 of the said Finance Act."

Notification No. 45/2010-ST dated 20.07.2010:-

"Whereas, the Central Government is satisfied that a practice was generally prevalent regarding levy of service tax (including non-levy thereof), under section 66 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as 'the Finance Act'), on all taxable services relating to transmission and distribution of electricity provided by a person (hereinafter called 'the service provider') to any other person (hereinafter called 'the service receiver'), and that all such services were liable to service tax under the said Finance Act, which were not being levied according to the said practice during the period up to 26th day of February, 2010 for all taxable services relating to transmission of electricity, and the period up to 21st day of June, 2010 for all taxable services relating to distribution of electricity;

Now, therefore, in exercise of the powers conferred by section 11C of the Central Excise Act, 1944 (1 of 1944), read with section 83 of the said Finance Act, the Central Government hereby directs that the service tax payable on said taxable services relating to transmission and distribution of electricity provided by the service provider to the service receiver, which was not being levied in accordance with the said practice, shall not be required to be paid in respect of the said taxable services relating to transmission and distribution of electricity during the aforesaid period."

3.7 It is submitted that in terms of the above Notifications, TANGEDCO is exempted from payment of Service Tax. He has referred to the following decisions of the Tribunal, in support of his contention that all the services related to transmission of electricity are exempted from the payment of Service Tax.

- i. *KEC International Ltd. Vs. Commissioner of CGST (CESTAT Chandigarh) [F.O. Nos. 40120-40121/2022 dated 23.08.2022].*
- ii. *M.P. Power Transmission Co. Ltd. Vs. Commissioner of Customs and Central Excise, Bhopal [2011 (24) STR 67 (Tri. - Del.)].*

- iii. *Paschimanchal Vidyut Vitran Nigam Ltd. Vs. Commissioner of Central Excise, Meerut [2011 (28) STR 412 (Tri. - Del.)]*.

3.8 The appellants further submitted that the Delhi Principal Bench has also passed identical orders in the case of *Purvanchal Vidyut Vitran Nigam Ltd Versus C.C.E., Allahabad [2013 (30) S.T.R. 259 (Tri. - Del.)]*, wherein the assessee's appeal was allowed and the department appeal was dismissed.

3.9 It was also put forth that the exemption under Notification No. 45/2010-ST dated 20.07.2010 and Notification No. 11/2010-ST dated 27.02.2010 is an omnibus exemption as the said Notification does not exempt any particular category of taxable service but exempts "all taxable services relating to transmission of electricity and distribution of electricity". Thus whether or not the taxable services relating to transmission of electricity and distribution of electricity are classifiable under a particular category of taxable service under the provisions of Finance Act, 1994, the exemption is available under Notification No. 45/2010-ST dated 20.07.2010 and Notification No. 11/2010-ST dated 27.02.2010 if the condition is satisfied that the taxable service in question is relating to transmission of electricity or distribution of electricity.

3.10 The appellants submit that the entire amount of Service Tax demanded has already been paid and that on this basis alone, the Impugned Order has no merit. In *Lovely Traders Vs. CCE ST (CESTAT Chandigarh)*, it has been held that "*BSNL has already deposited Service Tax on commission received by the appellant, which is clear from the certificate produced by them on record. Therefore, by following the ratio of said decision, we allow the appeal by setting aside the impugned order.*" Charging of tax twice on the commission received by the appellant would tantamount to double taxation which is not permitted in law.

3.11 The appellants submit that as a distribution and transmission utility, they are exempted from paying Service Tax in relation to related services even as per exemption Notification No. 11/2010-ST dated 27.2.2010 and Notification No. 45/2010-ST dated 20.07.2010 which was in vogue during the relevant period.

3.12 The appellants submit that there is no question of invoking the extended period inasmuch as there is no violation of the law as per the Finance Act, 1994 in the circumstances of the present case.

4. The Ld. Authorized Representative Shri Harendra Singh Pal appeared for the Department, has reiterated the findings in the impugned order dated 15.05.2014. He has argued that the appellant have not obtained Service Tax registration and not filed ST-3 returns and not paid Service Tax during the period though he was liable for payment of Service Tax on receipt of GTA Services. He has submitted that the appellant's argument that Notification No. 11/2010-ST dated 27.02.2010 covers GTA Services is not correct as the Notification exempts only the services related to transmission of electricity and does not cover the transport of goods by road.

5. Heard both sides and we have perused all the documents and the records available in this appeal.

6.1 The main issue that is required to be decided in this appeal is relating to taxability of GTA Services on Reverse Charge basis received by TNEB, Mettur.

6.2 The second issue is regarding invocation of extended period for demand of Service Tax and imposition of penalties in the facts and the circumstances of this appeal.

7.1 It is an admitted fact that the transport contractors viz., Mr. S. Natarajan and M/s. Annai Enterprises have paid the demanded Service Tax. The Order-in-Original passed by the

original adjudicating authority at paragraph No. 4.05 have recorded as follows:-

"4.05. The party vide their reference letter GM/MWS/AO/AAO/AS/APS/AE/F.C.Excise/D.No.07/2013 dated 18.05.2013 informed that M/s. Annai Enterprises have remitted a sum of Rs.64,860/- vide Challan No. 003 dated 12.06.2012 and M/s. S. Natarajan have remitted Rs.43,613/- vide Challan No. 00001 dated 09.05.2013 and requested to drop the Show Cause Notice since the amount demanded in the Show Cause Notice has been settled."

7.2 It has to be observed that major portion of the Service Tax demand was thus settled before the issuance of the Show Cause Notice. Even Mr. S. Natarajan who is the second contractor have remitted the remaining portion of Rs.43,613/- vide Challan No. 001 dated 09.05.2013 i.e., within less than two months after the issuance of Show Cause Notice much before the adjudication.

7.3 M/s. TNEB is engaged in generation and distribution of electricity and all the Services relating to generation or distribution are exempted in terms of Notification No. 11/2010-ST dated 27.02.2010 and Notification No. 45/2010-ST dated 20.07.2010. In terms of the above Notifications, all taxable services relating to transmission and distribution of electricity are exempted. It is an admitted fact that GTA services have been availed by the appellant for transportation of Line materials and Tower parts to various distribution circles.

7.4 In the case of *KEC International Ltd. Vs. Commissioner of CGST (CESTAT Chandigarh) [F.O.Nos. 40120-40121/2022 dated 23.08.2022]* CESTAT, Chandigarh, has opined that the expression 'relating to' is very wide in its amplitude and its scope and such taxable service rendered in relation to transmission / distribution of electricity would be eligible for the benefit of exemption under Notification dated 20.07.2010 and 27.02.2010 and further in the case of *Kedar Constructions Vs. Commissioner of Central Excise, Kolhapur [2015 (37) S.T.R. 631 (Tri. - Mumbai)]* it was held that the expression 'for' would cover

a wide gamut of activities and the activities undertaken by the appellant would be eligible for the benefit of the Notification as was held by the Tribunal in Noida Power Company Limited.

7.5 We note that the decision rendered by the Tribunal Delhi in the case of *Paschimanchal Vidyut Vitran Nigam Ltd. Vs. Commissioner of Central Excise, Meerut [2012 (28) STR 412 (Tri.- Del.)]* has ruled that installation of the electricity meters to be in relation to transmission of electricity. It has been decided therein that any activity or service like erection, commissioning and installation of meters as also technical testing and analysis can easily be termed as services relating to the transmission and distribution of electricity.

7.6 Considering the above decision and as GTA Services were availed for transport of Line materials and Tower parts which are related to transmission of electricity are eligible for the benefit of the exemption Notification No. 11/2010-ST dated 27.02.2010 and also Notification No. 45/2010-ST dated 20.07.2010. In this case, whether any consignment note was issued by these transporters is not coming forth from the records to be called as GTA. These transporters should have issued consignment notes for transportation of these line materials and tower parts. Service Tax payable was computed only on the basis of freight amount paid to these transporters.

7.7 As the Service Tax demanded is meagre and also major portion of the Service Tax paid before the issuance of the Show Cause Notice, the issue should have been settled as the Revenue has realized the entire tax. Demand of the tax again from TNEB would tantamount to double taxation which is not legally permissible. Various decisions of the judicial fora have laid down the principle that double taxation for the same service activity is not in accordance with law.

8. Even on the issue of invoking extended period, it has to be commented that all the services relating to transmission of generation of electricity are exempted including by Notification

No. 11/2010-ST dated 27.02.2010 and also Notification No. 45/2010-ST dated 20.07.2010 making the intention of the Government very clear regarding charging of Service Tax from the entities involved in generation or transmission of electricity. As the issue is of interpretational in nature, we hold that invoking the extended period is not justified.

9. In view of the above discussion and as the entire Service Tax demanded has been paid to the credit of Government account, we have to hold the impugned Order-in-Appeal No. 132/2014-ST dated 15.05.2014 is not sustainable and accordingly set aside. The appeal is allowed with consequential relief, if any.

(Order pronounced in open court on 30.10.2023)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

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