IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.75043 of 2014

(Arising out of Order-in-Original No.05/CE/ADJ/COMMR/DIB/13 dated 08.10.2013 passed by Commissioner of Central Excise & Service Tax, Dibrugarh.)

M/s. Assam Gas company Limited
(P.O. Duliajan, Dist: Dibrugarh, Assam-786602.)

...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Dibrugarh

.....Respondent

(P.O.:C.R. Building, Milan Nagar, "F" Lane, Dibrugarh-786003, Assam.)

WITH

Service Tax Appeal No.75256 of 2015

(Arising out of Order-in-Original No.07/ST/ADJ/COMMR/DIB/14-15 dated 05.12.2014 passed by Commissioner of Central Excise & Service Tax, Dibrugarh.)

M/s. Assam Gas company Limited
(P.O. Duliajan, Dist: Dibrugarh, Assam-786602.)

...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Dibrugarh

.....Respondent

(P.O.:C.R. Building, Milan Nagar, "F" Lane, Dibrugarh-786003, Assam.)

APPEARANCE

Shri Tarun Chatterjee, Advocate, Ms. Binita Pandey, C.S. & Ms.Sneha Das, Authorized Representative for the Appellant (s)
Shri S.S.Chattopadhyay, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)

FINAL ORDER NO. 76345-76346/2024

DATE OF HEARING : 25.06.2024
DATE OF DECISION : 25.06.2024

Per : RAJEEV TANDON :

The Appellant - a State Government Public Sector Undertaking, has filed the impugned appeal assailing the Order-in-Original dated 08.10.2013 and 05.12.2014 passed by the Ld.Commissioner of Central Excise & Service Tax, Dibrugarh. The appellant develops and operates pipeline infrastructure for transportation and sale of natural gas in the state of Assam and is largely concerned with the transmission of natural gas through pipeline. Show cause notice dated 09.04.2013, proposing recovery of an amount of Rs.2,51,10,673/- towards Service Tax leviable for provision of – "Transportation of goods through pipeline/conduit service" and "Erection, Commissioning & Installation Services", was issued to the appellant. In addition it also proposed recovery of inadmissible Cenvat Credit amounting to Rs.2,97,617/- availed by the noticee during 2010-11 and 2011-12. Demand for interest and penal provisions were also invoked in the said show cause notice. As per the said show cause notice the taxable value and service tax recoverable, are indicated category-wise in the following table :

(Amounts in Rupees)

Category		**Received amt.**	**Taxable Value**	**Service Tax**
A	Advance Received against Transmission Charges from Tea Estate and other consumers	37580200	37580200	4077945
B	Fuel Surcharge	16012999	16012999	1699598
C	Minimum Demand Charge (MDC)	135784718	135784718	14794332
D	Advance Received against Transmission Charges from PWD & APGCL	12681286	12681286	1306172
E	Amt. Received against cost of Gas Meter and Installation Charges	26196440	8644825	950633
F	Amt. against cost of Meter and Installation Charges received from Domestic Consumers	64489062	21281390	2263502
G	Reconnection Charges Collection against Re-installation	510000	168300	18491
TOTAL				**25110673**
H	Amount of Cenvat Credit taken on			**297617**

	Capital Goods & utilized against Output Services			

Each of the item proposed in the show cause notice and dealt by the authorities below is discussed hereunder:-

(A) Advance Received against Transmission Charges from Tea Estate and other consumers.

2. Service Tax amount of Rs.40,77,945/- is proposed for recovery against the said amount. This amount is part of the amount confirmed by the adjudicating authority. The appellant submits that in fact the said amount of Service Tax has been levied on advances received against transmission charges sourced from the tea estates and other consumers. They state that this advance is nothing, but a three months security deposit to secure payment and is taken in terms of Clause 12.3 of the contract entered into with their customers. For ready reference the said clause is extracted hereunder:-

"12.3 The CONSUMER shall have to deposit an amount of Rs.6,65,000.00 (Rupees Six Lakh Sixty five thousand only) which is approximately equivalent to Gas & T.C. Bills of those 3(three) months for which maximum quantity of gas is booked, as an advance with the COMPANY and this will be retained by the COMPANY till the date of expiry of the Agreement. The above amount is calculated as per the gas price & T.C. shown in clause 11.00, 11.02 & 11.03. The above deposit will have to be paid in the form of Bank Draft drawn in favour of M/s. Assam Gas Company Limited, Duliajan, on any Nationalised Bank payable at Duliajan. In case the CONSUMER fails to deposit the amount specified by the COMPANY within stipulated time, the COMPANY shall be at liberty to forfeit the Security Deposit of the CONSUMER.

In case of CONSUMER fails to clear the regular bills as raised by the COMPANY as per Clause 9.00, 11.00, 11.02, 11.03 and 13.00 and in the specified period the COMPANY reserves the right to realize/adjust the entire dues from the above advance deposited by the

CONSUMER with the COMPANY and in that case the CONSUMER will replenish the shortfall in the advance to the COMPANY immediately within 30(thirty) days time. The COMPANY will pay interest @ 3% (Three Percent) per annum for the above deposited amount."

3. As can be noted from the above reproduced clause of the contract, the amount is by way of deposit carrying interest @ 3% and refundable at the time of termination of the contract. It is also noticed that the same is also meant as a cushion and can be adjusted against the outstandings of the contracted party in case of any short payment thereto. In support of their contention, the appellant have also enclosed evidence, by way of records/returns indicating refund of the amount on termination of the contract on account of above. The said amount is duly reflected in the balance sheet and ledger account of the appellant with details of interest paid etc.. We note that it is settled proposition of law that such interest bearing deposit cannot be considered as part of service and leviable to service tax. We are of the view that any interest accrued (or notional) on such sums by way of a security advance, cannot form part of the value of a taxable service rendered. The of the Hon'ble Apex Court in the case of **MORIROKU UT INDIA (P) LTD. vs. State of U.P. [2008 (224) E.L.T. 365 (SC)]**, is squarely to this legal proposition. Moreover, such amount of interest as accrued on security deposits cannot be considered as part of a taxable service, towards consideration received by the appellant without establishing as to how the said security deposit is includible in the amount of consideration charged for the taxable value. Since it is a returnable deposit with no nexus to the nature of service provided, there is no

justification in levying Service Tax on the said deposit amounts. The appellant has also placed reliance in this regard on the law as settled by the Tribunal's decision in the case of **Abhishek Alcobe Pvt.Ltd. vs. CCE, Noida [2022 (62) GSTL 178 (Tri.All.)]** and that of **Sameer Rajender Sah vs. CCE, Kolapur [2015 (37) S.T.R. 154 (Tri.-Mumbai)]**. In support of the proposition that a security deposit obtained by the person for purpose of keeping business viability during the period of service in question, without any nexus between deposit and the consideration cannot be constituted as a part of the taxable service. Any interest therefore earned thereon shall not be includible in the gross taxable value for purpose of assessment. The department has woefully failed to establish any nexus with the security deposit to the discharge of the taxable service per se nor has it been borne out of record that such deposit in any way influences the value of the service rendered. It thus cannot form part of the taxable service and demand on this account for the aforesaid amount of Rs.40,77,945/- is required to be set aside. We do so.

(b) Fuel Surcharge.

4. The amount has not been contested and was paid correctly by the appellant and therefore the subject needs no further elaboration.

(c) Minimum Demand Charge (MDC).

5. An amount of Rs.1,47,94,332/- has been indicated in the aforesaid show cause notice on this count. The appellant has placed reliance on the issue on the decision of this Tribunal, rendered in their own case vide Final Order No.75233-75235/2024 dated 08.02.2024, whereby this Tribunal following the decision of the Tribunal in the case

of **GAIL India Ltd. vs. CCE, Delhi [2018 (8) GSTL 64 (Tri.Del.)]**, had held that as the appellants had paid VAT no Service Tax was leviable on the marketing margin and appellant was not liable to pay Service Tax thereon. We note that the aforesaid decision of the Tribunal is specific to the case of minimum demand charge for gas transportation from the customers, when the total consumption of gas uptake, irrespective of the calorific value thereof, falls below the contractual terms. We note that upon failure of the customer to derive, more than the contractual quantity i.e. 90%, through pipeline, in the circumstances is by way of a penalty charged on the customer for failure in meeting the contractual obligation. The amount thus received by the appellant by way of penalty can by no stretch be termed as provision of any service. Thus, respectfully following the precedent decision, we are of the view that no Service Tax is leviable this count. We allow the appeal to this extent.

(d) Advance Received against Transmission Charges from PWD & APGCL.

6. The appellant submits that the work involved therein was with reference to erection, commission and installation of the pipeline and the appellant has paid Service Tax on 33% of the total amount of Rs.4,30,972/- received, in terms of Notification No.1/2006-ST dated 01.03.2006. The appellant submits that challan thereof was produced before the lower authorities. However, the lower authorities failed to take note thereof. In view of the demand already having been paid appropriately by the appellant on this count, in accordance with law,

there is no case for elaborating on the demand aforesaid. The balance demand with all attendant liabilities is thus set aside.

(e) Amount received against Cost of Gas Meter and Installation Charges.

7. The amount of Service Tax of Rs.9,50,633/- thereon has already been paid and appropriated and therefore stands concluded. No contest thereto by the appellant is recorded in the impugned order.

(f) Amt. against cost of Meter and Installation Charges received from Domestic Consumers.

8. An amount of Rs.22,63,502/- has been made out and confirmed by the adjudicating authority. However, we note that the said amount is required to be collected by way of a security deposit in terms of section 14 of the Petroleum and Natural Gas Regulatory Board Act, 2006 (PNGRB Act). Since this amount is required to be collected in terms of a statutory provision and is refundable at the time of surrender of the connection, this amount cannot form part of the taxable value for consideration for provisioning of taxable service and therefore not liable to Service Tax. Service Tax confirmed thereto by the lower authority is set aside.

(g) Reconnection Charges Collection against Re-installation.

9. This amount is stated to accrue to the appellant, for failure of the customers in default of payment of Bills in time and subsequently dis-connection/re-connection of the said facility. The said amount has accrued on account of dis-connection charges/resumption of supply. We do not find any merit in the plea of the appellant in stating the same as penal in nature and not a provision of service. Therefore we

are of the view that such charges account for provision of service whether by way of initial connection or re-connection or any other name assigned. The appellant is liable to pay Service Tax of Rs.18,491/- thereon and the same is confirmed.

(h) Amount of Cenvat Credit taken on Capital Goods & utilized against Output Services.

10. An amount of Rs.2,97,617/- has been disallowed to the appellant on this score. The appellant submits that they have taken the said credit of erection, commissioning and installation service, as an input service, but have erroneously indicated the same as input and capital goods. Since such mistake is a curable defect, the said amount is otherwise eligible for availment of Cenvat credit and therefore allowed.

11. The appellant has also raised the plea of limitation in the matter. However, since we have already concluded our findings on the merits of each of the various category of issues on which Service Tax was demanded we strongly feel that the question of limitation therefore now remains to be of only academic interest. However, at the same time we would hasten to add that we do not find anything on record that would substantiate the department's charge of suppression of material facts from the department with intent to evade payment of Service Tax or of misstatement of the value of the taxable services. We thus are of the view that the matter did not call for invocation of extended period at all. It is on record that the DGCEI authorities had sourced all information and records from the appellant way back in 2004 under summons seeking from them their written profile and disclosing the nature of business activities carried out along with the

requisite records of the case. Hence we hold that the confirmed demand for the extended period is time barred.

12. As far the second show cause notice dated 01.04.2014, demanding service tax for the period April, 2012 to March 2013 and adjudicated vide order dated 05.12.2014/08.12.2014 issued on similar lines as discussed hereinabove, we would add that our findings and observations with regard to each of the various sub-clauses of demand do *mutatis mutandis* apply to the said category of demand in the second show cause notice as well.

12.1 For the sake of records the following table spells out the details of the category of issue and the service tax demand made out in the impugned show cause notice.

(Amounts in Rupees)

Category		**Received amt.**	**Taxable Value**	**Service Tax Including Ed.Cess & S & HE Cess**
A	Advance Received against Transmission Charges from Tea Estate and other consumers	7520400	7520400	929521
B	Minimum Demand Charge (MDC)	49222776	49222776	6083935
C	Amt. Received against cost of Gas Meter and Installation Charges	5429900	2171960	268448
D	Amt. against cost of Gas Meter and Installation Charges received from Domestic Consumers	20819016	8327606	1029292
E	Reconnection Charges Collection against Re-installation	90000	36000	4449
TOTAL				**8315645**
H	Amount of Cenvat Credit taken on Capital Goods & utilized against Output Services			**129280**

As evident from the table aforesaid, the said show cause notice relates to :

(i) Advances received against transmission charges from tea estates and other consumers as have been deliberated by us in paras 2 & 3 above. Our findings setting aside the said demand are replicated for the instant show cause notice.

(ii) Minimum demand charge as deliberated in para 5 above, holding non-leviability of service tax on this count, apply squarely herein.

(iii) Amount received against the cost of gas meter and installation charges that have not been contested and were appropriated by the adjudicating authority in respect of the show cause notice dated 09.04.2013, discussed in para 7 above. On similar lines the demand of service tax for Rs.2,68,448/- towards the said category, made vide show cause notice dated 01.04.2014, is required to be paid by the appellant and confirmed.

(iv) Amount against the cost of gas meter and installation charges received from domestic consumers, our findings as have been dealt by us in para 8 above holding the said amount as not to form part of consideration for computation of taxable value are replicated.

(v) Re-connection charges collection against re-installation - For reasons as discussed in para 9 above, an amount of Rs.4,449/- on this count is liable to be paid by the appellant and confirmed.

(vi) Our findings on account of Cenvat credit taken on capital goods as discussed in para 10 equally relate to the show cause notice dated 01.04.2014 and we hold on similar lines that the same being a curable defect, the amount is otherwise eligible for availment of Cenvat credit and allowed.

12.2 Our findings thus as in foregoing paras 2-10 are replicated and made applicable towards the demand made out by the show cause notice of 01.04.2014. The same being elaborated in para 12.1 (i)-(vi) above.

13. In view of our conclusions aforesaid, we modify the two orders under challenge to the extent as discussed in foregoing paras. The amount of demands paid, under various heads stated herein – paid/not contested and/or appropriated by the lower authority are settled accordingly. The demand under various heads as held payable by us are accordingly confirmed.

14. The appeals filed by the appellants are therefore allowed on aforesaid terms with consequential relief, if any, as per law. The amount as held payable by us shall be paid by the appellant forthwith, alongwith interest as applicable in law. Penal liabilities imposed upon the appellants are set aside.

(Operative part of the order was pronounced in the open Court.)

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/

(RAJEEV TANDON)
MEMBER (TECHNICAL)

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