CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.

PRINCIPAL BENCH

SERVICE TAX APPEAL NO. 50289 OF 2019

[Arising out of the Order-in-Original No. 13-18/COMMR/ST/JBP/2018 dated 30/10/2018 passed by Commissioner of CGST & Central Excise, Jabalpur.]

M/s Madhya Pradesh Poorva Kshetra Vidyut Vitaran Company Limited, ...Appellant
Block No. 7, 2nd Floor, Shakti Bhavan, Rampur,
Jabalpur – 482 008 (Madhya Pradesh).

Versus

Commissioner of CGST & Central Excise, ...Respondent
GST Bhawan, Mission Chowk, Napier Town,
Jabalpur – 482 001 (Madhya Pradesh).

WITH
SERVICE TAX APPEAL NO. 50168 OF 2019

[Arising out of the Order-in-Original No. 20/COMMR/ST/BPL-I/2018 dated 12/10/2018 passed by Commissioner of CGST & Central Excise, Bhopal.]

M/s Madhya Pradesh Madhya Kshetra Vidyut Vitaran Company Limited, ...Appellant
Nishtha Parisar, Bijalee Nagar, Govindpura,
Bhopal – 462 011 (Madhya Pradesh).

Versus

Commissioner of CGST & Central Excise, ...Respondent
35-C, GST Bhawan, Arera Hills, Jail Road,
Bhopal – 462 011 (Madhya Pradesh).

WITH
SERVICE TAX APPEAL NO. 51066 OF 2019

[Arising out of the Order-in-Original No. 04/Pr. COMMR/ST/BPL-II/2019 dated 24/01/2019 passed by Principal Commissioner of CGST & Central Excise, Bhopal.]

M/s Madhya Pradesh Madhya Kshetra Vidyut Vitaran Company Limited, ...Appellant
Nishtha Parisar, Bijalee Nagar, Govindpura,
Bhopal – 462 003 (Madhya Pradesh).

Versus

Commissioner of CGST & Central Excise, ...Respondent
35-C, GST Bhawan, Arera Hills, Jail Road,
Bhopal – 462 011 (Madhya Pradesh).

WITH
SERVICE TAX APPEAL NO. 50513 OF 2019

[Arising out of the Order-in-Original No. 04/COMMR/ST/IND/2018 dated 29/11/2018 passed by Commissioner of CGST & Central Excise, Indore.]

M/s Madhya Pradesh Paschim Kshetra Vidyut Vitaran Company Limited, ...Appellant
GPH Compound, Polo Ground,
Indore (Madhya Pradesh).

Versus

Commissioner of CGST & Central Excise, ...Respondent
Manik Bagh Palace,
Indore (Madhya Pradesh).

AND
SERVICE TAX APPEAL NO. 52104 OF 2019

[Arising out of the Order-in-Original No. 30/Pr. COMMR/ST/BPL-I/2019 dated 27/05/2019 passed by Principal Commissioner of CGST & Central Excise, Bhopal.]

M/s Madhya Pradesh Madhya Kshetra Vidyut Vitaran Company Limited, ...Appellant
Nishtha Parisar, Bijalee Nagar, Govindpura,
Bhopal – 462 003 (Madhya Pradesh).

Versus

Pr. Commissioner of CGST & Central Excise, ...Respondent
35-C, GST Bhawan, Arera Hills, Jail Road,
Bhopal – 462 011 (Madhya Pradesh).

APPEARANCE:

Shri Manoj Munshi, Advocate for the appellant.
Dr. Radhe Tallo, Authorized Representative for the Department

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 50329-50333/2022

DATE OF HEARING : 16.02.2022
DATE OF DECISION: 12.04.2022

P.V. SUBBA RAO

We have heard both sides and perused the records.

2. The appellants in these cases are public sector undertakings established by the Government of Madhya Pradesh for distribution of electricity. Madhya Pradesh Poorva Kshetra Vidyut Vitran Co. Ltd. deals with the Eastern part of the State, Madhya Pradesh Madhya Kshetra Vidyut Vitran Co. Ltd. deals with the Central part of the State, while Madhya Pradesh Paschim Kshetra Vidyut Vitran Co. Ltd. deals with the Western part of the State. All these companies have identical work and the disputes in these cases are also identical. Except one issue, all issues in dispute in these appeals were earlier decided in Service Tax Appeal No. 51649 of 2019 in respect of Madhya Pradesh Poorva Kshetra Vidyut Vitran Co. Ltd. by a bench of this Tribunal by final order No. 51031 of 2021 dated 14 January, 2021 following the judgment of Gujarat High Court in the case of **Torrent Power Ltd. versus Union of India**[1] decided on December 19, 2018.

3. Aggrieved by the final order dated 14 January 2021 of this Bench, Revenue has filed Civil appeal No. 5973/2021 before the Hon'ble Supreme Court, which was registered on 24 September 2021 and is still pending. Nevertheless, as the issues have already been decided by the Hon'ble Gujarat High Court which decision was followed in respect of the same appellant by this

[1] **Special Civil Application No. 5443/2018**

Bench, we find no reason to take a different view in the matter. The issues which for consideration are the exigibility to service tax on the following and consequent imposition of penalties upon the appellants for non-payment of Service Tax in respect of the following :-

(i) **Late payment surcharge**: The amount is charged by the appellants in the electricity bills issued to customers and is collected if the customer fails to pay the bill within time. The demand is on the ground that the appellants are tolerating the non-payment of electricity bill within time by the customer and such tolerance qualifies as a declared service as per Section 66E(e) of the Finance Act, 1994. The demand under this head was dropped by the final order dated 14 January 2021 in respect of the same appellants for a prior period;

(ii) **Meter renting charges**: The appellants collect meter rents from their consumers and the case of the Revenue is that since only transmission and distribution of electricity was covered under the negative list of services not exigible to service tax, meter rent being not under the negative list is chargeable to service tax. In this, the final order dated 14 January, 2021 for the earlier period this demand has been dropped by this Tribunal ;

(iii) **Supervision charges also known as re-connection and dis-connection charges** : the case of the Revenue is that these are not charges for transmission and distribution of electricity and hence are not covered in the negative list of services and, hence, service tax has to be paid by them. In the final order dated 14 January, 2021 the demand on this head was also dropped ;

(iv) **Lease rental** : This is an amount received by the appellants from the pole users for cable TV network. The appellant has not disputed the exigibility to service tax of this rental and has deposited the same;

(v) **Works contract service** : the appellant has not disputed the exigibility to service tax under this head and has deposited the same ;

(vi) **Liquidated damages** : The appellant, in the course of its business gives certain work contract to various contractors. Wherever the contractor fails to meet its obligations, the appellant collects liquidated damages from the contractors as per the contracts. Revenue seeks to charge service tax on these amounts.

4. The issue is whether service tax can be levied on liquidated damages received by the appellants from the other parties who failed to perform as per the contracts. This issue was not

specifically dealt in the final order dated 14 January 2021 in respect of the appellant. However, this matter was dealt with in several cases by the Tribunal, such as, **M/s. Southeastern Coal Fields versus Commissioner of Central Excise and Service Tax, Raipur**[2] in which it was held as follows:

> 22. In this connection it would also be pertinent to refer to TRU Circular dated 20 June, 2012 issued by the Central Board of Excise and Customs as an Education Guide when the Negative List based taxation regime was introduced from July 2012 to clarify various aspects of the levy of service tax. The Board dealt with —consideration‖ in paragraph 2.2 of this Circular and pointed out that since the definition was inclusive, it will not be out of place to refer to the definition of —consideration‖ as given in section 2(d) of the Indian Contract Act, 187212. The relevant portion of the aforesaid Circular is reproduced below:
>
> > "**2.2 Consideration**
> > **2.2.1 The phrase "consideration" has not been defined in the Act.**
> > **What is, therefore, the meaning of "consideration"?**
> >
> > **As per Explanation (a) to section 67 of the Act —consideration includes any amount that is payable for the taxable services provided or to be provided.**
> >
> > **Since this definition is inclusive it will not be out of place to refer to the definition of "consideration" as given in section 2(d) of the Indian Contract Act, 1872 as followsxxxxx xxxxx xxxxx (emphasis supplied)**
>
> 23. It would, therefore, be appropriate to examine the definition of —consideration‖ in section 2(d) of the Contract Act, as the Contract Act deals with all kinds of contracts and predates the Finance Act. The definition of —consideration is as follows:-
>
> > 2(d) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise."
>
> 24. What follows from the aforesaid decisions of the Supreme Court in Bhayana Builders and Intercontinental Consultants, and the decision of the Larger Bench of the Tribunal in Bhayana Builders is that —consideration must flow from the service recipient to the service provider and should accrue to the benefit of the service provider and that the amount charged has necessarily to be a consideration for the taxable service provided under the Finance Act. Any amount charged which has no nexus with the taxable service and is not a consideration for the service provided does not become part of the value which is taxable. It should also be remembered that there is marked distinction between —conditions to a contract‖ and

---

[2] Service Tax Appeal No. 50567 of 2019 decided by 51651/2020 dated 22 December 2020

—considerations for the contract. A service recipient may be required to fulfil certain conditions contained in the contract but that would not necessarily mean that this value would form part of the value of taxable services that are provided.

25. It is in the light of what has been stated above that the provisions of section 66E(e) have to be analyzed. Section 65B(44) defines service to mean any activity carried out by a person for another for consideration and includes a declared service. One of the declared services contemplated under section 66E is a service contemplated under clause (e) which service is agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act. There has, therefore, to be a flow of consideration from one person to another when one person agrees to the obligation to refrain from an act, or to tolerate an act, or a situation, or to do an act. In other words, the agreement should not only specify the activity to be carried out by a person for another person but should specify the:

(i) consideration for agreeing to the obligation to refrain from an act; or
(ii) consideration for agreeing to tolerate an act or a situation; or
(iii) consideration to do an act.

26. Thus, a service conceived in an agreement where one person, for a consideration, agrees to an obligation to refrain from an act, would be a 'declared service' under section 66E(e) read with section 65B (44) and would be taxable under section 68 at the rate specified in section 66B. Likewise, there can be services conceived in agreements in relation to the other two activities referred to in section 66E(e).

27. It is trite that an agreement has to be read as a whole so as to gather the intention of the parties. The intention of the appellant and the parties was for supply of coal; for supply of goods; and for availing various types of services. The consideration contemplated under the agreements was for such supply of coal, materials or for availing various types of services. The intention of the parties certainly was not for flouting the terms of the agreement so that the penal clauses get attracted. The penal clauses are in the nature of providing a safeguard to the commercial interest of the appellant and it cannot, by any stretch of imagination, be said that recovering any sum by invoking the penalty clauses is the reason behind the execution of the contract for an agreed consideration. It is not the intention of the appellant to impose any penalty upon the other party nor is it the intention of the other party to get penalized.

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

the appellant is that the 18 ST/50567/2019 other party complies with the terms of the contract and a penalty is imposed only if there is non-compliance.

29. The situation would have been different if the party purchasing coal had an option to purchase coal from 'A' or from 'B' and if in such a situation 'A' and 'B' enter into an agreement that 'A' would not supply coal to the appellant provided 'B' paid some amount to it, then in such a case, it can be said that the activity may result in a deemed service contemplated under section 66E (e).

30. The activities, therefore, that are contemplated under section 66E (e), when one party agrees to refrain from an act, or to tolerate an act or a situation, or to do an act, are activities where the agreement specifically refers to such an activity and there is a flow of consideration for this activity.

31. In this connection, it will be useful to refer to a decision of the Supreme Court in **Food Corporation of India versus Surana Commercial Co. and others**[3]. The Supreme Court pointed out that if a party promises to abstain from doing something, it can be regarded as a consideration, but such abstinence has to be specifically mentioned in the agreement. The relevant portion of the judgment is reproduced below:

> **—Under the main agreement, a party had contracted for the conversion of whole arhar grain into dal. Subsequently, by another supplemental agreement, the party agreed to upgrade the dal. It was held that as soon as the first agreement was complied with and dal was delivered, the contract came to an end and the supplemental agreement, which was made subsequently, was a separate and independent agreement. In this agreement, there was no consideration to be given to the promissor and thus that agreement could not be enforced in law. It was claimed that in the supplemental agreement consideration was that the bank guarantees were not to be encashed, but it was found that there was no mention of such a consideration in the supplemental agreement. Although if a party promised to abstain from doing something, it could be regarded as consideration for the contract, but in the present case there was no such case of abstinence and there was no consideration for supplemental contract." (emphasis supplied)**

32. In the present case, the agreements do not specify what precise obligation has been cast upon the appellant to refrain from an act or tolerate an act or a situation. It is no doubt true that the contracts may provide for penal clauses for breach of the terms of the contract but, as noted above, there is a marked distinction between 'conditions to a contract' and 'considerations for a contract'.

---

[3] **(2003) 8 SCC 636 19**

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

6. Compensation can be of two forms : un-liquidated damages or liquidated damages. If the suffering party sues the other in a court and damages are award by the court such damages are un-liquidated damages. The quantum of damages is decided by the court taking into account the facts and circumstances of the case and the damage suffered. Liquidated damages are those damages and which are built into the contract itself. They provide that the defaulting party shall pay to the other a certain amount in case of default. The purpose of the liquidated damages in a contract is to dissuade the parties from reneging from the contract. In other words the liquidated damages are *in terrorem*, i.e., to strongly dissuade the party from defaulting. What is chargeable to service tax under Section 66 E (e) as a declared service is where the very purpose of the contract is tolerance of an Act or a situation. If (A) agrees with (B) to tolerate an act or situation for a consideration, it is covered under Section 66E (e)

as declared service. However, if A agrees with B to do something and fails to do so and pays liquidated damages for his failure, it is not covered under Section 66E(e) as a declared service. What is chargeable to service tax is where the tolerance itself is the purpose of the contract. Liquidated damages are a compensation for failure of the defaulting party to perform as per the contract. Therefore, no service tax can be levied on liquidated damages received under any contract. We find no reason take a different view in this case.

7. The details of the demands and penalties imposed in these appeals are as follows :-

Sl. No	Appeal No.	Issue Involved	Duty Involved	Penalty Imposed
1	ST/50289/2019	• Late Payment Surcharge • Meter Renting Charges • Supervision Charges • Work Contract Service • Non-payment of Service Tax on l ease rent.	Rs.93,47,59,963/-(in respect of 6 SCN by common order)	1) Rs.93,47,59,963 /- under Section78 2)Rs60,000/-under Section70 (1) 3)Rs60,000/-under Section77(2)
2	ST/50168/2019	• Late Payment Surcharge	Rs.183,88,53,751 /-	1) Rs.183,88,53,751 /- under Section78 2)Rs.10,000/- underSection77(1)(a) 3)Rs.10,000/-under Section77(1)(d) 4)Rs.10,000/-under Section77(2).
3	ST/51066/2019	• Liquidated Damages Charges	Rs.4,11,98,996 /-	Rs. 4,11,98,996 /- underSection78
4	ST/50513/2019	• Late payment Surcharge • Meter Renting Charges		Rs. 107,81,05,451 /- under Section 78R/w173,174ofCGST Act,2017.
5	ST/52104/2019	• Meter Rent • Reconnection • Income from Pole used for Cable TV Network	Rs.38,69,89,440 /-	Rs. 38,69,89,440 /- underSection78

8. These issues have already been decided by this Bench in final order dated 14 January, 2021 in respect of the same pattern. Paragraph 26 to 31 of which are reproduced below:-

> "26. The issue as to whether the charges collected in connection with transmission of electricity even after July 01, 2012 would be subjected to tax as according to the Department they would not be exempted under section 66D(k) of the Finance Act, came up for consideration before the Gujarat High Court in **Torrent Power** after referring to the position prior to the introduction of the negative list and the Notifications referred to above and the introduction of the negative list regime w.e.f July 01, 2012, the Gujarat High Court observed as follows:
>
> > "10. **Insofar as the first phase is concerned, the respondents do not dispute that the related/ancillary services to transmission and distribution of electricity are exempt from payment of service tax. The dispute, therefore, relates to the period of the negative list regime and the CGST/SGST regime.**
> >
> > 11. Insofar as the second phase, namely, the negative list regime is concerned, with effect from 1.7.2012, section 65B of the Finance Act, 1994 came to be amended and service tax became leviable on all services, other than those services specified in the negative list. Admittedly, transmission and distribution of electricity by an electricity transmission or distribution utility, finds place in the negative list and, is therefore, not exigible to service tax.
> >
> > 12. The first question that arises for consideration is whether services relating to transmission and distribution of electricity fall within the ambit of clause (k) of section 66D of the Finance Act and, are therefore, exempt. In this regard, it may be noted that prior to the coming into force of the negative list regime, goods and services were exempted by virtue of notifications issued in exercise of powers under sub-section (1) of section 93 of the Finance Act. By virtue of Notification No. 11/2010 dated 27.2.2010, the Central Government exempted transmission of electricity from the whole of service tax leviable thereon under section 66 of the Finance Act; and by virtue of Notification No.32/2010-Service Tax dated 22.6.2010, distribution of electricity came to be exempted from the whole of service tax leviable thereon

under section 66 of the Finance Act. Thus, what was exempt under those provisions was transmission and distribution of electricity, despite which, during the pre-negative list regime, the respondents have considered services related to transmission and distribution of electricity as exempted from service tax by virtue of those notifications. Insofar as electricity meters are concerned, vide circular No.131/13/2010-ST dated 7.12.2010, it was clarified that supply of electricity meters for hire to consumers being an essential activity, having direct and close nexus with transmission and distribution of electricity, the same is covered by the exemption for transmission and distribution of electricity extended under relevant notifications.

13. Thus, 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 would have no bearing inasmuch as the circular only clarifies 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.

14. **It may be noted that insofar as the exemptions prior to the negative list regime as well as post the negative list regime are concerned, it is the transmission and distribution of electricity that has been exempted by virtue of notifications.** During the negative list regime, transmission and distribution of electricity has been placed in the negative list. Therefore, in all the three phases, what was exempted was "transmission and distribution of electricity". **However, while for the prenegative list phase, the respondents considered the services related to transmission and distribution of electricity as exempt under the exemption notifications, for the negative list regime and the GST regime, they seek to exclude such services from the ambit of transmission and distribution of electricity.** From the affidavits-in-reply filed on behalf of the respondents, there is nothing to show as to how the very services, which stood included within the ambit of transmission and distribution of electricity now stand excluded. The sole refrain of the respondents is that in view of the fact that the exemption notification stands rescinded, the clarification also stands rescinded. What is lost sight of is that the clarification was only in respect of electric meters, whereas all related services were included within the ambit of transmission and distribution of electricity and given the benefit of the exemption notifications. Moreover, the clarificatory circular merely clarifies the stand of the Government as regards what would stand included within the meaning of "transmission and distribution services" namely, essential activities having direct and close nexus with the transmission and distribution of electricity. **The**

> **respondents having themselves considered the services in question as being covered by the exemption for transmission and distribution of electricity as such services were essential activities having a direct and close nexus cannot be now permitted to take a U-turn and seek to exclude such services without pointing out any specific change in the nature of the exemptions, except that they are provided under different statutory provisions. In the opinion of this court, the meaning of "transmission and distribution of electricity" does not change either for the negative list regime or the GST regime.** If that be so, the services which stood included within the ambit of transmission and distribution of electricity during the pre-negative list regime cannot now be sought be excluded by merely issuing a clarificatory circular, that too, with retrospective effect. By the clarificatory circular, the respondents seek to give a different interpretation of the very same services as against the clarification issued for the prenegative list regime.
>
> 15. **Thus, from the very manner in which the respondents have treated the services related to transmission and distribution of electricity during the pre-negative list regime, such services would stand covered by the exemption granted to transmission and distribution of electricity by virtue of inclusion of such services in the list of negative services under section 66D (k) of the Finance Act as well as by virtue of exemption notification issued under the CGST Act."**
>
> **(emphasis supplied)**

27. The Gujarat High Court also examined whether services provided with fall within the ambit of bundle services as contemplated under Section 66F(3) of the Finance Act and observed that for the phase relating to the negative list, the services in question would fall within the ambit of bundle services, as contemplated under 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. The service would, therefore, be exempted from payment of service tax. The relevant portion of the order is reproduced below:

> "20. The facts of this case are required to be examined in the light of the above statutory provisions. **In this case, we are concerned with transmission and distribution of electricity being the main services and application fee for releasing the connection for electricity; rental charges against metering equipment; testing fee for**

meters/transformers, capacitors etc.; labour charges from customers for shifting of meters or shifting of service lines; charges for duplicate bills provided by DISCOMS to consumers being related services. The question is whether an element of provision of these services is combined with an element or elements of provision of the main service of transmission and distribution of electricity. **As noticed earlier, the respondents have themselves treated such related/ancillary services as part of the main service of transmission and distribution of electricity for the pre-negative list regime.** Apart, therefrom, considering this issue independently, reference may be made to certain provisions of the Electricity Act. Sections 43 and 45 of the Electricity Act.

22. Thus, 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. Moreover, 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 fall within the ambit of electrical plant as defined under section 2(22) of the Electricity Act. 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. **Evidently 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.**

23. **Besides, a perusal of the GERC Regulations indicates that the services which are sought to be taxed now are the services, which the petitioner is required to mandatorily provide at the rate prescribed by GERC, a statutory authority constituted under the provisions of the Electricity Act. In the opinion of this court, all these services are essential activities which have a direct and close nexus with transmission and**

> **distribution of electricity.** In terms of the earlier clarification dated 7.12.2010 issued vide Circular No.131/13-2010-ST, the Government of India had clarified that an activity, which is an essential activity having direct and close nexus with transmission and distribution of electricity would be covered by the exemption for transmission and distribution of electricity extended under the relevant notifications. Therefore, the taxability of the related/ancillary services are required to be given same treatment as is given to the single service, which gives such bundle its essential character, namely, transmission and distribution of electricity.
>
> 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 subsection (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."**
>
> **(emphasis supplied)**

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

29. Thus, for all the reasons stated above, it is not possible to sustain the levy of service tax on the amount collected by the appellant for late payment surcharge, meter rent and supervision charges.

30. The issue that now remains to be decided is about the levy of penalty on the lease rent collected from the customers. The appellant claims that since it has deposited the lease rent, the levy of penalty may be set aside. It is not possible to accept this

contention of the learned counsel for the appellant. The imposition of penalty under 'lease rent' is, therefore, confirmed.

31. Thus, for all the reasons stated above, the confirmation of demand by the Principal Commissioner on late payment surcharge, meter rent and supervision charges are set aside. The levy of penalty on the lease rent amount is confirmed. The appeal is, therefore, allowed to the extent indicated above".

9. In view of the above, the appeals are disposed of, as below:

(i) In Service Tax Appeal no. 50289 of 2019, the demand of service tax on late payment surcharge meter renting charges and supervision charges are set aside. The demand of service tax on works contract service and lease rent is upheld and the same stands already deposited by the appellant. The penalties for the extent of service tax on works contract service and lease rent is upheld and the remaining penalties are set aside.

(ii) Service tax appeal number 50168 of 2019 is allowed and the impugned order is set aside.

(iii) Service Tax appeal number 51066 of 2019 is allowed and the impugned order is set aside.

(iv) Service tax appeal number 50513 of 2019 is allowed and the impugned order is set aside.

(v) Service tax appeal number 52104 of 2019 is partly allowed. The demand on meter rent and re-connection and dis-connection charges in the impugned order are set aside and

the demand of service tax on rental received from poles use by cable TV network are upheld. The penalties are also upheld only to the extent of this income and the remaining penalty is dropped.

10. All appeals are disposed, as above with consequential relief, if any, to the appellants.

(Order pronounced in open court on 12/04/2022.)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

PK