



::आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE



द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan.

रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

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रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O No.	दिनांक / Date
	V2/320 /RAJ/2017	01/ST/2017-18	12.04.2017

ख अपील आदेश संख्या (Order-In-Appeal No.):

RAJ-EXCUS-000-APP-103-2018-19

आदेश का दिनांक / Date of Order:	24.05.2018	जारी करने की तारीख / Date of issue:	25.05.2018
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कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित। /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham :

घ **अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name&Address of the Appellants & Respondent :-**
M/s. Hi-Tech Transpower P. Ltd., 10, Navarangpara Opp : Prima Product Mavdi Plot ,Rajkot 360 004

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। /
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है। /

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) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामलों में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए। /

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) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- 380016 को की जानी चाहिए। /

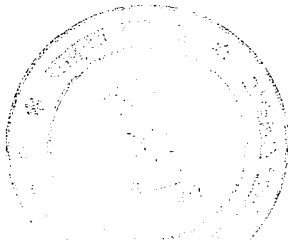
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, व्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac.. 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated 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) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, व्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

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 (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- 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/-.



- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / 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.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होंगे।
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, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना 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-35B ibid:
(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। / 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 क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी हैं। / 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 उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो झूठी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न. 2), 1998 की धारा 109 के द्वारा नियत की गई तरीक़ा अथवा समयावधि पर या बाद में पारित किए गए हैं। / 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 उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संश्लेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की 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 रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया 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 है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिख पट्टी 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 various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, not withstanding 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 lakh fee of Rs. 100/- for each.
(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। / One copy of application or O.I.O. as the case may be, and the order of the adjudicating 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 संबन्धित 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.cbec.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.cbec.gov.in

::ORDER IN APPEAL ::

M/s. Hi- Tech Tranpower P Ltd, 10, Navrangpara, Opp. Prima Product, Mavdi Plot, Rajkot 360004 (hereinafter referred to as "Appellant") filed present appeal against Order-In-Original No. 01/ST/2017-18 dated 12.04.2017 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Service Tax Division, Rajkot (hereinafter referred to as "the lower adjudicating authority"): -

2. The brief facts of the case are that during the course of audit of the records of the Appellant, it was found that appellant provided services of erection of structure and equipments of 66KV Electric Transmission Line but did not pay service tax on the services provided during 2011-12 to 2012-13 (upto Aug, 2012). Show Cause Notice dated 3.1.2017 (hereinafter referred to as "the SCN") was issued to the appellant demanding service tax of Rs. 28,07,109/- under Section 73 of the Finance Act, 1994 (hereinafter referred to as "the Act") along with interest under Section 75 of the Act and penalty on under Section 76, 77 & 78 of the Act. The lower adjudicating authority vide impugned order confirmed demand of service tax of Rs.28,07,109/- along with interest and imposed penalty of Rs.28,07,109/- under Section 78 of the Act with option to pay reduced penalty and also imposed penalty of Rs. 10,000/- under Section 77(2) of the Act.

3. Being aggrieved with the impugned order, the appellant preferred present appeal, *inter-alia*, on the following grounds: -

(i) Impugned order travelled beyond the scope of SCN inasmuch as SCN alleged providing of works contract services whereas it is held in the impugned order that the Appellant had provided the services of "Erection Commissioning and Installation services".

(ii) Laying electric cables under or alongside roads as well as laying of electric cables between grids/ substations/ transformer stations enroute are both exempted from service tax as clarified by CBEC vide Circular No. 123/5/2010-TRU dated 24.05.2010; that work orders reproduced in the impugned order shows that Appellant had erected transmission lines and conducted testing thereof; the testing is an integral part of laying such lines; that the work done by them is duly covered by Sl. No.3 of the table under CBEC Circular dated 24.05.2010; that merely because the appellant was required to carry out the testing of transmission lines laid by them would not remove them from the exemption meant for laying of electric cables; that as per Notification 11/2010-ST dated 27.02.2010, taxable service provided to any person by any other person for transmission of electricity is exempted from whole of service tax; that as much as adjudicating authority has admitted in the impugned

order that services provided by appellant was used for transmission of electricity, services are covered under Notification No.11/2010-St dated 27.02.2010.

(iii) Demand was time barred inasmuch as the appellant was under a bonafide belief that service provided by him in terms of work orders referred in the impugned order is squarely covered under the notification dated 27.02.2010 and as explained by CBEC vide Circular No. 24.05.2010.

(iv) Cum tax benefit was available to the Appellant in view of Hon'ble CESTAT's decision in the case of M/s. Advantage Media Consultant reported as 2008(10) STR 449 (Tri-Kolkata).

(v) No penalty was imposable under Section 78 of the Act as suppression of facts etc. is not invokable in their case.

4. Personal hearing in the matter was attended by Shri Vikas Mehta, Consultant, who reiterated the grounds of Appeal; submitted that Para 13 of the impugned order accepts that the services provided by them are towards erection, testing and commission of 66KV Transmission lines; that whether they have provided such services to M/s. GETCO or to any other person is not relevant factor; that Para 12 & 12.1 also accept that they have provided services of erection, testing & commission of Transmission lines, which are exempted vide Notification No. 11/2010-ST dated 27.02.2010; that demand is time barred as submitted by them in ground (E) of the Appeal Memorandum as because CBEC Circular dated 24.05.2010 clarified that the services provided for transmission of electricity are exempted.

4.1 Assistant Commissioner, CGST Division-1, Rajkot vide his letter F. NO. IV/ 15-05/ ST/ REC 17-18 dated 09.01.2018, submitted that: -

(i) As per the work order, there is no transfer of title of goods in the services provided by the Appellant and hence services are in the nature of 'Services' only.

(ii) Contract Value is excluding service tax and to be reimbursed on production of proof to M/s. GETCO and it cannot be said that appellant was not liable for service tax.

(iii) There is no mention in the work orders that the work was relating to laying of Transmission Lines between the grids and sub-stations, on the contrary, it refers erection, testing and commission of the Transmission of lines.

(iv) Appellant provided the services towards erection, testing and commissioning services, which were used by M/s. GETCO for Transmission of Electricity and hence, no services were provided by the Appellant for the transmission of electricity.

FINDINGS: -

5. I have carefully gone through the facts of the case, the impugned order and submissions of the appellant in their appeal memorandum. The issue to be decided in the present appeal is whether the impugned order, in the facts of this case, confirming demand of service tax and imposing penalty on the appellant is correct or not.

6. The Appellant's main contentions are that the services provided by them are for Transmission of electricity and hence, exempted from service tax in terms of Notification 11/2010-ST dated 27.02.2010, which has also been clarified at Sl. No. 3 of CBEC Circular No.123/5/2010-TRU dated 24.05.2010. The lower adjudicating has discussed the work order to hold that the Appellant has not provided services of laying of electrical cables. I find that the contracts under appeal are given to the appellant by Gujarat Energy Transmission Corporation Limited, Amreli Division for Erection of 66KV D/C Tower LILO at 66KV Jambarvala S/S from 66KV Malpara-Gadhada-Paliyad S/C Tower line on Panther Conductor; Erection of 66KV D/C Tower line on DOG conductor for LILO to proposed 66KV Kadiyali S/S; Erection, testing and commissioning of 66KV S/C H-frame structure from 66KV Dihor S/S to 66KV Trapaj S/S on Dog conductor; Erection of 66KV Rojmal S/S from existing 66KV Gadhada-Paliyad S/C Tower line on Panther Conductor, which are nothing but for providing various services including civil works, etc. but essentially in relation to transmission of electricity only.

6.1 I also find that providing any taxable service to any person by any other person for transmission of electricity is exempted from whole of service tax under Notification 11/2010-ST dated 27.2.2010, which is reproduced as under: -

Exemption to services provided for transmission of electricity:

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.

6.2 I find that Notification No. 11/2010-ST dated 27.02.2010 provides exemption to any taxable service provided by any person to any other person as long as it is related to transmission of electricity. I find that no specific nature of service has been mentioned in the said Notification but the words employed in the Notification is that 'taxable service provided for transmission of electricity' and therefore, I am of the

considered view that the said Notification provided exemption to all taxable services provided for transmission of electricity and hence, exemption from service tax to the appellant cannot be denied. I also find that the language employed in the said Notification is clear and unambiguous as it provides exemption to all taxable services provided in relation to transmission of electricity. Therefore, I hold that demand of service tax confirmed by the lower adjudicating authority vide impugned order is neither correct nor legal & proper.

6.3 My above view gets support from the Final Order of the Hon'ble CESTAT, Mumbai in the case of Kedar Constructions reported as 2015 (37) STR 631 (Tri. – Mumbai), which held as under: -

6. As regards the demand for the period w.e.f. 27-2-2010, the said exemption is available if the taxable services are rendered for transmission of electricity. As held by the Hon'ble Apex Court in the case cited supra the expression "for" means 'for the purpose of'. As per the definition of transmission (given in the Electricity Act, 2003), it covers a very wide gamut of activities including sub-station and equipments. Therefore, the various activities undertaken by the appellant, though classifiable under Commercial or Industrial Construction prior to 1-6-2007 or under works contract service on or after 1-6-2007, would be eligible for the benefit of exemption as held by this Tribunal in the case of Noida Power Co. Ltd., Pashchimanchal Vidyut Vitran Nigam, Purvanchal Vidyut Vitran Nigam and Shri Ganesh Enterprises cited supra. Therefore, the confirmation of Service Tax demand in respect of the construction, maintenance or repair activities undertaken by the appellant so far as it relates to the transmission/distribution of electricity cannot be sustained in law.

(Emphasis supplied)

6.4 The Hon'ble CESTAT, New Delhi in the case of M.P. Power Transmission Co. Ltd. reported as 2011 (24) STR 67 (Tri. – Del.) has also held as under: -

9. We find that Notification No. 11/10-S.T., dated 27th February, 2010 exempts services relating to transmission and distribution of electricity provided by a person (service provider) to any other person (service receiver) from 27-2-2010. Further for the past period upto 26-2-10, Ministry has issued Notification No. 45/2010 dated 20-7-10 exempts such service invoking provision under Section 11C of the Central Excise Act read with Section 83 of the Finance Act, 1994.

(Emphasis supplied)

6.5 The Hon'ble CESTAT, New Delhi in the case of Noida Power Co. Ltd. reported as 2014 (33) STR 383 (Tri. – LB) has in respect of similar Notification providing exemption to services for distribution of electricity, held as under: -

5. On true and fair analysis of the Exemption Notification dated 22-6-2010 and the immunity Notification dated 20-7-2010, the conclusion is

compelling that all taxable services provided in relation to distribution of electrical energy are exempt from the liability to Service Tax. The expression "in relation to" is of wide import and indicates all activities having a direct and proximal nexus with distribution of electrical energy. Distribution of electricity energy cannot be effectively accomplished without installation of sub-stations, transmission towers and installation of meters to record electricity consumption for periodic billing and recovery of charges.

(Emphasis supplied)

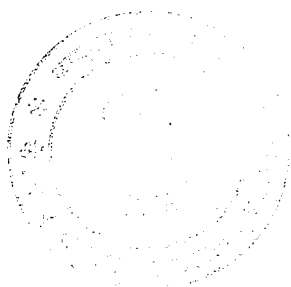
6.6 I, therefore, hold that the impugned order confirming demand for the period from 1.4.2011 to 30.6.2012 is not correct, legal and proper. Hence, I have no option but to set aside the demand from 1.4.2011 to 30.6.2012 and I do so.

6.7 However, I find that Notification No. 11/2010-ST dated 27.02.2010 has been rescinded vide Notification No. 34/2012-ST dated 20.06.2012 w.e.f. 1.7.2012 and hence, the demand for the period from 1.7.2012 to 31.8.2012 is required to be upheld. Accordingly, I confirm demand of Rs. 55,830/- as stated in Para 4.4 of the impugned order for the period from 1.7.2012 to 31.8.2012 with consequential interest under Section 75 of the Act, which needs to be paid by the appellant immediately.

7. As regards, cum-tax benefit, it is an admitted fact that the appellant did not charge and have not collected any amount towards service tax separately as per the work orders, hence consideration is not inclusive of service tax. Since no service tax has been charged and no service tax was collected from the customers benefit of cum tax value can't be extended to the appellant for the period from 1.7.2012 to 31.8.2012 as held by the Hon'ble Supreme Court in the case of Amrit Agro Industries reported as 2007 (210) E. L. T. 183 (SC).

8. I find that the appellant has not discharged service tax liabilities even when the exemption was rescinded and the non-payment of service tax was detected by the department only at the time of audit. Therefore, penalty equal to service tax not paid is imposable on the appellant in terms of Section 78 of the Act only for the period from 1.7.2012 to 31.8.2012.

9. I find that the appellant has failed to assess service tax liability on services rendered for transmission of electricity for the period 1.7.2012 to 31.8.2012 even when the exemption provided under Notification No. 11/2010-ST dated 27.2.2010 was rescinded w.e.f. 1.7.2012 and has not provided correct information in their ST-3 returns, therefore, they are liable to penalty under Section 77(2) of the Act and hence I uphold penalty of Rs. 10,000/- imposed under Section 77(2) of the Act.



10. In view of the above factual and legal position, I allow appeal for the period from 1.4.2011 to 30.6.2012 and set aside the impugned order in respect of demand, interest and penalty under Section 78 of the Act for this period. However, I uphold demand, interest and penalty under Section 78 of the Act for the period from 1.7.2012 to 31.8.2012 apart from penalty of Rs. 10,000/- under Section 77(2) of the Act.

११. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

11. The appeal filed by the Appellant is disposed off in above terms.

[Handwritten Signature]
24/5/12
(कुमार संतोष)
आयुक्त (अपील्स)

[Handwritten Signature]
25/5/12

By RPAD

To,

M/s. Hi- Tech Transpower P Ltd, 10, Navrangpara, Opp. Prima Product, Mavdi Plot, Rajkot 360004	मेसर्स हाई टेक ट्रांसपावर प्रा ली १० नवरंगपरा, प्रीमा प्रोडक्ट के सामने मवड़ी मेन रोड राजकोट ३६०००४
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Copy to:

- 1) The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone Ahmedabad for his kind information.
- 2) The Commissioner, CGST & Central Excise, Rajkot Commissionerate, Rajkot.
- 3) The Assistant Commissioner, CGST & Central Excise Division-I, Rajkot.
- 4) Guard File.