CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT NO. – I

ST/CROSS/30114/2020
in
Service Tax Appeal No. 30139 of 2020
(Arising out of **Order-in-Original** No. HYD-EXCUS-003-COM-010-19-20 dated 20.11.2019 passed by Commissioner of Central Tax & Central Excise, Hyderabad)

Commissioner of Central Tax .. APPELLANT
Secunderabad - GST
Kendriya Shulk Bhavan,
L.B Stadium Road,
Basheerbagh,
Hyderabad,
Telangana – 500 004.

VERSUS

M/s Northern Power Distribution .. RESPONDENT
Company of Telangana Ltd.,
Vidyut Bhavan, H.No. 2-5-31/2,
Corporate Office, Nakkalagutta,
Hanamakonda, Warangal,
Telangana – 506 001.

APPEARANCE:
Shri A. Rangadham, Authorized Representative for the Appellant.
Shri C. Umakanth Sarma, Advocate for the Respondent.

CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30512/2026

Date of Hearing: 15.04.2026
Date of Decision: 11.09.2026

[ORDER PER: ANGAD PRASAD]

The present appeal has been filed by the Department against the impugned Order-in-Original dated 20.11.2019 passed by the Commissioner of Central Tax, Secunderabad – GST Commissionerate, whereby, the proposals contained in the Show Cause Notice dated 22.10.2018 for recovery of service tax, interest and penalties were dropped. The respondent has filed cross-objections supporting the impugned order and praying for dismissal of the Revenue's appeal.

2. The fact in brief is that the respondent is an Electricity Distribution Utility engaged in distribution and supply of electricity in the state of Telangana. In the course of its statutory functions, it collected:

(i) Additional charges/sur-charge from consumers for delayed payment of electricity bill; and

(ii) Meter-Testing charges from consumers.

3. The Show Cause Notice proposed to demand service tax on additional charges amounting to ₹374,41,24,477/-, involving service tax of ₹50,71,82,945/-, on the ground that such charges constituted consideration for "agreeing to tolerate an act or situation" under Section 66E(e) of the Finance Act 1994. Service tax was also proposed on meter-testing charges on the ground that meter testing was a separate service within the meaning of Section 65B(44) of the Finance Act.

4. The Adjudicating Authority, after considering the respondent's reply and affording personal hearing, dropped the proceedings. Aggrieved by the said decision, the Department is in appeal.

5. Learned AR for the Department submits that Section 66D(k) of the Finance Act exempts only transmission or distribution of electricity by electricity transmission or distribution utility. The exemption does not expressly extend to every activity performed by such utility. It is submitted that additional charges are recovered because the respondent tolerates delayed payment by consumers and continues to supply electricity despite

such default. The amount is, therefore, consideration for the declared service of agreeing to tolerate an act or situation under Section 66E(e).

6. Regarding meter-testing charges, it is submitted that meter testing is performed on payment of a separately prescribed charge and constitutes an independent service. According to the Department, merely because the service is provided by an electricity distribution utility, it cannot automatically fall within the negative list under Section 66D(k) of the Finance Act, 1994. The Department, therefore, seeks setting aside of the impugned order and confirmation of the proposed demands with interest and penalties.

7. Learned Counsel for the respondent submits that all the disputed amounts were collected under the tariff, regulations and conditions of supply framed by the Telangana State Electricity Regulatory Commission. The respondent had no discretion either in prescribing or recovering these charges.

8. The delay-payment, sur-charge is not consideration for any agreement to tolerate delayed payment. The contractual and statutory expectation is that consumers must pay electricity bills by the prescribed due date. The sur charge is imposed only to discourage default and compensate for delay. There is no independent agreement, under which the respondent undertakes, for consideration, to tolerate non-payment.

9. Meter testing is stated to be an essential activity directly connected with distribution, measurement and billing of electricity. A distribution utility cannot raise an accurate consumption bill or discharge it’s obligation under the Electricity Act, 2003 without installation, maintenance and testing of

meters. The activity is, therefore, naturally bundled with distribution of electricity. Reliance is principally placed upon;

- Torent Power Ltd., Vs Union of India [2019 (61) GSTR 454 (Guj)]
- Madya Pradesh Vidyut Vitaran Company Ltd., Vs Principal Commissioner of CGST and Central Excise, Bhopal [2022 (104) GSTR 161 (Tri-Del)]

10. On limitation, it is submitted that an earlier Show Cause Notice dated 11.04.2018 had already been issued by the DGGI for the period July 2012 to June 2017 after investigation. The present Show Cause Notice dated 22.10.2018 cannot invokes the extended period for April 2013 to June 2017. Thus, the Department was already fully aware of the respondent’s activities and could not repeatedly invoke the extended period for the overlapping period.

11. We have heard and considered the submissions made by both the sides and perused the records.

12. The following issues arise for determination and adjudication:

(i) Whether additional charges recovered for delayed payment of electricity bills are taxable under Section 66E(e);

(ii) Whether meter-testing charges constitute an independent taxable service or form part of the exempted service of distribution of electricity; and

(iii) Whether extended period under the proviso to Section 73(1) of the Finance Act, 1994 is invokable.

13. With effect from 01.07.2012, Section 66B provided for levy of service tax on all services, other than those specified in the negative list. Section

66D(k), is applicable during the relevant period, placed “transmission or distribution of electricity by an electricity transmission or distribution utility” in the negative list. Section 66F(3) of Finance Act, 1994 laid down the rule for determination of taxability of bundled services. Where various elements of a service were naturally bundled in the ordinary course of business. The bundle was required to be treated as the provision of the single service which gave the bundle its essential character. The Department’s argument proceeds on the basis that every ancillary activity undertaken by a distribution utility must be examined in isolation. This approach cannot be accepted if the activity is intrinsically connected with and naturally bundled with transmission or distribution of electricity.

14. The scope of the exemption available to Electricity Transmission and Distribution Utilities was examined in detail by the Gujarat High Court in the case of Torrent Power Ltd., supra. The Hon’ble High Court considered three distinct periods:

(i) The period prior to 01.07.2012 governed by exemption notifications;

(ii) The negative list regime from 01.07.2012 to 30.06.2017; and

(iii) The GST regime commencing from 01.07.2017.

15. For the pre-negative-list period, Notification No. 11/2010-ST dated 27.02.2010 exempted transmission of electricity, while Notification No. 32/2010-ST dated 22.06.2010 exempted distribution of electricity. CBEC Circular No. 131/13/2010-ST dated 07.12.2010 clarified that supply of electricity meters on hire was an essential activity having a direct and close nexus with transmission and distribution of electricity and was, therefore, covered by the exemption. The Gujarat High Court observed the nature and

essential character of transmission and distribution of electricity did not undergo any change merely because the statutory scheme subsequently changed from exemption notifications to the negative-list regime. An activity regarded by the Department itself as having a direct and close nexus with distribution of electricity could not be execluded during the negative-list period in the absence of any material change in the nature of the activity.

16. The High Court further examined under Section 66F(3) and held that all activities naturally bundled with transmission or distribution of electricity must receive the same tax treatment as the service giving the bundle its essential character. Importantly, the High Court rejected the contention that Section 66F(3) could not apply where the principal service was placed in the negative list. The expression (taxability) was held to encompass both liability and non-liability to tax. Therefore, if the service giving the bundle its essential character was not taxable, the naturally bundled ancillary services would also receive the same treatment. The High Court accordingly held that activities such as application for connection, rental of metering equipment, testing of meters and transformers, shifting of meters or service lines and other charges directly connected with transmission or distribution of electricity were not independent supplies detached from the principal service. They were naturally bundled with distribution of electricity.

17. The material principle emerging from Torrent Power Ltd., supra, is, therefore, that the true test is not whether a separate amount is collected or a separate accounting entry is made. The controlling test is whether the activity is an essential or ancillary activity having a direct and close nexus with transmission or distribution of electricity and whether it is naturally bundled with such principal service in the ordinary course of business.

18. The aforesaid principle was subsequently followed by the Tribunal New Delhi in the case of Madya Pradesh Vidyut Vitaran Company Ltd., supra. In that case also, the appellants were state Government undertakings engaged in distribution of electricity. The dispute concerned various amounts collected in connection with their electricity distribution functions. The Tribunal noticed that substantially identical issues had already been decided in favour of the electricity distribution utility by following the judgment of the Gujarat High Court in Torrent Power Ltd., supra. The Tribunal held that activities having a direct nexus with transmission and distribution of electricity could not be artificially separated and taxed as independent services. The Tribunal found no reason to depart from the binding ratio of the Gujarat High Court merely because the Department had questioned or carried the earlier decision in further appeal. The decision, therefore, affirms that the following considerations are material:

- Whether the respondent is an electricity transmission or distribution utility;
- Whether the disputed charges are collected in discharge of its functions under the Electricity Act and the Regulations framed thereunder;
- Whether the activities have a direct and proximate nexus with transmission or distribution of electricity; and
- Whether such activities are naturally bundled with the principal service under Section 66F(3) of the Finance Act, 1994.

19. The ratio of the above decisions applies squarely to the present case. The respondent is admittedly an electricity distribution utility and the charges in dispute arises from its regulated activity of distribution and supply of electricity.

20. Section 66E(e) of the Finance Act, 1994, treats the following as the declared service:

"Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act".

21. For attracting this provision, there must be an agreement, express or implied, under which one party assumes an obligation to tolerate an act or situation and the consideration is paid for such tolerance. A mere flow of money consequent upon a breach or default is not sufficient. In the present case, the respondent does not agree that consumers may delay payment. On the contrary, the statutory tariff and the electricity bill oblige the consumer to make payment by the due date. The delayed-payment, sur-charge is imposed only upon failure to comply with that obligation. Its object is to secure timely payment and discourage default. Neither the consumer desires to purchase a service of "tolerance, nor does the respondent undertake delayed payment as an activity for the consumer". There is no reciprocal arrangement under which the sur-charge constitutes consideration for an independent service. Continuation of electricity supply in accordance with the Electricity Act and the applicable regulatory framework cannot, by itself, be regarded as an agreement to tolerate delayed payment. The respondent is governed by statutory conditions regarding supply and disconnection and cannot be treated as voluntarily rendering a separate service merely because immediate disconnection does not follow every default. The sur-charge also bears a direct nexus with the electricity bill and is collected as part of the mechanism for recovery of charges for distribution of electricity. It is not founded upon any independent agreement unconnected with supply and distribution.

22. CBEC Circular No. 96/7/2007-ST dated 23.08.2007 had also clarified, in the context of Telephone Bills that an amount collected for delayed payment of a bill is not consideration for the provision of the underlying service and does not form part of its taxable value. Although the circular was issued in the context of Telecom Service, its underlying principle supports the respondent's contention that a charge arising only upon delayed payment is not consideration for a separately rendered service. Applying Torrent Power Ltd., supra, and Madya Pradesh Vidyut Vitaran Company Ltd., supra, we hold that the additional charges recovered from consumers for delayed payment of electricity bills are not consideration for a declared service under Section 66E(e) of the Finance Act, 1994. The demand of service tax of ₹ 50,71,82,945/- proposed on this count was correctly dropped by the Adjudicating Authority.

23. The meter is a statutory and technical instrument through which the quantity of electricity supplied to the consumer is measured. Consumption is recorded through the meter and the electricity bill is raised on that basis. Ensuring the accuracy and proper functioning of the meter, is, therefore, inseparable from distribution, measurement and billing of electricity. Testing of a meter is not an unrelated consultancy or technical service commercially offered by the respondent in an independent market. It is undertaken in the respondent's capacity as a distribution utility and in furtherance of its statutory functions under the Electricity Act and the applicable regulations. The mere fact that a separately prescribed fee is recovered does not alter the essential character of the activity. Separate pricing or separate accounting does not necessarily result in a separate taxable service when the activity is naturally bundled with and ancillary to the principal service. In

Torrent Power Ltd., supra, meter-related activities were specifically considered to have a direct and close nexus with transmission and distribution of electricity. The Hon'ble Gujarat High Court treated such activities as naturally bundled with the principal service under Section 66F(3) of Finance Act 1994. Likewise, the Delhi Tribunal in Madya Pradesh Vidyut Vitaran Company Ltd., applied Torrent Power Ltd., to the charges collected by distribution companies in connection with their statutory electricity distribution activities. The same view was followed in South Power Distribution Company of Andhra Predesh Ltd., Vs Commissioner of Central Tax, Tirupati vide Final Order No. A/30087/2022 dated 14.09.2022, wherein, transformer and metering charges were held not liable to service tax.

24. We accordingly hold that meter-testing is ancillary and naturally bundled element of distribution of electricity. The activity takes its tax character from the principal service falling within Section 66D(k) of the Finance Act, 1994. The Adjudicating Authority was, therefore, correct in dropping the demand of meter-testing charges.

25. The Show Cause Notice dated 22.10.2018 covers the period April 2013 to June 2017 and invokes the extended period under the proviso to Section 73(1) of Finance Act, 1994. Invocation of extended period requires proof that non-payment or short-payment occurred by reason of fraud, collusion, wilful mis-statement, suppression of facts or contravention of statutory provisions with intent to evade service tax. Mere omission, erroneous interpretation or non-payment is insufficient. The respondent is a state control distribution utility. The disputed charges were collected under publicly available tariff orders and regulations framed by the State Electricity Regulatory Commission. The amounts were duly recorded in the

respondent's books of accounts. There was no clandestine activity or secret consideration. The dispute involves interpretation of Section 66D(k), 66E(e) and Section 66F and the scope of the negative list. The decisions in Torrent Power Ltd., supra, and Madya Pradesh Vidyut Vitaran Company Ltd., supra, themselves demonstrates that the issue involved substantial question of statutory interpretations. More importantly, the DGGI had already issued an earlier Show Cause Notice dated 11.04.2018 for the period July 2012 to June 2017 after investigating the respondent's activities. The present notice dated 22.10.2018 covers an overlapping period from April 2013 to June 2017. Once the Department had obtained knowledge of the respondent's activities and accounting records during the earlier investigation, suppression of the same facts cannot ordinarily be alleged for a subsequent notice covering the same period. In Collector of Central Excise, Hyderabad Vs Chemphor Drugs and Liniments [1989 (40) ELT 276 (SC)], the Supreme Court held that something positive, apart from mere inaction or failure, is required before the assesse can be seddled with liability for the extended period. Conscious or deliberate withholding of information must be established. No positive evidence of deliberate suppression with intent to evade tax has been brought on record. We, therefore, hold that the extended period was not available to the Department. Consequently, the demand beyond the normal period would fail on the limitation as well.

26. Since the disputed activities are not liable to service tax, the question of recovery of interest does not arise. Further, the issue was interpretational, the respondent acted under a bona fide understanding of the statutory provisions, and all receipts were recorded in its accounts. Therefore, penalties cannot be imposed independently.

27. In view of the foregoing discussion, we hold that:

(i) additional charges or sur-charge recovered for delayed payment of electricity bills do not constitute consideration for agreeing to tolerate an act or situation under Section 66E(e) of the Finance Act, 1994;

(ii) meter-testing charges are directly connected with and naturally bundled with distribution of electricity and receive the same tax treatment as the principal service falling under Section 66D(k) of the Finance Act, 1994;

(iii) the extended period of limitation is not invocable; and

(iv) No interest or penalty is recoverable.

28. We find no legal or factual infirmity in the impugned order dated 20.11.2019 passed by the Commissioner dropping the proceedings initiated by the Show Cause Notice dated 22.10.2018.

29. Accordingly, the appeal filed by the Department is dismissed and the impugned order is upheld. The Cross Objections filed by the respondent, being in support of the impugned order and not seeking any separate relief, are disposed of accordingly.

(Pronounced in the open court on 11.09.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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