


<p>आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हॉउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009</p>		<p>Office of the Commissioner of Central Goods &amp; Services Tax &amp; Central Excise, Ahmedabad North, Custom House(1<sup>st</sup> Floor) Navrangpura, Ahmedabad-380009</p>
<p>फ़ोन नंबर./ PHONE No.: 079-2754 4599 फ़ैक्स/ FAX : 079-2754 4463 E-mail:- <a href="mailto:oaahmedabad2@gmail.com">oaahmedabad2@gmail.com</a></p>		

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. STC/15-116/OA/2020

DIN-20211264WT0000666CE6

आदेश की तारीख / Date of Order : 16.12.2021  
जारी करने की तारीख / Date of Issue : 21.12.2021

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV  
आयुक्त / COMMISSIONER

मूल आदेश संख्या / AHM-EXCUS-002-COMMR-42/2021-22

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-42/2021-22

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

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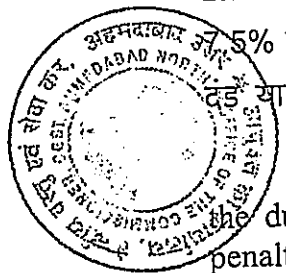
2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण , द्वितीय तल, बाहुमली भवन असरवा, गिरधर नगर पुल के पास, गिरधर नगर, अहमदाबाद, गुजरात 380004 को संबोधित होनी चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan Asarwa, Near Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad, Gujarat 380004.

2.1 इस आदेश के विरुद्ध अपील न्यायाधिकरण में अपील करने से पहले मांगे गये शुल्क के 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है।

An appeal against this order shall lie before the Tribunal on payment of 7.5% of duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

(as per amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)

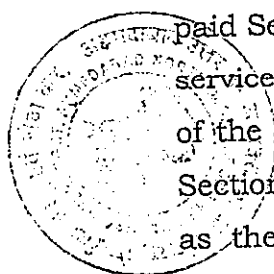


M/S. TORRENT POWER GRID LIMITED, 5<sup>TH</sup> FLOOR, TORRENT HOUSE, OFF. ASHRAM ROAD, AHMEDABAD-380 054 were issued SCN STC/15-116/OA/2020 dated 21.10.2020 DEMANDING THEREIN SERVICE TAX OF RS.7,86,90,419/-.

**BRIEF FACTS OF THE CASE PERTAINING TO THE ISSUEANCE OF SUBJECT SCN ARE AS FOLLOWS;**

M/s. Torrent Power Grid Limited, 5<sup>th</sup> Floor, Torrent House, Off. Ashram Road, Ahmedabad-380054 (hereinafter referred to as "the service provider or assessee") are engaged in the business of providing taxable services and are holding Service Tax Registration No. AACCT2930MSD001.

2. On preliminary verification of Third Party Data shared by CBDT, the Sales/Gross Receipt from Services (Value from ITR) were found to be not tallying with Gross Value of Service Provided, as declared in ST-3 Return for the F.Y. 2015-16. It was observed that there was difference in Value of Services in ITR/TDS and Gross Value of Services provided in ST-3 returns which was to the tune of Rs. 54,26,92,543/-. It therefore appeared that the service provider had less/not discharged their service tax liability of Rs. 7,86,90,419/- on the aforesaid differential amount of Rs. 54,26,92,543/- for the F.Y. 2015-16.
3. The service provider was requested to clarify the above said differential value by submitting the self-certified documentary evidences such as Audited Balance Sheet, copy of Profit & Loss Account, copy of Ledgers, Gross Trial Balance Sheet, ITR, Form 26AS, ST-3 returns, sample sales invoices along with details of all the sales invoices issued from F.Y. 2015-16 to F.Y. 2017-18 (up to June'2017) vide letter DATED 07.10.2020, but the service provider neither produced any documentary evidences of the differential value nor submitted any reply.
4. Accordingly, the service provider appeared to have not discharged their service tax liability on the actual value received towards taxable services provided by them, hence, there appeared to be a short payment of Service Tax of Rs. 7,86,90,419/- during the material period. Further, the service provider appeared to have contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of Service Tax Rules, 1994, inasmuch as they failed to pay Service Tax to the extent of Rs. 7,86,90,419/- as per their ITR/Form 26AS, in such manner and within such period prescribed in respect of taxable services provided/received by them; Section 70 of Finance Act 1994 inasmuch they failed to properly assess their service tax liability under Rule 2(1)(d) of Service Tax Rules, 1994.
5. In view of the above, the service provider appeared to have short paid/not paid Service Tax of Rs. 7,86,90,419/- on the actual value received towards taxable services provided, which appeared to be recoverable under proviso to Section 73(1) of the said Act along with interest under Section 75 *ibid* not paid by them under Section 68 of the said Act read with Rule 6 of Service Tax Rules, 1994, inasmuch as the said service provider appeared to have suppressed the facts from the



department and contravened the provisions with intent to evade payment of service tax.

6. In terms of Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, every person providing taxable service to any person is required to pay Service Tax at the rate specified in Section 66 in such manner and within such period as may be prescribed. In the present case, on the basis of Third party Data/information of CBDT for the F.Y. 2015-16, the service provider has less/not discharged their service tax liability on the actual value received towards taxable services provided at the rate prescribed under Section 66 of the said Act. All these acts of contravention on the part of the service provider appeared to have been committed by way of suppression of the facts by not declaring/not considering the correct value of taxable services provided by them for payment of Service Tax to the Central Government for the period in question, with intent to evade payment of Service Tax and therefore the service tax which was not paid at the material time was required to be demanded under the proviso to Section 73(1) along with interest as per provision of Section 75 of the said Act.

7. All the above acts of contravention as discussed in aforementioned paras on the part of the service provider appeared to be punishable; therefore, they appeared to be liable for penalty under Section 76 of the said Act. Further, as per Section 70 of the said Act, the person liable to pay Service Tax shall himself assess the tax due on the services provided by him and shall furnish a prescribed return as per Rule 7 of the Service Tax Rules, 1994. As they have failed to do so, they appeared to be liable to penalty in terms of Section 77 of the said Act. The penalty under Section 78 of the said Act also appeared to be invocable in the instant case as they appeared to have suppressed the taxable value.

8. The provisions of the repealed Central Excise Act, 1944, the Central Excise Tariff Act, 1985 and amendment of the Finance Act, 1994 have been saved vide Section 174 (2) of the CGST Act, 2017, and therefore the provisions of the said repealed/amended Acts and Rules made there under are enforced for the purpose of demand of duty, interest, etc. and imposition of penalty under Show Cause Notice.

**9. Further, Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarified as under :**

‘2.8 Quantification of duty demanded. It is desirable that the demand is quantified in the SCN, however if due to some genuine grounds it is not possible to quantify the short levy at the time of issue of SCN would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the notice are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg. (Wvg.) Co. Vs. UOI, 1982 (OIO) ELT 0844 (MP), the Madhya Pradesh High Court at Jabalpur affirms the same position that merely because necessary particulars have not been stated in the show cause notice, it could not be a valid ground for quashing the notice, because it is open to the petitioner to

seek further particulars, if any, that may be necessary for it to show cause if the same is deficient.'

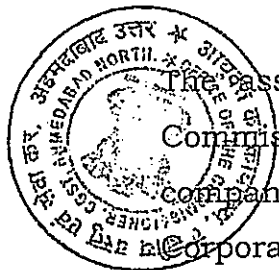
10. From the facts and circumstances as narrated above, it appeared that the "Total Amount Paid/Credited under Section 194C, 194H, 194I, 194J OR Sales/Gross Receipts from Services (From ITR)" for the **F.Y. 2016-17 to FY2017-18 (up to June'2017)** had not been disclosed thereof by the Income Tax Department, nor the reason for the non-disclosure was made known to this department. The said assessee had also failed to provide the required information even after the issuance of letters from the Department. Therefore, the assessable value for the year **F.Y.2016-17 to F.Y. 2017-18 (up to June'2017)** was not ascertainable at the time of issuance of Show Cause Notice. Consequently, if any other amount was to be disclosed by the Income Tax Department or any other sources/agencies, against the said assessee, action was to be initiated against them under the proviso to Section 73(1) of the Finance Act, 1994 read with Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017, **in as much as the Service Tax liability arising in future, for the period F.Y. 2016-17 to F.Y. 2017-18 (up to June'2017)** covered under this Show Cause Notice, was to be recoverable from the said assessee accordingly.

11. Therefore, a Show Cause Notice No.STC/15-116/OA/2020 dated 21.10.2020 was issued by the Principal Commissioner, Central Excise & CGST, Ahmedabad North to M/s. Torrent Power Grid Limited, 5<sup>th</sup> Floor, Torrent House, Off Ashram Road, Ahmedabad-380009, asking them as to why :

- a) The demand of Service tax to the extent of Rs. 7,86,90,419/- (Rs. Seven Crore Eighty Six Lakh Ninety Thousand Four Hundred Nineteen Only) not paid/short paid by them should not be confirmed and recovered from them under the provisions of Section 73 of the Finance Act, 1994 read with Notification dated 27.06.2020 issued from F.No.CBEC-20/06/08/2020-GST ;
- b) Service Tax liability for financial year 2016-17 and 2017-18 (up to June,2017) ascertained in future should be demanded and recovered under proviso to sub section (1) of the Section 73 of the Finance Act,1994;
- c) Recovery of Interest should not be demanded and recovered at the appropriate rate under the provision of Section 75 of the Finance Act, 1994;
- d) Penalty should not be imposed upon them under the provisions of Section 77(1)(c) and 77(2) of the of the Finance Act, 1994.
- e) Penalty should not be imposed upon them under the provisions of 78 of the Finance Act, 1994.

**12. DEFENCE REPLY:**

The assessee vide letter dated 20.11.2020 received on 25.11.2020 in the Commissionerate submitted their written submission. They stated that the company had joint venture between Torrent Poser Limited and Power Grid Corporation of India Limited; that they were engaged in the business of



transmission of electricity, and they had obtained Transmission License from Central Electricity Regulatory Commission (CERC). They have submitted that as a part of its joint venture they have set up transmission system on Build, Own, Operate and Maintain (BOOM) concept and the entire project was executed in three phases, Phase I:- LILO of Vapi-Jhanor line, Phase II:- 400 kV D/C line from SUGEN to a point near Gandhar with LILO of one circuit of existing Gandhar - Dehgam 400 kV D/C line and Phase III:- 400 kV Line from LILO point on Jhanor (Gandhar)-Dehgam line to 400 kV S/S of PGCIL at Pirana (Kamod). The assessee have been issued a tariff order by the Central Electricity Regulatory Commission, the transmission tariff has been fixed which can be earned by the company. They have submitted that in response to the notice dated 7th October 2020 they had prepared a reply and had proceeded to submit the same vide letter dated 22nd October 2020, however, when they went to submit the reply, it was informed to them that since a show cause notice was already issued, the reply was not going to be accepted. The assessee were electricity transmission utility and they had obtained transmission license from CERC, the activity of the assessee have been unequivocally included in the negative list of service tax. They have submitted that, only liability to pay service tax arises under the provisions of the reverse charge mechanism which was not in dispute and that the assessee had discharged their liability to pay service tax under reverse charge and the same has been duly incorporated in the service tax returns in form ST 3. They have further submitted that, there was only one source of revenue for the Company i.e. income from transmission of electricity which was further substantiated from the audited financial statements as well as reconciliation of income, copy of income tax return along with form 26AS. They have submitted that there was no case of suppression of any fact knowingly or unknowingly since the business of the assessee was regulatory business, and the entire documents and books of account are duly verified by the Government authorities under Electricity Act.

They have submitted that it was not the fault of the assessee that show cause notice had to be issued. In response to the letter dated 07 Oct 2020 of the department a suitable reply was about to be filed but was not accepted by the department due to the fact that show cause was already issued without waiting for their response. The assessee submitted that they have received the licence for the transmission of electricity, and it falls within the four corners of the definition of Electricity transmission utility which was undisputed. They have submitted that after 1st July 2012, the negative list came into force under the Finance Act and whatever activities and services as stated in the negative list were exempt and the remaining shall stand taxable. Therefore, tax liability would arise only in the event when the service provided was not forming a part of the negative list.

They have submitted that, the case which were germane to the issue, it follows that the respondent company holds a valid Transmission licence and that by virtue of the items ingrained in the negative list, the activity of the respondent

company falls in the said negative list. Once the activity was a part of the negative list, the levy of service tax automatically gets annulled.

"Sec 66D (k) Transmission or distribution of electricity by an electricity transmission or distribution utility"

They have submitted photocopy of the tariff order, and the notification issued by the Central Electricity Regulatory Commission New Delhi. Hence, the show cause notice was liable to be dropped as the activity was exempted and falls under the negative list and accordingly no liability arises. They have stated that since the income exigible to tax is NIL it logically follows that there was no difference between the income reported in Income Tax Return and as declared in the service tax returns in form ST 3. The allegation of difference of turnover lacks total merit and so, the show cause notice must be quashed and set aside as there is no difference and as such no income on which service tax was payable.

They have submitted that extended period of limitation was not invocable in the present case. A cursory glance at the provision of Sec 73 would make it lucidly clear that the case of the assessee falls outside the tentacles of allegations mentioned in the show cause notice and that the show cause notice deserves to be declared as a nullity and be quashed and set aside. They have submitted that, there was no suppression of facts in the regulated business which is carried on, there was no intention to evade payment of service tax, there were no mala fides and the notice also doesn't prove any mala fides, and that in the present case no service tax was payable since the activity falls under the negative list. The show cause notice had not brought on record any evidence to show that the respondent company has suppressed any fact from the Department. Therefore, the show-cause notice was liable to be dropped forthwith. When the activity falls in negative list, there could not be any allegation of suppression of facts in the present case. They have submitted that show cause notice was framed based on the data received from the Income Tax Department and there was no fact finding or recording of reasons by the Ld. Service Tax Officer. Based on the facts of the case, it becomes apparent and evident that the activity of the assessee is covered under the negative list and therefore exempted. When there was no difference or differential liability the requirement of intimation of the same to the Department never arises, the foundation of the notice was illegal and that the notice was barred by limitation.

They assessee have further submitted that, notice was mere sophistry and by some self-propounded theory, the extended period of limitation was invoked and the show cause notice was being illegally thrust which deserves to be quashed and set aside. They have relied upon the following judicial pronouncements by the

following adjudicating authorities;

Decision of Hon'ble CESTAT AHM in Adani Power Limited [82 GSTR 150(CESTAT AHD)];-

Decision of the honourable CESTAT MUM, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL]

RELIANCE INDUSTRIES LTD [2016] 95 VST 551 (CESTAT-Mum):-



Decision of the honourable Supreme Court in the case of NIRLON LTD. [2015] 32 GSTR 319 (SC):-  
Decision of the Hon'ble Supreme Court in the case of UNIWORTH TEXTILES LTD. [2013] 19 GSTR 246 (SC):-

Decision of the honourable CESTAT New Delhi CHHATTISGARH STATE INDUSTRIAL DEVELOPMENT CORPORATION LTD [2016] 95 VST 61W (CESTAT-New Delhi):-

Decision of the Hon'ble Supreme Court in the case of Continental Foundation 2007 (216) EL T 177 (SC)

The assessee have further submitted that even if there was a failure to pay any tax for any reason whatsoever then also it could never be inferred that there was "suppression" and extended period of limitation can't be invoked. They urged that omission to inform the department cannot be equated with suppression of facts. The assessee has further fortified their view by referring to the salutary decision of the Hon'ble Delhi High Court in the case of Bharat Hotels Limited. They have submitted that, the ratio of the said decision squarely applies to the instant case and that there was a bona fide belief that service tax was not payable in view of the specific exemption provided in the negative list and the applicability of the provisions of Sec 66D(k) which made the service exclusively exempt. Hence, the extended period of limitation can't be invoked and that the show cause notice was barred by limitation. There was no suppression of fact in the instant case. It was due to the fact that the Department refused to accept the reply to the notice dated 07<sup>th</sup> October 2020, that a show cause notice had been served which in pith and substance proposes to make a service in the negative list a taxable one. They have submitted that , the sheer fact that the activity falls in the negative list was a ground enough to negate the allegation of suppression and therefore the extended period of limitation can't be invoked and that the show cause notice was time barred and must be quashed and set aside. They have relied upon the decision of the Hon'ble Supreme Court in the case of Continental Foundation VIs CCE 2007 (216) ELT 177 (SC). They have submitted that the contents of the show cause notice and facts of the case unequivocally support the fact that there was no liability to pay tax in the instant case on the revenue earned as alleged in the show cause notice. When the tax payable is Rs.0 the requirement of charging any interest or penalty as a resultant corollary gets extinguished.

They have submitted that, it became translucently clear that there was no mens rea and that penalty could not be imposed. They have relied upon the decision of Hon'ble Supreme Court in the case of Hindustan Steel Limited (25 STC 211), similar view was upheld in the case of Hemchandbhai & Co. v. State of Gujarat (50 STC 274) (Guj HC), R. K James and Jewellery (2014/GSTBI/181), Padmini Products v. Collector of Central Excise (76 STC 241)(S.C). They have submitted that, penalty under any section can't be imposed in the instant case.

They have submitted that, in case of legal debatable issue, penalty can never be imposed, they have relied upon the decision of the, Hon'ble Karnataka High Court in the case of Xerox India limited V. State of Karnataka [71 VST 201] [KARNA TAKA HC] where in it was held that if at all tax was payable due to a legal debatable issue, then penalty can never be imposed in such cases. They have relied upon the cases of Reliance Petroproducts Pvt. Ltd [322 ITR 158] (SC), Additional Commissioner of Income Tax V. Jeev Shah [205 ITR 244] (SC). They have submitted that penalty can be levied only when there was a deliberate act of deception which was missing in the instant case.

They have further submitted that Section 80 of the Finance Act, 1994 also aids in the interpretation that penalty should not be imposed. They have submitted that, the Hon'ble Bombay High Court has held that penalty under section 77 and 78 not mandatory in view of section 80 of the Finance Act, 1994 in the case a) Vinay Bele & Associates 2008 (9) STR 350 (Born), b) Ashish Patil 2008 (10) STR 8 (Born).

They have submitted that Show cause notice may be dropped and that there was no variance in any turnover reported in Income tax return and as declared in Service return in form ST 3.

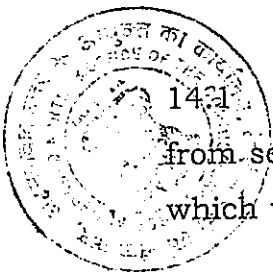
### **13. PERSONAL HEARING:**

The assessee M/s. Torrent Power Grid Limited, Ahmedabad were granted personal hearing on 02.12.2021 to present their case. Shri Soham U. Mashruwala, Chartered Accountant appeared on behalf of the assessee for personal hearing. He referred to the earlier written submissions made by them vide their letter dated 20.11.2020. He submitted that noticee's income is exempted from levy of Service Tax as the noticee is engaged in providing electric transmission service which is exempt for the levy of Service Tax. He also submitted the transmission certificate issued by CERL. He accordingly requested to drop the proceedings and do justice to the assessee.

### **DISCUSSION & FINDINGS:**

14. I have carefully gone through the facts of the case and records available in the case file, which include the SCN, the defense reply dated 20.11.2020 and documents submitted by the assessee.

On going through the SCN, I find that data of Sales /Gross receipt from services as per ITR were shared by the CBDT with CBIC for FY 2015-16, which was then compared with the gross value declared in ST-3 Returns filed





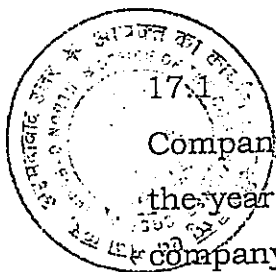
for FY 2015-16 by the assessee. The difference in value of service to the extent of Rs. 54,26,92,543/- was noticed and therefore, the subject SCN for recovery of Service Tax of Rs.7,86,90,419/- was issued. Apart from the aforementioned difference noticed, no other documentary evidence was adduced by the department to substantiate the allegations. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax on the differential value of Rs. 54,26,92,543/- under proviso to section 73(1) of Finance Act, 1944 or not.

15. Thus, first and foremost, to understand the liability or otherwise of the noticee for paying Service Tax, I feel it necessary to understand the activities being carried out by the assessee. I observe that after introduction of new system of taxation of services in negative list regime, any services for a consideration is taxable except those services specified in the negative or exempt list by virtue of mega exemption.

16. I discern that the assessee in his defense reply dated 20.11.2020 has stated that they have rendered service of transmission of electricity. They have contended that Torrent Power Grid Limited is engaged in electricity transmission utility and they have obtained transmission license No.2/Transmission/CERC dated 16.07.2007 from Central Electricity Regulatory Commission, New Delhi. They have submitted that their activity had been unequivocally included in the negative list of service tax under Section 66D (k), they have submitted that only liability to pay service tax arises under provisions of the reverse charge mechanism which was not in dispute and that they had discharged their liability to pay service tax under reverse charge mechanism and the same had been duly incorporated in the ST3 returns. I also find that there is no dispute in this regard. The activity of electricity transmission or distribution utility falls under the Negative List of Services and are exempted from payment of Service Tax under Section 66D (k) of Finance Act, 1994.

17. In order to comprehend the actual nature of service, I would like to take support of the following documents which have been submitted along with their aforementioned defense reply dated 20.11.2020. I would also like to discuss and reproduce the relevant excerpt of the documents.

The assessee is a registered company incorporated under the Company Act. The assessee has submitted the copy of 12<sup>th</sup> Annual Report for the year 2016-17 of the Company, wherein it is discerned/evidenced that "the company is engaged in transmission of power, the company has set up a

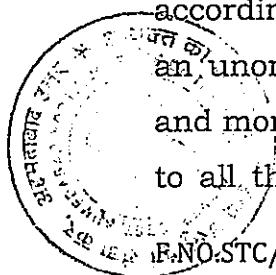


transmission system for evacuation of power from torrent power limited's 1147.5 MW Generation Project near Akhakhoi in District Surat, Gujarat to western region and the system is being to transfer power to its beneficiaries within and outside Gujarat State".

17.2 The assessee has also submitted the 11<sup>th</sup> Annual Report for F.Y.2015-16 & 12<sup>th</sup> Annual Report for F.Y.2016-17 alongwith balance sheet and profit & loss account. I find that the financial statements have been prepared and presented to comply with all material respect with the accounting standards specified under Section 133 of the Company Act read with Rule 7 of the Companies (Accountants) Rules, 2014. The auditor has to make a report, in accordance with Section 143 of Company Act, to the members of the company on the accounts examined by him and on every financial statements which are required by this Act to be laid before the company in general meeting. The report shall after taking into account the provisions of this Act, the accounting and auditing standards and matters which are required to be included in the audit report under the provisions of this Act or any rules made thereunder or under any order made under section 143(11) and to the best of his information and knowledge, the said accounts, financial statements give a true and fair view of the state of the company's affairs as at the end of its financial year and profit or loss and cash flow for the year and such other matters as may be prescribed. Further, the Profit and Loss Accounts for FY 2015-16 and 2016-17 recognises revenue from operations as "Transmission Income Including Incentive".

17.3 The assessee have also submitted the copies of Income Tax Returns in Form ITR-6 for Assessment Year 2016-17 filed with Income Tax Department as required under Section 11 of the Income Tax Act,1962. On perusing these return, I observe that the information about "the nature of company and its business" provided in the returns is shown as "Service sector -others".

17.4 I find that the aforementioned records/ returns are prepared in statutory format and reflect financial transactions, income and expenses and profit and loss incurred by company during a financial year. The said financial records are placed before different legal authorities for depicting true and fair financial picture. Assessee is legally obligated to maintain such records according to generally accepted accounting principles. They cannot keep it in an unorganized manner and the statute provides mechanism for supervision and monitoring of financial records. It is mandated upon auditor to have access to all the bills, vouchers, books and accounts and statements of a company



and the auditor is also empowered to call additional information required for verification to arrive at a fair conclusion in respect of the balance sheet and profit and loss accounts. It is also an onus cast upon the auditor to verify and make a report on balance sheet and profit and loss accounts that such accounts are in the manner as provided by statute and give a true and fair view on the affairs of the company. Therefore, I have no option other than to accept the information of nature of business/source of income to be true and fair.

17.5. I find that transmission or distribution of electricity by an electricity transmission or distribution utility falls under the negative list of section 66D(k) of the finance act,1994. Section 66D of Finance Act,1994 specifies the Negative List of Services i.e. the Services on which Service Tax was not leviable. Now, I consider it necessary to look into the Section 66D(k) of the Finance Act,1994, reproduce as under;

66D. The negative list shall comprise of the following services, namely;

(a).....

(b).....

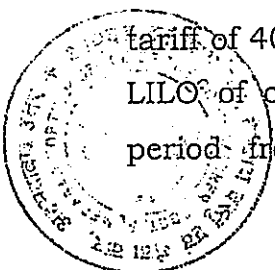
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**(k) transmission or distribution of electricity by an electricity transmission or distribution facility**

I find that assessee are engaged in the providing the transmission or distribution of electricity by an electricity transmission or distribution facility. The Central Electricity Regulatory Commission, New Delhi in petition No.159/2009 in the matter of determination of transmission tariff of 400KV LILO of Gandhar (Jhanor)-Vapi at Sugen generation switchyard in western region for the period from 01.04.2009 to 31.03.2014 have passed the order dated 19.07.2011 that

*"34. the transmission charges allowed shall be recovered on monthly basis in accordance with Regulation 23 and shall be shared by the responded in accordance with Regulation 33 of the 2009 regulation up to 30.06.2011. With effect from 01.07.2011, billing, collection and distribution of the transmission charges shall be governed by the provisions of Central Electricity Regulatory Commission (Sharing of inter-state transmission charges and losses) Regulations, 2010 and the Removal of Difficulties orders issued thereunder".*

In petition No.318/2010 in the matter of determination of transmission tariff of 400kv D/C transmission line from SUGEN to a point near Gandhar for LILO of one circuit of existing Gandhar – Dehgam 400kv D/C line for the period from 01.04.2010 to 31.03.2014 based on the Central Electricity



Regulatory Commission (Terms and Condition of Tariff) Regulation 2009 have passed the order dated that

*"49. We have considered the submission of the petitioner and the objections of the respondents. The petitioner has not made any specific prayer regarding the sharing of transmission charges of the transmission system in the main petition. However, in para 2.2 of the petition, the petitioner has submitted that the transmission system will connect SUGEN Power Project to Western Region and will be utilized to transfer power to its beneficiaries of Ahmedabad and outside the State. Therefore, by its own submission, the transmission system will be used by beneficiaries of the Western Region in addition to the SUGEN beneficiaries. Since, the transmission assets form part of the inter-State Transmission System for which transmission licence has been granted by the Commission, the transmission charges of the transmission assets of the petitioner being a part of the ISTS shall be shared in accordance with Regulation 23 of the 2009 Tariff Regulations up to 30.6.2011. With effect from 1.7.2011, the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010 came into force. As per Regulation 2(2) of the Sharing Regulations, the regulations are applicable to all designated ISTS customers, inter-State licensees, etc. Since the petitioner is an inter-State transmission licensee, the sharing of transmission charges and losses of the petitioner shall be governed by the provisions of the Sharing Regulation"*

Further in petition NO.106/TT/2012 the matter of Determination of transmission tariff for LILO point Jhanor (Gandhar)-Dehgam Line to 400 kV Sub-station of PGCIL at Pirana (Kamod) with LILO at 400 kV Pirana Sub-station of TPL (Phase-III) for the period from 1.4.2011 to 31.3.2014 under Regulation-86 of Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 have passed the order that :

*"61. We have considered the submissions of GUVNL and the petitioner. The petitioner was granted transmission license, vide order dated 16.5.2007 in Petition No.97/2006 and the petitioner is an inter-State transmission licensee. The transmission line of the petitioner is connected to the ISTS and it is utilized to carry power outside the State through LTA. As such, the transmission charges for the instant transmission assets shall be recovered on monthly basis in accordance with Regulation 23 and shall be shared by the respondents in accordance with Regulation 33 of the 2009 Tariff Regulations from the date of commercial operation, i.e. 1.4.2011 upto 30.6.2011. With effect from 1.7.2011, billing, collection and disbursement of the transmission charges approved shall be governed by Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010, as amended from time to time"*

I find from the above tariff order that transmission tariff has been fixed by the Central Electricity Regulatory Commission, and tariff can be earned by the assessee.

I find that in Section 65(B) 23 meaning of electricity transmission or distribution utility are as under;

(23) "Electricity transmission or distribution utility" means the Central Electricity Authority; a State Electricity Board; the Central Transmission Utility or a State Transmission Utility notified under the Electricity Act, 2003 (36 of 2003); or a distribution or transmission licensee under the said Act, or any other entity entrusted with such function by the Central Government or, as the case may be, the State Government;

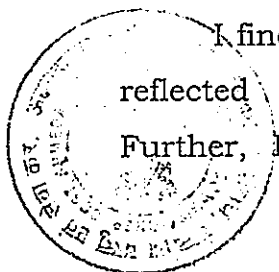
I find that, assessee are holding licence No.2/Transmission/CERC/ dated 16.05.2007 issued by Chief (Legal), Central Electricity Regulatory Commission, New Delhi. Based on the above CERC order and submission made by the assessee, I am in agreement with the assessee argument that they are engaged in business of transmission of electricity and the activity carried out by the assessee are squarely falls under Section 66D(k) Negative list of services.

17.6 Having considered above facts and the aforementioned discussion, I am of the considered view that the service provided by the assessee is appropriately classifiable under the '*Transmission or distribution of electricity by an electricity transmission or distribution utility*'.

18. I find that the SCN shows the difference in value to the tune of Rs. 54,26,92,543/- for F.Y. 2015-16 when value of sales/gross receipt as per ITR are compared with gross value declared in ST-3 as mentioned in forgoing paras. Further para 4 of the SCN states that the levy of service tax for FY 2016-17 and FY 2017-18 (upto June 2017), which was not ascertainable at the time of issuance of the subject SCN, if the same was to be disclosed by the Income Tax department or any other source/agencies, against the said assessee, action was to be initiated against assessee under the proviso to Section 73(1) of the Finance Act, 1994 read with Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017 and the service tax liability was to be recoverable from the assessee accordingly. I however do not find any charges levelled for demand for FY 2016-17 and FY 2017-18 (upto June 2017) in charging part of the SCN. On going through the ST3 returns for the F.Y.2015-16 (April to September), it is noticed that the assessee has declared service tax liability to be discharged under RCM. As per ITRs filed by the assessee, Revenue from Operations for F.Y. 2015-16 and 2016-17 booked is as under.

	FY 2015-16	FY 2016-17
Revenue from transmission income including incentive	54,26,92,543/-	38,97,74,076/-
Other income	1,98,64,474/-	2,26,53,836/-

I find that except income under Section 194A no other income has been reflected in Form26AS under Section 194C,194Ia,194Ib,194J or 194H. Further, I find that the SCN has not questioned the taxability on any income



other than the income from sale of services. I therefore refrain from discussing the taxability on income other than the sale of service.

19. I find that Section 66D(k) Negative List of Services, grants exemption from whole of Service Tax leviable under the Finance Act,1994. I find that the assessee has contested the demand of service tax on services rendered by them being transmission of electricity and holding the licence issued by the CERC and the same has been exempted by the Section 66D(k) of the Finance Act,1994 reproduce as below;

SECTION 66D. Negative list of services.—

The negative list shall comprise of the following services, namely :—

(a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere.....

*(k) transmission or distribution of electricity by an electricity transmission or distribution utility;*

20. As discussed hereinabove, the assessee is found to be clearly engaged in business of providing service of transmission of electricity and is squarely covered under the negative list of services of Section 66D(k).

21. Keeping in view the aforementioned detailed discussions, I find that the service rendered by the assessee is squarely covered under the Section 66D(k) of the Finance Act,1994 and find that the exemption is quite clearly available to the assessee as claimed by them. Since I am fully convinced with the arguments put forth by the assessee, I therefore hold that no service tax is payable by the assessee as demanded in the subject SCN.

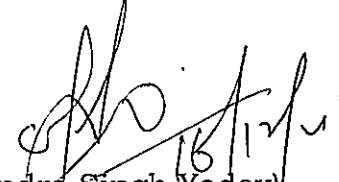
22. Having considered these factual and documentary evidences available on records, I find no reason to disregard the assessee's arguments. Accordingly, it is my considered view that the assessee has established their case quite unambiguously that the difference in value of service as discerned by the department by comparing the value of services in ITR/TDS and gross value of services provided in ST-3 Returns is basically on account of the exempt service being transmission of electricity rendered by the assessee as discussed hereinabove which was not shown in ST-3 Returns. Since the sole basis of demanding the Service Tax from the noticee was on the basis of difference noticed in the ST3 returns and ITR sans any other investigations or documentary evidence. I therefore hold that no service tax is payable by the assessee as demanded in the subject SCN.

23. In view of the facts and circumstances pertaining to the case, the demand is not tenable in law, accordingly I do not consider it necessary to delve in the merits of invoking extended period of limitation which has been discussed in the SCN at length and contested by the said assessee in their submissions. For the

same reasons, I am also not entering into discussions on the need or otherwise of imposing penalty. Therefore, from the factual matrix and the question of law as discussed in the foregoing paras, I pass the following order: -

**ORDER**

I drop the proceedings initiated against M/s. Torrent Power Grid Limited, 5<sup>th</sup> Floor, Torrent House, Ashram Road – 380 009, vide Show Cause Notice F. No. STC/15-116/OA/2020 dated 21.10.2020.

  
 (Upendra Singh Yadav)  
 Commissioner,  
 Central Excise & CGST,  
 Ahmedabad North.

By Regd. Post AD./Hand Delivery

F.No. STC/15-116/OA/2020

Date: 16 .12.2021

To,

M/s. Torrent Power Grid Limited,  
 5<sup>th</sup> Floor, Torrent House,  
 Ashram Road – 380 009

Copy to:

1. The Chief Commissioner of CGST & C. Ex., Ahmedabad Zone.
2. The Assistant Commissioner, CGST & C.Ex., Division-VII, Ahmedabad North.
3. The Superintendent, Range-I, Division-VII, Ahmedabad North.
- ✓ 4. The Superintendent (System), CGST, Ahmedabad North for uploading on website.
- ✓ 5. Guard File.

