

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24457 of 2019

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South Bihar Power Distribution Company Ltd. a Company incorporated under the Companies Act 1956 having its registered Office at Vidut Bhawan, Bailey Road, P.O. GPO, P.S. Kotwali, through its Sr. Manager, Finance, Gajendra Sharma, Son of Shri Mahendra Sharma Resident of Road No. 9, Near Balaji Apartment Shri Nagar, P.O. Ashiana Nagar, P.S. Shastri Nagar Patna.

... .. Petitioner/s

Versus

1. Union of India through the Secretary, Ministry of Finance, Department of Revenue having its office at North Block New Delhi
2. Central Board of Excise and Customs, through its Secretary having its Office at North Block, New Delhi
3. Directorate General of Goods and Service Tax Intelligence Patna Zonal Unit, having its office at Near Pani Tanki More, Cybotech Tower, Boring Patliputra Road, Patliputra Patna.
4. Senior Intelligence Officer, DGGI, Patna Zonal Unit, having its Office at Near Pani Tanki More, Cybotech Tower, Boring Patliputra Road, Patliputra Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 885 of 2020

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North Bihar Power Distribution Co. Ltd. A Company incorporated under the Companies Act, 1956 having its Office at Vidyut Bhawan Bailey Road, Patna 800001 through its Deputy General Manager- Finance Anurag, Son of Late Rajendra Prasad resident of Flat No. 406 Ramayan Apartment Exhibition Road P.O. GPO, P.S. Gandhi Maidan, District- Patna.

... .. Petitioner/s

Versus

1. Union of India Through the Secretary, Ministry of Finance, Department of Revenue having its office at North Block New Delhi.
2. Central Board of Excise and Customs Through its Secretary having its office at North Block, New Delhi.
3. Directorate General of Goods and Service Tax Intelligence Patna Zonal Unit, having its office at Near Pani Tanki More, Cybotech Tower, Boring Patliputra Road, Patliputra, Patna.
4. Senior Intelligence Officer DGGI, Patna Zonal Unit, having its office at Near Pani Tanki More, Cybotech Tower, Boring Patliputra Road, Patliputra, Patna.

... .. Respondent/s



Appearance :

(In Civil Writ Jurisdiction Case No. 24457 of 2019)

For the Petitioner/s : Mr. D.V.Pathy, Advocate
For the Respondent/s : Dr. K.N. Singh, ASG
Mr. Anshuman Singh, Sr. SC. CGST & CX
Mr. Devansh Shankar Singh, Advocate
Mr. Shivaditya Dhari Sinha, Advocate

(In Civil Writ Jurisdiction Case No. 885 of 2020)

For the Petitioner/s : Mr. D.V.Pathy, Advocate
For the Respondent/s : Dr. K.N. Singh, ASG
Mr. Anshuman Singh, Sr. SC. CGST & CX
Mr. Devansh Shankar Singh, Advocate
Mr. Shivaditya Dhari Sinha, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 01-08-2024

The question arises in the above cases, as to whether the exemption granted to transmission or distribution of electricity by an electricity transmission or distribution utility company would take in the ancillary services offered to its consumers.

2. A complete exemption granted as seen from Annexure-5 would take within its ambit, those services which have been culled out 'for levy of tax' by Annexure-1 issued by the Principal Chief Commissioner on the approval of the Fitment Committee to the GST Council dated 01.03.2018, is the contention of the petitioners.

3. The activities/services which are culled out for the purpose of levy of tax under the CGST Act by a



classification are the following:-

- I. Application fee for releasing connection of electricity;*
- ii. Rental Charges against metering equipment;*
- iii Testing fee for meters/ transformers, capacitors etc.;*
- iv. Labour charges from customers for shifting of meters or shifting of service lines;*
- v. Charges for duplicate bill;*

4. The two electricity distribution companies who are before us rely on Sections 7 and 8 of the CGST Act, 2017 and contend that it is a composite service offered to the consumers, and there cannot be any clarification by which the exemption granted by a notification is diluted.

5. The High Court of Gujarat, by Annexure-6 judgment dated 19.12.2018 in **Torrent Power Ltd. v. Union of India** in **R/Special Civil Application No. 5343 of 2018**, has struck down the clarifications in serial no. 4 of Annexure-1, which have been extracted herein above.

6. It is the common case that a Special Leave Petition was filed, which has been converted into **C.A. No. 006278 of 2019** registered on 13.08.2019, which is pending before the Hon'ble Supreme Court.

7. The learned Counsel appearing for the Distribution Companies submits, and the learned ASG agrees,



that the petitioner has paid up the entire liability of the years, which are the subject matter of the two instant cases. It is submitted by learned Counsel for the petitioners that they are continuing to pay the liability under protest, subject to the final decision in the writ petition. Now that the matter is pending before the Hon'ble Supreme Court, we deem it fit to dispose off the writ petition but leaving the parties to abide by the decision of the Hon'ble Supreme Court.

8. The petitioner-Companies would go on paying the levy which shall be treated as payments made under protest, subject to the final judgment of the Hon'ble Supreme Court in **C.A. No. 006278 of 2019.**

9. The learned Counsel for the petitioners also submits that penalty proceedings were issued, which were stayed only on the ground of the pendency of the writ petitions. The order in the penalty proceedings specified that there shall be a stay till the disposal of the writ petition. In the context of our disposing of the writ petitions, we make it clear that the penalty proceedings shall not be continued and proceeded with till the Hon'ble Supreme Court passes final judgment in the matter.

10. The writ petitions stand closed with the above observations and reservations, leaving the parties to abide by the



Hon'ble Supreme Court judgment and *status quo* be maintained with respect to the payments and also the penalty proceedings till judgment is delivered by the Hon'ble Supreme Court in C.A. No. **C.A. No. 006278 of 2019.**

11. The penalty proceedings will stand stayed till the final decision of the Hon'ble Supreme Court in the matter of exemption regarding ancillary services, and if the issue is held against the assessee, then necessarily penalty will have to be independently considered, on the basis of principles governing imposition of penalties.

12. Writ petitions are disposed of with the above observations and reservations.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

aditya/-

AFR/NAFR	
CAV DATE	
Uploading Date	06.08.2024.
Transmission Date	

