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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75261 of 2016

(Arising out of Order-in-Appeal No. 99/DIB/CE(A)/GHY/15 dated 04.12.2015 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax (NER), Custom House, Nilamoni Phukan Path, Christian Basti, Guwahati – 781 005)

M/s. Assam Gas Company Limited **: Appellant**
P.O. Duliajan, District: Dibrugarh,
Assam – 786 602

VERSUS

Commissioner of Central Excise and Service Tax **: Respondent**
Milan Nagar, Lane 'F', P.O.: C.R. Building,
Dibrugarh – 786 003

APPEARANCE:

Shri Tarun Chatterjee, Advocate for the Appellant

Shri Debapriya Sue, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 76699 / 2024

DATE OF HEARING / DECISION: 20.08.2024

ORDER: [PER SHRI K. ANPAZHAKAN]

M/s. Assam Gas Company Limited, P.O. Duliajan, District: Dibrugarh, Assam – 786 602 (the 'Appellant') is a State Public Sector Undertaking promoted by the Government of Assam to create, develop and operate pipeline infrastructure for transportation and sale of natural gas in the State of Assam.

2. A Show Cause Notice dated 30.09.2014 was issued to the appellant demanding Service Tax of Rs.27,34,108/- (including Cess) on the taxable services viz. 'transportation of goods through pipeline/conduit service' and 'works contract service',

which were not paid by the appellant for the period from 01.04.2013 to 31.03.2014.

2.1. The Notice was adjudicated by the Ld. Additional Commissioner vide the Order-in-Original No. 09/Addl.Commr/ADJ/BT/ST/COMMR/DIB/15-16 dtd. 30.04.2015 wherein he confirmed the demand of Service Tax as proposed in the Notice, along with interest and imposed equal amount of tax as penalty under Section 78 of the Finance Act, 1994.

2.2. On appeal, the Ld. Commissioner (Appeals) vide the impugned order has confirmed the demand of Service Tax of Rs.24,18,855/-, along with interest, and held that the appellant is liable to pay equal amount of tax as penalty under Section 78 of the Act.

3. Aggrieved against the impugned order, the appellant has filed this appeal.

4. The appellant submitted that in the impugned order, the Ld. Commissioner (Appeals) has confirmed the demands under the following categories: -

Sl.No.	DEMAND	Amount
A.	Advance Received against Transmission Charges from Tea Estate and other consumers. Such amount is security deposit and interest is payable on such amount.	Rs.14,67,083/-
B.	Amount against cost of Gas Meter and installation charges received from domestic consumers, the amount is refundable security deposit as per PNGRB Act, 2006.	Rs.9,60,289/-
C.	Reconnection charges collected against re-installation	Rs.1,483/-
Total		Rs.24,28,855/-

4.1. Regarding the demand of Service Tax of Rs.14,67,083/- confirmed on advance received against transmission charges received from Tea Estate and other consumers, the appellant submits that 'three (3) months advance' collected by them is security deposit to secure payment; such deposit is taken as per clause 12.03 of the Agreement and it carries interest @3% p.a.; such amount is refundable at the time of termination of the contract and adjusted against the outstanding amount, if the contractee failed to pay as per the terms of the contract. The appellant also submits that the issue is already settled by this Tribunal in the appellant's own case vide*Final Order Nos. 76345-76346 of 2024 dated 25.06.2024 in Service Tax Appeal No. 75043 of 2014 & anr. (CESTAT, Kolkata).*

4.2. Regarding the demand of Service Tax of Rs.9,60,289/- against the cost of gas meter and pipeline installation, the appellant submitted that the amount is collected as Security Deposit in terms of Section 14 of the PNGRB Act, 2006; furthermore, such amount is refundable at the time of surrender of the connection and hence, such amount is not consideration for provision of any taxable service and not liable to Service Tax. It is submitted that the issue is already settled by this Bench of the Tribunal in appellant's own case by Final Order dated 25.06.2024 (*supra*).

4.3. Regarding the demand of Service Tax of Rs.1,483/- on reconnection charges, the appellant submits that they are not contesting the said demand and are agreeing to pay the same.

5. The Ld. Departmental Representative appearing for the Revenue reiterated the findings in the impugned order.

6. Heard both sides and perused the appeal documents.

7. We find that the Ld. Commissioner (Appeals) has confirmed the demand in the impugned order under three categories. The liability of service tax on each of the category is discussed as below:

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

7.1. Regarding the demand of Rs.14,67,083/- on advance received against transmission charges from Tea Estate and other consumers, we observe that the same issue has already been settled by this Tribunal in the appellant's own case *Final Order Nos. 76345-76346 of 2024 dated 25.06.2024.* The relevant part of the said decision is reproduced below: -

> *"(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:-*
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>> *"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."*

7.2. By relying on the decision cited above, we hold that the demand of service tax confirmed in the impugned order, on this count is not sustainable.

B. Amount against cost of Gas Meter and installation charges:

7.3. Regarding the demand of Service Tax of Rs.9,60,289/- on the cost of gas meter and pipeline installation, we observe that the amount is collected as 'security deposit' in terms of Section 14 of the PNGRB Act, 2006. Further, this amount is refundable at the time of surrender of the connection. Hence, we hold that no taxable service is rendered and the amount is not liable to Service Tax. This view has also been held in the appellant's own case in Final Order dated 25.06.2024 (*supra)*. The relevant part of the said order is reproduced below: -

> *"(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."*

7.4. By relying on the decision cited above, we hold that the demand of service tax confirmed in the impugned order, on this count is not sustainable.

C. Reconnection charges collected against re-installation:

7.5. Regarding the demand of Rs.1,483/- on the reconnection charges against re-installation, we observe that the appellant has not contested this demand. Further, in the appellant's own case, this Tribunal vide Final Order dated 25.06.2024 (*supra)* has held that the appellant is liable to pay Service Tax on re-connection charges. The relevant portion of the order reads as under: -

> *"(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."*

7.6. Thus, by relying on the decision cited above, we hold that the appellant is liable to pay service tax along with interest on the reconnection charges received by them. However, there is no suppression of fact with intention to evade the payment of tax exist in this case and hence, no penalty is imposed on this demand.

8. In view of the above, we pass the following order: -

(i) We set aside the demand of Rs. Rs.14,67,083/- confirmed on the advance received against transmission charges from Tea Estate and other consumers.

(ii) We set aside the demand of Rs.9,60,289/- confirmed on the security deposit collected.

(iii) We uphold the confirmation of demand of Rs.1,483/- on the reconnection charges against re-installation. The appellant is also liable to pay interest on this amount.

(iv) All the penalties imposed on the appellant are set aside.

(v) The appeal filed by the appellant is disposed of on the above terms.

(Operative part of the order was pronounced in open court)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd