

<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		<p>GST ONE NATION. ONE TAX. ONE MARKET</p> <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./ F.No. STC-05/O&A/SCN/T&RIL/2017-18

आदेश की तारीख/Date of Order: - 02.02.2018

जारी करने की तारीख/Date of Issue :- 05.02.2018

द्वारा पारित/Passed by:-

आर. एम. गौतम / *R.M.Gautam*

अपर आयुक्त / *Additional Commissioner*

मूल आदेश संख्या / Order-In-Original No. 02/ADC/2018/RMG

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।

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इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप संख्या इ.ए.-1 (E.A.-1) में दाखिल कर सकता है। इस अपील पर रु .2.00 (दो रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 2.00 only.

इस आदेश के विरुद्ध आयुक्त के शुल्क गये मांगे पहले से करने अपील में (अपील) 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 Commissioner (Appeal) on payment of 7.5% of the 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)

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या इ.ए.-1 में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(13) उक्त अपील की प्रति।

(14) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु) 2.00 .दो रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form EA-1 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(13) Copy of accompanied Appeal.

(14) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.2.00.

विषय: -कारण बताओ सूचना/Show Cause Notice F.No. CEA-II/ST/15-18/C-V/AP-XXI/FAR/1094/RP-07/16-17 dated 13.06.2017 issued to M/s. Transformers & Rectifiers (I) Pvt. Ltd., Survey no 431/P&427/1/P, Sarkhej Bavla highway, Moriya, Chanerdar, Ahmedabad, Gujarat-382213, State : Gujarat.

Brief facts of the case:

During the course of audit of records for the period December, 2013 to March, 2015 of M/s. Transformers & Rectifiers (India) Ltd., S.No.431/P & 427/1/P, Sarkhej-Bavla Highway, Vill. Moraiya, Ta-Sanand, Dist.; Ahmedabad-382213 (hereinafter referred to as 'M/s. T&R'), who is holding Central Excise Registration No.AACCT8243PXM003, for manufacturing Electrical Transformers (falling under Chapter 85 of the schedule to the Central Excise Tariff Act, 1985), it was noticed that they were not paying service tax on the consideration received in terms with the agreement with M/s BTW, China against service to tolerate an act or a situation , which is a declared service under Section 66E(e) of the Finance Act, 1994.

2. M/s T&R entered into an agreement with M/s BTW , China and signed a MOU with M/s. BTW, China The relevant text of the said MOU dated 20.03.2013 is as under:

"BTW hold the opinion that T&R facility meets the manufacturing and testing conditions for 765 KV transformer, however the testing facility is not able to perform all the test for the 765 KV reactor of 110MVAR and 80MVAR particularly those which require separate source transformer. T&R has made the commitment to satisfy this condition before the first reactor bank supplied by BTW is commissioned by PGCIL before June 20, 2013. T&R has taken the responsibility for successful factory approval by PGCIL in order to ensure the issuance of R& M undertaking letter for the contracts BTW already awarded from PGCIL and the commencement of joint bidding.

2. *Regarding the R&M undertaking letter T&R agreed to issue the same on condition that both sides agree to participate in the reactor tenders of PGCIL and other India utilities in the way of joint bidding. T& R shall issue the R&M undertaking letter as per the contract requirements of PGCIL for all the existing reactor contracts between BTW and PGCIL, which includes BTW portion in the successful joint bid and other BTW projects as independent bidder in PGCIL and other India utilities.*

3. *For the existing transformer contracts between BTW and PGCIL and other India utilities. T&R shall issue the undertaking letter based on the existing transformer contract between BTW & PGCIL and other India utilities, and shall provide the backup service for transformer and reactors which includes site visit and attending of complaints for a period of 15 years, and issue the letter of undertaking T&R offered two conditions:*

a) *BTW will furnish a Bank Guarantee to protect T&R interest at the same time when the agreement is signed. Notwithstanding the above, the value of the Bank Guarantee will be decided mutually before the finalization of the agreement,*

This BG will be valid till the order for 765 KV Reactors becomes effective

b) *The order for 13 Reactors will be placed on T&R by BTW. The terms to be discussed and finalized*



In case the repair cannot be carried out on site and transformers and reactors have to be brought to the works in Ahmedabad, T&R will do so on priority and all the costs of bringing the transformers or reactors from and back to the site will be paid by BTW on actual cost. The cost of repairs will be discussed mutually by both the companies.

4. *Regarding the subcontract issue of Reactors to be manufactured in India. T&R agrees to manufacture for BTW. BTW will provide the Bill of Material and T&R to quote accordingly. BTW & T&R will finalize the detailed scope and subcontract work, and then calculate the subcontract price. Considering the total cost. T&R suggested the materials except insulation material, bushing, and core packets) be procured in India. The detailed solution depends on the final approval of PGCIL. T&R has the obligations to assist BTW to get PGCIL approval for T&R subcontracting for the shunts reactors.*

5. *The draft is provided by T&R, BTW will study the draft and both sides will conclude the agreement. After the R&M undertaking letter (Issued for BTW) and reactor subcontracting solution are approved by PGCIL, the final agreement of Joint bid shall be signed with the exchange of undertaking letter. The detailed cooperation more for joint bidding shall meet the PGCIL requirements as per the tendering documents.*

According to the above mentioned MOU, both sides shall finalize the above mentioned work by 15th April-2013."

3 *In continuation to above MOU , they also entered into a supplementary agreement dated 21.06.2013 . Main condition of the said supplement MOU between BTW and T&R is as under:*

"As per clause 2(a) in MOU signed between BTW and T&R on March , 2013, T&R is required to submit undertaking letter in terms of R&M on T3 and World Bank Project for BTW to PGCIL after signing aforesaid MOU, in exchange, BTW is required to submit Bank Guarantee for protecting benefits from T&R.

Furthermore, the clause 2 in the Minutes of Meeting on April 8, 2013 stipulates that the compensation costs is 1.450,000 USD which is undertaken by BTW for Undertaking letter from T&R.

As T&R has submitted Undertaking Letter to PGCIL. after mutual agreement, BTW shall issue to T&R Bank Guarantee with amount equal to 1.450,000 USD and valid until Aug 15, 2013

It is further agreed that neither BTW nor T&R shall implement Joint Venture Bid with any other third party during valid period of the aforesaid Bank Guarantee. If BTW fails to sign the Agreement on Joint Venture Bid with T&R before Aug. 15. 2013 as a result of BTW side, T&R would encash the Bank Guarantee. Otherwise T&R should release aforesaid Bank Guarantee to BTW within two working days after signing the Agreement.



on Joint Venture Bid.

*After signing the Agreement on Joint Venture Bid, T&R shall as per agreed terms and conditions, manufacture 5 packages of Shunt Reactor for the portion of **Onshore Supply in India** under the proposal approved by PGCIL".*

4. Further vide supplementary agreement nil dated 22.07.2013(RUD-5) for MOU entered into between BTW and T&R, the following changes were made.

*"Based upon latest discussion. BTW and T&R agreed to extend the deadline for signing The agreement on Joint Venture Bid from August 15 to September 10, 2013 Therefore BTW has agreed with T&R to extend the validity of Bank Guarantee to Sept. 10, 2013, If BTW failed to sign the Agreement on Joint Venture Bid with T&R **before Sept.10, 2013** as a result of BTW side, T&R would accept the Bank Guarantee. Otherwise T&R should release aforesaid Bank Guarantee to BTW within two working days after signing The Agreement on Joint Venture Bid".*

5. Detailed scrutiny of records revealed that M/s. T&R had entered into an MOU dated 20.3.2013 with M/s. BTW, China for joint venture bid with PGCIL (Power Grid Corporation of India) wherein M/s. T&R has agreed to provide Repair & Maintenance (R&M) undertaking as per the contract requirements of PGCIL, for all the existing reactor contracts between M/s. BTW and PGCIL and other Indian utilities and also to provide the backup service for transformer and reactors which includes site visit and attending of complaints for a period of 15 years etc. **As per the agreement neither the M/s. BTW nor M/s. T&R shall implement Joint Venture Bid with any other third party during valid period of the aforesaid Bank Guarantee** and M/s. BTW shall furnish a Bank Guarantee (USD 1,450,000) to protect M/s. T&R's interest. As per supplementary agreement dated 21.06.2013, if M/s. BTW fails to sign the agreement on joint venture bid with M/s. T&R before 15th Aug, 2013 (later extended to 10th Sept, 2013), M/s. T&R would encash the Bank Guarantee otherwise M/s. T&R should release the aforesaid Bank Guarantee to M/s. BTW within two working days after signing the agreement on Joint Venture Bid.

6. From the Inward Remittance payment advice dated 16.9.2013 of SBI, it was noticed that the Bank Guarantee has been encashed and Rs.8,94,22,750/- (i.e. USD 1,450,000) was credited to M/s. T&R's account for non-fulfillment of agreement by M/s. BTW. It appeared that said consideration received was against a service for agreeing to the obligation to tolerate an act or situation, which is a declared service as per Section 65E(e) in as much as M/s. T&R has agreed not to implement Joint Venture Bid with



other third party during the validity of the Bank Guarantee, hence liable to service tax. M/s. T&R on the hand argued that as per Rule 3 of the Place of provisions of Service Rules, 2012, the service is not taxable as the recipient of the service is located in foreign country hence falls under non-taxable category. This argument was not accepted on the ground that the service agreed to be provided to PGCIL was in India and the tolerance of the act of refraining from doing something, i.e. failure to sign the agreement on Joint Venture Bid with M/s. T&R before 15th Aug, 2013 has taken place in India. Even the consumption of service has also taken place in taxable territory.

7. In view of above, a notice dated 13.6.2017 was issued to M/s. Transformer & Rectifiers (India) Ltd., Survey No.431/P & 427/1/P, Sarkhej Bavla Highway, Village Moraiya, Sanand, Ahmedabad-382213 to show cause to the Additional/Joint Commissioner of Service Tax, Ahmedabad having office at Excise Bhavan, Near Polytechnic, Ambawadi, Ahmedabad – 380015 as to why:-

- Amount of Rs.8,94,22,750/- received as consideration towards encashment of Bank Guarantee should not be considered as value for the taxable service provided under Section 66(E) (e) of the Finance Act, 1994 and Service Tax amounting to **Rs.1,10,52,652/-** [Rupees Once Crore Ten Lakh Fifty Two Thousand Six Hundred and Fifty Two Only] should not be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994, by invoking larger period of five years as discussed herein above;
- Interest at the appropriate rate on the above amount of service tax not paid should not be recovered from them under Section 75 of the Finance Act, 1994;
- Penalty should not be imposed upon them under Section 76 of the Finance Act, 1994 (as amended) as they have failed to pay service tax within the prescribed time limits as per Section 68 of Finance Act, 1994 read with Rule 6 of Service Tax Rules, 1994.
- Penalty should not be imposed upon them under Section 77(2) of the Finance Act, 1994, failure to self assess the tax liability correctly and failure to file ST-3 returns with correct and full details;
- Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994, for suppressing the value of taxable service provided by them, before the department with intent to evade payment of Service Tax.

8. **Defence Reply** In response to the allegations leveled in the notice, M/s.T&R vide letter dated 3.10.2017 submitted their written submission wherein they *inter alia* submitted that;

- The encashment of B.G. was originally provided by the Foreign Customer, who failed to comply with certain terms & conditions



the agreement entered with them. The service tax demanded is on cross border transaction in terms of the provisions of Section 66-B read with Section 66-C further read with Section 66-E(e) of the Finance Act, 1994 read with the Place of Provision of Services Rules, 2012.

- The place of provision of service is in a non-taxable territory hence no service tax payable in terms of Section 66B. Further in terms of Section 66C if the service is provided to a recipient situated in foreign country, it is said to have been provided in a non-taxable territory and would not attract service tax liability. There is no scope to determine the place of provision of service in terms of Section 66C of the Finance Act, 1994. In the cases of cross border transaction the Place of Provision of Services Rules, 2012 has to be referred.
- Place of provision of service in question can be decided only in terms of Rule 3 of the Place of Provision of Services Rules, 2012. As the encashed B.G was furnished by a foreign customer, the service recipient is said to be situated in foreign country which is a non-taxable territory thus the provision of service tax provisions would not apply in terms of Section 66B, Section 66E(e) read with Sl.No.10 of the table of the Reverse Charge Notification No.30/2012-ST dated 20.6.2012.
- Suppression cannot be alleged as the records & documents are open for examination, by the departmental authorities. Thus the SCN is time barred & should be set-aside.

9. Personal Hearing

Though the party has failed to mention in their written submission as to whether they want a personal hearing or not , however Personal hearing was accorded on 13.11.2017. However nobody turned up to defend the case. Therefore another date was granted on 18.12.2017 and Shri Mukesh Pandya, Executive Commercial appeared on behalf of M/s. T&R and reiterated the submissions made in their written reply dated 3.10.2017.

Discussion & Finding:

10. I have carefully gone through the case records, written submissions made by M/s. T&R in their defense at the time of personal hearing, the MOU dated 20.3.2013 between M/s. BTW, China and M/s. T&R and the supplementary agreements dated 21.6.2013 and 22.7.2013 for the said MOU.



11. From the facts of the case on records, I find that the issue before me to decide is whether the consideration received by M/s. T&R by way of en-cashing the Bank Guarantee in consequent to non-fulfillment of agreement (i.e. not signing the agreement on Joint Venture Bid with M/s. T&R) by M/s. BTW, China, is liable for service tax.

12. The notice alleges that M/s. T&R by agreeing not to implement Joint Venture Bid with third party till the validity of B.G. has provided a service to tolerate an act or a situation which is a declared service in terms of Section 66(E)(e) of the Finance Act, 1994 and any consideration for the said service is liable to service tax. Further, since the place of provision of the service is not outside India, the service cannot be treated as export of service in terms of Rule 6A(1) of Service Tax Rules 1994. The consumption of service has also taken place in taxable territory of India. The consideration received from M/s. BTW, China through Bank Guarantee is for providing the service of tolerance. As the consideration received is against the service agreed to be provided in India, the place of provision would be India and as such M/s. T&R are liable to pay service tax on such consideration. M/s. T&R on the other hand are strongly contesting that service recipient in the instant case is located in foreign country hence falls under non-taxable category and not liable for service tax.

13. I will first take up the nature of service rendered by M/s. T&R. As per the MOU dated 20.3.2013, M/s. T&R has made a commitment to meet the testing of 765kV reactor of 110MVAR and 80MVAR before the first reactor bank supplied by M/s. BTW, China is commissioned by PGCIL (Power Grid Corporation of India). M/s. T&R shall issue the Repair & Maintenance (R&M) undertaking letter as per the contract requirement of PGCIL for all the existing reactor contracts between M/s. BTW & PGCIL, which includes M/s. BTW portion in the successful joint bid and other M/s. BTW projects as independent bidder in PGCIL and other Indian utilities. For the existing transformer contracts, between M/s. BTW and PGCIL & other Indian utilities, M/s. T&R shall issue the undertaking letter and shall also provide backup service for transformer & reactors including site visit and attending complaints. In the letter of undertaking, M/s. T&R offered two conditions (i) M/s. BTW will furnish a B.G. to protect M/s. T&R' interest when the agreement is signed and (ii) that the B.G. will be valid till order of 765 kV Reactors becomes effective. Regarding the subcontract issue of Reactors to be manufactured in India, M/s. T&R agrees to manufacture for M/s. BTW however the detailed solution depends on the final approval of PGCIL. After the R&M undertaking letter (issued for M/s. BTW) and reactor subcontracting solution are approved by PGCIL, the final agreement of joint bid shall be signed with the exchange of undertaking letter.



14. Subsequent to this, a Supplementary Agreement for MOU was signed on 21.06.2013 wherein as M/s. T&R has submitted Undertaking letter to PGCIL, after mutual agreement, M/s. BTW shall issue to M/s. T&R, Bank Guarantee with the amount equal to USD 1,450,000 valid till 15th Aug, 2013. It is further agreed that neither M/s. BTW nor M/s. T&R shall implement Joint Venture Bid with any other third party during valid period of the aforesaid B.G. If M/s. BTW fails to sign the Agreement on Joint Venture Bid with M/s. T&R before 15th Aug, 2013 (later extended to 10th Sept 2013) as a result of M/s. BTW side, M/s. T&R would encash the B.G., otherwise M/s. T&R should release the aforesaid B.G. to M/s. BTW within two working days after signing the Agreement on Joint Venture Bid.

15. In view of the above para and the facts of the case, I find that the B.G. was in exchange of the MOU signed between M/s. BTW and M/s. T&R wherein M/s. T&R agrees to issue the Repair & Maintenance undertaking for M/s. BTW five packages of reactors awarded to PGCIL and to provide backup service for transformers & reactors including site visits and attending complaints. M/s. T&R shall provide R&M undertaking as per the contract requirement of PGCIL for all existing reactor. In case the repair cannot be carried out on site, the cost of bringing the transformers / reactors from and back to site will be paid by M/s. BTW on actual cost. Regarding sub-contract issue of Reactors to be manufactured in India, M/s. T&R agrees to manufacture reactors for M/s. BTW for which BTW will provide the Bill of Material after the approval by PGCIL. It is clear that the MOU was between M/s. BTW & M/s. T&R and the B.G. was a compensation undertaken by M/s. BTW for Undertaking letter from T&R and for the agreement that neither M/s. BTW nor M/s. T&R shall implement Joint Venture bid with any third party during the valid period of the B.G and if M/s. BTW fails to sign the Agreement on Joint Venture Bid with M/s.T&R, M/s. T&R would encash the B.G. . Thus M/s. BTW has submitted a Bank Guarantee to protect M/s. T&R interest which I find was encashed as the final agreement of joint venture bid was not signed by M/s. BTW. Thus the service in the instant case is rendered to M/s. BTW as the terms & conditions of MOU are agreed by M/s. BTW, China & M/s.T&R. At this point of time there is no role of PGCIL in the agreement. The agreement to enter into a Joint Venture bid with PGCIL was promised by M/s. BTW to M/s. T&R.

16. In terms of clause (e) of Section 66E of the Finance Act, 1994, "*agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act*" is a declared service. The agreement to provide R&M undertaking letter for M/s. BTW and not entering into a Joint Venture bid with any third party is a service of agreeing to the obligation to refrain from an act or to tolerate an act or a situation. According to the definition given by the Act, 'tolerating' an act signifies the foregoing of a benefit by the



receiver in exchange for a consideration that compensates the act that is being tolerated. In the instant case, M/s. T&R has tolerated M/s. BTW by agreeing to undertake R&M for PGCIL and to sign a Joint venture bid, since the same could not be materialized in time due to lapses on the part of M/s. BTW, M/s. T&R encashed the B.G. for tolerating the act of M/s. BTW.

17. The term 'service' defined under clause (44) of Section 65B means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include activity mentioned at (a) to (c). 'Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act' shall constitute a 'declared service' hence taxable. A service is taxable on which service tax is leviable under Section 66B which stipulates that service tax is levied at the rate of [twelve per cent.] **on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another** and collected in such manner as may be prescribed. Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act, is a declared service and since not included in the negative list is leviable to service tax only if provided in the taxable territory.

18. Now coming to the argument whether the service is taxable since the recipient i.e. M/s. BTW is located in foreign country. There is no ambiguity that in the instant case, service has been rendered to M/s. BTW which is a China based Company. The SCN however has not considered the service as an export of service on the argument that the condition (d) of Rule 6A of Service Tax Rules, 1994, has not been fulfilled. Relevant extract of Rule 6A is reproduced below:-

RULE [6A. Export of services. — (1) *The provision of any service provided or agreed to be provided shall be treated as export of service when,-*

- (a) *the provider of service is located in the taxable territory,*
- (b) *the recipient of service is located outside India,*
- (c) *the service is not a service specified in the section 66D of the Act,*
- (d) ***the place of provision of the service is outside India,***
- (e) *the payment for such service has been received by the provider of service in convertible foreign exchange, and*
- (f) *the provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 2 of clause (44) of section 65B of the Act.*

(2) *Where any service is exported, the Central Government may, by notification, grant rebate of service tax or duty paid on input services or inputs, as the case may be, used in providing such service and the rebate shall be allowed subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification.]*

19. On plain reading of the above rule and the facts of the case, I find that the place of provision of service in the present case is outside India as the service is rendered to M/s. BTW for agreeing to tolerate an act or a situation. If M/s. BTW fails to fulfill the promise, M/s. T&R shall encash the B.G. to protect its interest. For



manufacturer entering into an agreement with the buyer that in case of cancellation of order, the buyer has to bear a particular amount is an agreement to the obligation to tolerate an act or situation. Since the obligation to tolerate an act is with a China based company, I find the service rendered has to be treated as export of service as rendered outside the taxable territory of India. Since all the conditions of Rule 6A are fulfilled, the said service is to be treated as export of service and not liable for service tax.

20. I also do not find merit in the allegation that the consumption of service has taken place in India. Export of Service Rules, 2005 and Taxation of Services (Provided from Outside India as Received in India) Rules, 2006, are basically the rules for determining the place of consumption of services. These rules in the budget of 2012-13 have been replaced by Place of Provision of Service Rules, 2012, Rule 3 of said Rules states that the place of provision of a service shall be the location of the service recipient, (who is the service consumer). Since the service is rendered by M/s. T&R to M/s. BTW, located in China, the service cannot be said to have consumed in India as the consumer / recipient is outside the taxable territory of India.

21. In terms of Section 66B, a service is taxable only when it is "provided or agreed to be provided in the taxable territory" thus the taxability of a service shall be determined based on the place of its provision. M/s. T&R has heavily relied on Rule 3 of the Place of Provision of Services Rules, 2012 stating that the service recipient is said to be situated in foreign country which is a non-taxable territory thus the provision of service tax provisions would not apply in terms of Section 66B, Section 66E(e) read with Sl.No.10 of the table of the Reverse Charge Notification No.30/2012-ST dated 20.6.2012. I have gone thorough Rule-3 of Place of Provision of Services Rules, 2012 which is reproduced below for reference;

RULE 3. Place of provision generally. — *The place of provision of a service shall be the location of the recipient of service :*

Provided that in case [of services other than online information and database access or retrieval services, where] the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of service.

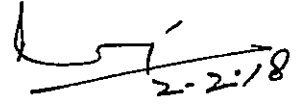
22. According to aforesaid Rule-3, the place of provision of service shall be location of the recipient of service, however, if location of the service receiver is not available in ordinary course of business the place of provision shall be the location of the provider of service. SCN alleges that the consideration is received for the service agreed to be rendered to PGCIL. I find that M/s. T&R has agreed to render Repair & Maintenance service to PGCIL which of course is based in India. But fact remains that the entire demand has been proposed under the declared service of "agreeing to tolerate an act or situation".



or situation" which I find has been rendered to M/s. BTW and not to PGCIL. Since the service is rendered to M/s. BTW , which is based in China, the place of provision of service shall be the location of the recipient of service in term of Rule 3 ibid. Further, proviso to the said rule is not applicable to this case since the location of the service receiver is available. I therefore find that the allegation of service being rendered to PGCIL as baseless and unsustainable.

23. In view of my above findings, I hold the demand for recovery of the impugned amounts untenable on merits. As the demands are not sustainable on merit, the demand for interest and the proposal for penalties on the noticee are also liable to be dropped.

24. I, accordingly drop the demand initiated vide show cause notice no. CEA-II/ST/15-18/C-V/AP-XXI/FAR/1094/RP-07/16-17 dated 13.6.2017 against M/s. T&R.



[R. M. GAUTAM]
Additional Commissioner
C.Ex. & CGST, Ahmedabad-North

F.No: STC-05/O&A/SCN/T&RIL/2017-18

Date: 02 .02. 2018

By Regd. Post A. D./Hand Delivery

To
M/s. Transformers & Rectifiers (India) Ltd.,
Survey No. 431/P & 427/1/P,
Sarkhej-Bavla Highway,
Moraiya, Sanand,
Ahmedabad- 382213.

Copy to:

1. The Commissioner, C.Ex. & CGST, Ahmedabad-North.
2. The Deputy Commissioner, C.Ex. & CGST, Division-IV, Ahmedabad- North.
3. The Assistant Commissioner (RRA), C.Ex. & CGST, Ahmedabad-North.
4. The Superintendent, C.Ex. & CGST, AR-III, Division-IV, Ahmedabad-North.
- ✓ 5. Guard File.

