O/O THE COMMISSIONER (APPEALS), CENTRAL GST & EXCISE,

[illegible] Floor, GST Bhavan,

[illegible] Race Course Ring Road,

[illegible] 360 001

[illegible]

Email: [illegible]

[illegible]

	Appeal / File No.	O.I.O. No.	Date
[illegible]	[illegible]	[illegible]	17.03.2017

[illegible] Order-In-Appeal No.:

[illegible]-APP-[illegible]-2018-19

Date of Order:	18.06.2018	Date of issue:	26.06.2018

Passed by Shri P. A. [illegible], Commissioner, CGST & Central Excise, Kutch(Gandhidham)

[illegible]

In pursuance to Board's Notification No. [illegible]/2017 [illegible] dated 17.10.2017 read with Board's Order No. [illegible], Shri [illegible], Commissioner, CGST & Central Excise, Kutch(Gandhidham) [illegible] Appellate Authority for the purpose of passing orders in respect of appeals filed under Section 35 of Central Excise Act, 1944 and Section 85 of the Finance Act, 1994.

[illegible]

Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, [illegible] / Jamnagar / Gandhidham / Bhavnagar:

[illegible] Name & Address of the Appellants & Respondent:

M/s Gujarat Energy Transmission Corpn. Ltd. Construction Division Near [illegible] Hotel, [illegible] Highway, Limbdi -363 421 Dist.: Surendranagar

[illegible]

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) [illegible]

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) [illegible]

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) [illegible]

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at [illegible] Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para-[illegible] above

(iii) [illegible]

The appeal to the Appellate Tribunal shall be filed [illegible] as prescribed under Rule [illegible] of Central Excise (Appeal) Rules, [illegible] and shall be accompanied [illegible] Rs. 1,000/- [illegible] Rs. 5000/- [illegible] 5 Lac [illegible] in the form of crossed bank draft in favour of Asstt. Registrar of [illegible] public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

(B) [illegible]

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and Shall be accompanied by a copy of the order appealed against [illegible] where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. fifty Lakhs, Rs. 10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

(ii) [illegible]

The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

(iii) [illegible]

(i) [illegible]

(ii) [illegible]

(iii) [illegible]

[illegible]

For an appeal to be filed before the CESTAT, 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, 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, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 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.

(C) भारत सरकार को पुनरीक्षण आवेदन :

Revision application to Government of India:

इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को की जानी चाहिए।

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, 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:

(i) यदि माल के किसी नुकसान के मामले में जब ऐसा नुकसान कारखाने से किसी भंडारगृह या अन्य कारखाने में या किसी भंडारगृह से दूसरे भंडारगृह में माल ले जाते हुए मार्ग में, या किसी भंडारगृह या भंडार में चाहे वह किसी कारखाने में या किसी भंडारगृह में हो माल की प्रक्रिया के दौरान हुई हो।

In case of any loss of goods where the loss occurs 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.

(ii) भारत के बाहर किसी राष्ट्र या प्रदेश को निर्यात किए गए माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के छूट (रिबेट) के मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यात की गई है।

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.

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

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

(iv) अंतिम उत्पाद 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 की धारा 109 द्वारा नियुक्त किए गए हो।

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 such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो-दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी 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.

(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 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 in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

(D) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी की लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। In case, if 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 Appellant 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.

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 के अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट लगा होना चाहिए।

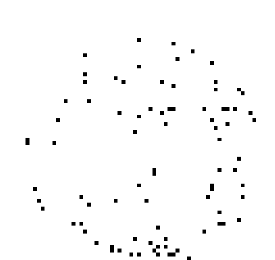
One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-I in terms of the Court Fee Act,1975 as amended.

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता है।

Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbic.gov.in को देख सकते हैं।

For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbic.gov.in.



:: ORDER-IN-APPEAL::

M/s Gujarat Energy Transmission Corporation Ltd., Construction Division Office, 220 KV Substation Compound, N.H. No. 8-A, Limbdi-363421, Surendranagar, Gujarat (hereinafter referred to as the 'appellant') have filed this appeal against O.O No. 59/AC/STAX/DIV/2016-17 dated 17.03.2017 (hereinafter referred to as 'impugned Order') of the Assistant Commissioner of Service Tax Division, Bhavnagar (hereinafter referred to as 'lower adjudicating authority').

2. The briefly stated facts of the case are that the appellant had provided various Services viz. erection work order, consisting of eight sub orders for electrical substation and transmission lines on behalf of M/s. Sardar Sarovar Narmada Nigam Limited (SSNNL), for the purpose of operating pumping station nearby water canal for ease of flow of water from Narmada Canal. The appellant had received payment in instalments from July-2007 to March-2008 and the entire work was completed from December-2007 to October-2009 (27.10.2009). The appellant had voluntarily paid the service tax Rs. 55,14,620/- with interest Rs.55,95,472/- thus totaling to Rs. 1,11,10,092/- on 31.03.2014 after finalization of the bills. After payment of the above Service Tax, it came to the knowledge of the appellant that there was some typographical error in the calculation and payment of Service Tax therefore they filed a refund application for Rs.46,27,373/- with the lower authority on 27.03.2015 for the service tax paid in excess by them. During the course of refund proceedings, the appellant was requested to provide supporting documents / evidence to ascertain / assess their service tax liability and the same was provided by the appellant vide their letters dated 15.07.2015 and 28.07.2015 alongwith various documents. The appellant had considered the date of completion of the different sub projects (sub divided by them for their convenience) as a base for calculation of interest on the tax paid by them belatedly. The respondent department considered the date from which interest liability arose as 5th of the month immediately following the calendar month in which the payments were received towards the value of taxable service by the appellant and not the date of completion of project taken by the appellant and issued Show Cause Notice dated 28.01.2016 for recovery of interest Rs.13,00,967/- and proposing imposition of penalty under Section 76 & 77 of the Finance Act, 1994.

3. The Show Cause Notice dated 28.01.2016 was adjudicated vide the impugned order by the lower adjudicating authority. The lower adjudicating authority confirmed demand of interest of Rs.13,00,967/- under Section 75 of the Finance Act, 1994 and imposed Penalties of Rs.27,57,480/- & Rs.1,000/- upon the appellant under Section 76 & 77 of the Finance Act, 1994 respectively on the grounds that : the appellant had calculated their interest payable at their own and considered the date of completion of the project as the base for arriving at the amount of interest payable; that as per Rule 6 of Service Tax Rules, 1994 as amended vide Notification No. 7/2005 dated 01.03.2005, the service tax was required to be paid by the 5th of the month immediately following the calendar month in which the payments were received towards the value of taxable services; the appellant was liable to pay service tax on the advance payments received towards the value of taxable service upto 31.03.2011 (i.e. till the POT Rules, 2011 came into effect); that the appellant had wrongly calculated the interest liability; that the interest liability of the appellant was worked out to be Rs.68,96,439/- against their payment of Rs.55,95,472/- hence the short paid interest is required to be recovered from the appellant under Section 75 of the Finance Act, 1994; that the appellant's plea that they were not liable to pay Service Tax for the works provided by them citing the Notification No. 45/2010 dated 20.07.2010 does not hold ground since it is settled position of law that any service tax collected will have to be deposited to the Central Government exchequer; that it cannot be believed that the appellant was not aware of

Notification no. 45/2010 cited by them at the time of payment; that the appellant could have sought/consulted the department for any clarification; that it is settled position of law that interest is levied at applicable rates on any delayed payments of duty and relied on Apex Court's decision in Pratibha Processors Vs. UOI reported at 1996 (83) ELT 12 (SC); that the appellant failed to pay due tax at material time and by paying the tax without paying consequent interest hence liable to be penalized for failure to pay due tax at material time under Section 76; that the appellant did not paid Service Tax and the short paid interest and the revenue loss is still continuing therefore there is no applicability of Section 73(3); in the instant case, the appellant failed to obtain the Service Tax registration within the required time and as such, has made liable them for penalization under the provisions of Section 77 of the Finance Act, 1994.

4. Being aggrieved by the impugned order, the appellant preferred the present appeal on the grounds that:

(i) the impugned order is bad in law and beyond facts.

(ii) that the appellant had received total Rs. 1,35,10,84,346/- as advance during 2002 to 2009 period in different instalment out of total advance, Rs. 19,00,00,000/- was received prior to 10.05.2005; that the lower authority has erred in law and on facts has raised demand of short paid interest amounting to Rs.13,20,327/- which has arisen due to calculating interest liability for delayed payment of service tax w.e.f. 10.05.2005 (date from which service tax was required to be paid on advance payment also as before that date service tax was not payable on advance receipts) on advance portion amount which was received prior to 10.05.2005 instead of date of completion of provision of service date even though advance payment amount was received prior to 10.05.2005 and notification is not applicable for advance amount received prior to 10.05.2005.

(iii) that no service tax was payable on such services as said service was exempted from payment of tax during the entire tenure from date of receipt of advance to date of completion of project (year 2002 to year 2009) vide notification 45/2010; that the appellant has already file to refund application separately, one for refund of excess payment and second for refund of original amount of service tax as no service tax was payable due to exemption nature of service vide notification no. 45/2010; that as it may while finalizing the bills of SSNNL, the matter was considered as general and regular bills of erection, commissioning etc. and service tax was charged and paid; that it was only after making payment, while considering the period for which payment of service tax was made which was exempted and no service tax was payable by the company; that no service tax was payable by the appellant on service of erection work of electrical substation and transmission lines related to transmission of electricity to SSNNL related to which short interest payment notice was raised; that in absence of applicability of service tax, there is no question of charging interest on delayed payment or penalty for non/short payment of service tax.

(iv) that they filed return for Oct 2013 to March 2014 on 25.04.2014; thus, eighteen months time limit for issuance of SCN expired on 25.10.2015; that the SCN dated 28.01.2016 was time barred as the same was issued beyond eighteen months as prescribed in Section 73(1) of the Finance Act, 1994 and hence not sustainable in law.

(v) that the appellant had suo-moto paid Service Tax with interest and claimed benefit of Section 73(3) hence no penalty u/s 78 is imposable.

(vi) that penalty u/s 77(1)(a) imposed upon them for failure to obtain service tax registration. The GETCO was recognized by the government board during 2005-09 and there was some delay in transfer of business to concerned offices from erstwhile GEB, thus there was delay in obtaining service tax registration; that applicability of service tax on transmission related services was not clear during the period upto year 2010; that the lower authority has wrongly raised penalty for delay in registration and is not sustainable in law and shall be dropped.

(vii) that the appellant have explained in details the reasons/ justification for delay for payment of service tax; that being the government public undertaking company, there could be no intention of tax evasion; that in view of the above no penalty should be imposed upon them.

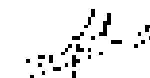
5. Subsequently, in pursuance of Board's Notification No.26/2017-C.Ex.(NT) dated 17.10.2017 read with Board's Order No.05/2017-ST dated 16.11.2017, the instant appeal has been taken on hand for passing Order-in-Appeal.

6. Personal Hearing in the matter was granted and held on 25.04.2018. Shri Dinesh C. Bagthariya, Authorized representative and Shri Sharvesh Tripathi, Account Officer of appellant appeared and reiterated the submission already made in the case and also submitted additional submission at the time of personal hearing, which has been taken on record.

7. I find that in case of instant appeal, the impugned order was received by the appellant on 22.03.2017 and date of filing of appeal is 18.05.2017. Hence, the appeal has been filed within the stipulated time period and there is no delay in filing the appeal. Since appellant have pre-deposited Rs.2,06,900/- vide challans No. 20256 dated 10.05.2018 hence condition of pre-deposit is also fulfilled. therefore, I proceed to decide the Appeal.

8. I have carefully gone through the records placed before me, appeal memorandum and the various submission made orally as well as in writing during the personal hearing. I proceed to decide the appeals on merits. The issue to be decided is whether the appellant is liable to pay interest and penalty as imposed by the lower authority for the services provided by them for the advances received by them and services provided & work completed by them for the period July-2007 to March-2009 and December-2007 to October-2009 respectively.

9. On going through the impugned order, I find that the chronology of the events in the instant case is strange. The appellant had received advance from their service receiver for the period July-2007 to March 2009, the work was completed in the phased manner during the period December-2007 to October-2009, Service Tax was paid on 31.03.2014. thus, for a long period of July-2007 to March 2014 no service tax was paid by the appellant. I find that during the said period, there were various amendments, which were carried out in the Finance Act in respect of services provided for erection of electrical substation and transmission line work.



10. The main ground of appellant is that the Services provided by them were exempted or on which service tax was not payable at that material time or subsequent period. In this regard, I find that the appellant has mentioned at sub para 1.3(10) of Para I of their Grounds of Appeal 'Annexure-A' that 'while finalizing the bills of RSNNL, the matter was considered as general and regular bills of erection, commissioning etc and service tax was charged and paid'. Thus, it is clear that the appellant has already charged and collected the Service tax from their service receiver and then paid the same to the exchequer though belatedly but paid only after charging and collecting the same.

11. I find that the decision of Hon'ble High Court of Bombay in the case of WESTERN COALFIELDS LTD. VS CESTAT, NEW DELHI – 2015 (288) E.L.T. 203 (Bom.) is squarely applicable in the instant case. Para-8 & 9 of the order are reproduced below:-

"8. After hearing respective counsel and after perusal of records, we find that burden was upon the appellant to rebut presumption under Section 12B. When Section 11B(1) is read along with Section 12B, it is apparent that the Parliament has acted upon the normal course followed in all commercial transactions and therefore, there is a presumption that expenditure incurred by persons like appellant, has been recovered by them while selling their product. Because of this normal business practice, the positive burden of facts to contrary is cast upon the applicant. Therefore, Section 11B(1) requires person claiming refund to produce along with his application for refund, documentary or other evidence showing that incidence of such duty had not been passed by him to any other person. Here, the findings concurrently recorded show that the appellant did not exhibit any such documentary or other material. Hence the application under Section 11B(1) itself was not complete.

9. The judgment of Karnataka High Court in the case of CCE, Bangalore-II v. Karnataka State Agro Corn. Products Ltd. (supra) shows that in para 6 of judgment of that Court, judgment of the Hon'ble Apex Court in the matter of Mafatlal Industries Limited v. Union of India & Ors. reported at 1997 (5) SCC 536 = 1997 (89) E.L.T. 247 (S.C.) has been looked into and a finding has been recorded that there cannot be any unjust enrichment by State Government. The said objection of department was, therefore, not accepted. The facts there show that food products manufactured by assessee were supplied to various departments of Government and while clearing those articles, assessee raised invoice and collected excise duty for making it over to Central Government. Thereafter it was found that the assessee was not liable to pay Central Excise duty. It then sought refund and the refund claimed was rejected. Appeal against it was also rejected and CESTAT, Chennai, then allowed further appeal of the assessee. After that appeal was allowed, the Assistant Commissioner examined the issue and rejected refund on the ground of unjust enrichment. Then again appeal reached Tribunal, which ordered refund. This order of refund was questioned before the High Court. Thus, entitlement to refund had already crystallized and thereafter the refund was being refused on the ground of unjust enrichment. It is, therefore, clear that view taken is in peculiar facts. The perusal of judgment of the Hon'ble Apex Court delivered later in the case of State of Maharashtra v. Swanstone Multiplex Cinema Private Limited, reported at (2009) 8 SCC 235, already shows the law that neither tax levier (State) nor tax collector is entitled to retain such duty. The above judgment of Karnataka High Court, therefore, has no application in present facts. The principle of unjust enrichment is therefore relevant here & needs to be applied."

12. Thus, from the above, it is clear that Not passing of burden of taxes to consumer is an exception. I find that in the instant case, the appellant have themselves informed that the Service tax was charged and collected by them. It is also affirmed in the above order that Neither tax levier (State) nor tax collector is entitled to retain such duty

13. I find that the appellant had collected and paid the service tax levied though not required at that material time. Since, the Service Tax has already been collected by the appellant, Section (73A) stipulates that any amount collected as Service Tax is to be paid to the Government forthwith.

14. Further the appellant relies heavily on Notification 45/2010 dated 20.07.2010. Appellant's main contention is that they are not liable to pay service tax in view of the above notification. Text of the Notification 45/2010 dated 20.07.2010 is reproduced below:-

> New Delhi, the 20 July, 2010
>
> **Notification No. 45/ 2010-Service Tax**
>
> G.S.R. 621. 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.
>
> [F. No. 358/ 1/2010 - TRU]

I find that the Notification 45/2010 has been issued on 20.07.2010 and as the services related to transmission and distribution & transmission of electricity which were not being taxable according to the practice upto the period mentioned in the notification were not required to be paid. In the instant case, the appellant has collected the service tax from their service recipient for the period mentioned in the above Notification and deposited with the government on 31.03.2014. I find it appropriate that appellant can not withhold the service tax collected with themselves.

15. I find that the services provided and amount collected by the appellant for the same upto October-2008 and Service Tax was paid by them on 31.03.2014. I find that return for Oct 2013 to March 2014 were filed on 25.04.2014 and the Show Cause Notice was issued on 28.01.2016, thus the SCN was issued beyond even extended period of limitation. I also find that the Show Cause Notice could not have been issued after issuance of Notification No. 45/2010 dated 20.07.2010 as the period for which exemption is granted in the Notification is applicable in the instant case.

16. I hold that the demand of interest confirmed vide the impugned order inappropriate as service tax demand prior to the dates mentioned in Notification No. 45/2010 can not be made, hence interest.

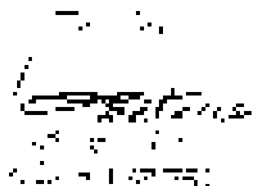
17. Regarding Penalty under Section 78 of the Finance Act, 1994, I hold that the demand of Service tax or interest thereon is inappropriate as discussed in foregoing paras, hence no penalty is imposable in the instant case.

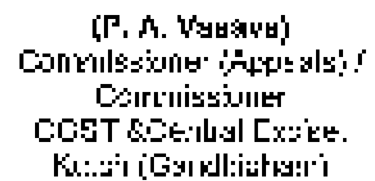
18. Regarding penalty under Section 77 of the Finance Act, 1994 for not obtaining service tax registration at the material time, the appellant is Government Undertaking Company, therefore, I find that the explanation submitted by the appellant that their Company was formed but not recognized by the government board hence there was

delay in obtaining service tax registration is acceptable. I hold that no penalty is required to be imposed on appellant under Section 77 of the Finance Act, 1994.

19. In view of the above, I hold that the impugned order issued by the lower authority is not tenable in law and is required to be quashed. I allow the appeal filed by the appellant.

20. The appeal is disposed of in the above terms.





(P. A. Vasava)
Commissioner (Appeals) /
Commissioner
CGST &Central Excise,
Kutch (Gandhidham)

F. No. V.2/198/BVR/2017 Date: 19.03.2018

By R.P.A.D.

To,
M/s. Gujarat Energy Transmission Corporation Ltd.,
Construction Division Office,
220 KV Substation Compound,
N.H. No. 8-A, Limbadi,
Surendranagar-363421

Copy to:

1) The Principal Chief Commissioner, CGST &Central Excise, Ahmedabad.
2) The Dy./Asst. Commissioner, Central Excise, Rural Division, Bhavnagar.
3) The Dy. / Asst. Commissioner (Systems), H.Q., Bhavnagar – for uploading on website.
4) Guard File