



\$~60

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 6th October 2025

+ **W.P.(C) 948/2018**

TARC PROJECTS LIMITED

.....Petitioner

Through: Mr. J. K. Mittal, Ms. Vandana Mittal &
Mr. Mukesh Choudhary, Advs.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Harpreet Singh, SSC with Mr. Jai
Ahuja, Adv.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE SHAIL JAIN

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.
2. The present petition has been filed on behalf of the Petitioner- M/s TARC Projects Ltd., earlier known as Anant Raj Projects Ltd. under Article 226 of the Constitution of India, *inter alia*, seeking issuance of a writ in the nature of *mandamus* for quashing of Section 66D(k) of the Finance Act, 1994 (hereinafter, '*the Act*') as also the **Notification No. 32/2010-Service Tax** dated 22nd June 2010. The Petitioner *vide* the present petition also assails the Order-in-Original bearing no. 03/GST/DL-West/RR/2017-18 dated 30th November 2017 (hereinafter, '*impugned order*') passed by the Office of the Commissioner of Central Tax (Delhi West).
3. The Petitioner *vide* the present petition further seeks a direction that the



collection of service tax on the supply of electricity by the Petitioner is not liable to be taxed under the Act as the same is under the purview of the State List as per the VII Schedule of the Constitution of India.

Facts

4. The Petitioner owns a shopping mall by the name ‘*MOMENTS*’ at Kirti Nagar, New Delhi. The said mall was developed during the years 2008-2011 on approximately 6.18 acres of land having approximately 5,00,000 sq. ft. of leasable area. Various commercial spaces in the said mall are given on lease to tenants for running their showrooms/outlets.

5. According to the Petitioner, it is registered with the Service Tax Department (hereinafter, ‘*Department*’) and is providing services of renting of immovable properties. It is stated that the Petitioner has duly paid the applicable service tax and files returns regularly. Apart from the rental amount that it collects, the Petitioner also provides certain maintenance services as also common-area facilities to its tenants. In respect of these facilities, service tax is also paid by the Petitioner on monthly billing basis.

6. An agreement dated 4th June, 2012 has been entered into between the Petitioner and the North Delhi Power Ltd. (hereinafter, ‘*NDPL*’) for supply of 4000kW of electrical energy on Non-Domestic High-Tension basis. The Petitioner has also entered into various agreements with the tenants who have taken the space on lease in the mall of the Petitioner. In the said agreements, one of the clauses relates to supply of electricity. The said clause is a standard clause in the said agreements, mostly entered into with all the tenants. By way of example, the said clause in the agreement dated 21st May, 2014 entered by the Petitioner with M/s. V S Foods is extracted below:



“8. Electricity and Demand charges

i. Use of Electricity/ Power Back-up by the Licensee

a. The Licensor shall procure and make provision for the electricity requirements of the Food Court, and shall permit the use of such electricity in the Licensed Space, on a metered basis and upon payment of electricity charges, as shall be computed by the Licensor and/or MMA from time to time. The Licensee undertakes not to source electricity through any other means except as distributed by the Licensor. The Licensee hereby agrees and undertakes to sign and execute the necessary documents/authorizations as may be required by the Licensor to get electric connection or load on its own and/or on their behalf.

b. The Licensee, as a prior requisite, shall submit to the Licensor its requirement of electricity load of 10 KVA in the Licensed Space and the same may be provided to the Licensee subject to availability of such load in Moments Mall and upon payment of Demand Charges for Utilities on pro rate basis in addition to the charges levied by the electricity provider. These Demand Charges for Utilities shall be paid by the Licensee to the Licensor.

c. The Licensee undertakes not to exceed the usage of electricity beyond their total permissible load, as that may cause short circuits or malfunctioning of equipments in the Moments Mall/ Food Court. If the Licensee exceeds the usage of electricity beyond their total permissible load then the Licensee shall pay additional charges for the same along with a penalty of 30 (thirty) % of the total electricity bill for that particular month to the Licensor.



d. Electricity used in the Licensed Space, shall be metered, and the Licensee undertakes to reimburse for the use of such electricity and power backup in the Licensed Space, against monthly bills/invoices submitted to it by the Licensor, by the due date specified in such bills, without any delay. The reimbursements/ costs for electricity consumed in Food Court shall be based upon the costs of: procurement/ generation, distribution, loss factors, related manpower costs, the maintenance & management of all related equipments, service charges and applicable taxes, as certified by the Licensor/ MMA.”

7. Audits were conducted by the Department in the year 2015 and various documents were sought from the Petitioner. One of the issues over which queries were raised during the audits were related to electricity bills. After the audits, the Department issued a Show Cause Notice (hereinafter, ‘SCN’) dated 18th October 2016 to the Petitioner. One of the grounds taken in the SCN was that the Petitioner had not paid service tax on the electricity charges recovered towards supply of electricity to various shops in the mall through sub-meters installed in the said shops.

8. The case of the Department was that the Petitioner is supplying electricity as a part of maintenance activity and the same is, therefore, liable to be charged for service tax under the category ‘*Management, Maintenance and Repair Services*’ as defined under Section 65(105)(zzg) of the Act. According to the Department, prior to 1st July 2012, transmission and distribution of electricity were exempted from payment of service tax *vide Notification No. 32/2010-ST* dated 22nd June 2010, only if the same were transmitted or distributed by persons authorized to distribute power under the



Electricity Act, 2003.

9. Since electricity service is not inserted in the ‘*Negative List*’ of services and is also not exempted by the Mega exemption **Notification No.25/2012-ST** dated 20th June 2012, the Department’s case was that service tax to the tune of Rs.1,24,40,055/- was recoverable from the Petitioner.

10. One of the factors that was considered by the Department was that the Petitioner had agreed to provide uninterrupted power supply which would be beyond mere re-distribution of electricity. The said SCN dated 18th October 2016 which was issued to the Petitioner for the Financial Years 2011-12, 2012-13 and 2013-14, levied service tax on electricity charges in the following terms:

“Revenue From ‘Electricity Charges Income”

S. No.	Financial Year	Electricity Charges income as per Balance Sheet	Rate of Service Tax	Service Tax payable (including EF & SHEC)
1.	2011-12	22365719	10.30%	2303669
2.	2012-13	45605540	12.36%	5636845
3.	2013-14	36404059	12.36%	4499542
	Total	104375318		12440055

11. A similar SCN was issued to the Petitioner by the Department on 8th May 2017 for the Financial Year 2014-15. The same levied service tax on electricity charges in the following terms:

“Revenue From ‘Electricity Charges Income”

S. No.	Financial Year	Electricity Charges income as per Balance Sheet	Rate of Service Tax	Service Tax payable (including EC & SHEC)
--------	----------------	---	---------------------	---



1.	2014-15	4,11,16,023	12.36%	50,81,940
----	---------	-------------	--------	-----------

12. In respect of both the SCNs, the impugned order was passed on 30th November 2017. In terms of the impugned order, the Adjudicating Authority held that that electricity would not constitute exempted services and there was an intention on behalf of the Petitioner to evade tax. Therefore, it was concluded by the Adjudicating Authority as under:

“3.14 In view of above I find that the party is liable to pay service tax on such Electricity Charges Income under Management, Maintenance & Repair Services in terms of erstwhile Section 66 of the Act read with Section 65(64) of the Finance Act, 1994 upto 30.06.2012 and under Section 66B of the Act ibid w.e.f. 01.07.2012. Accordingly I hold that the service tax amounting to Rs, 1,24,40,055/- and Rs 50,81,940/- including Education Cess and Secondary & Higher Education Cess is recoverable under the provisions of Section 73(1) of Finance Act, 1994, read with Section 66, 66B and 68 of the Act ibid and read with Rule 6 of Service Tax Rules, 1994 read with Section 91 and 95 of the Finance (No.2) Act, 2004 for Education Cess, Section 136 and 140 of the Finance Act, 2007 for Secondary & Higher Education Cess along with interest under the provisions of Section 75 of Finance Act, 1994.”

Thus, the service tax towards electricity charges collected by the Petitioner from its tenants as contemplated under both the SCNs was confirmed by the Adjudicating Authority.

13. The relief sought by the Petitioner in the present writ petition is as



under:

*“A) issue a Writ of certiorari/ mandamus or any other appropriate Writ/ order/ direction against the Respondents by quashing impugned provisions of section 66D(k) of the Finance Act, 1994 (**reproduced in para 7 of writ petition**) and the impugned Notification No. 32/2010-Service Tax, dated 22- 6-2010 (**reproduced in para 6 of writ petition**) by declaring that same lack legislative competency, ultra vires to the Finance Act, 1994 and transgress the provisions and the power granted under the Constitution of India, hence unconstitutional;*

B) issue a Writ of certiorari/ mandamus or any other appropriate Writ/ order/ direction declaring that sale/ supply of electricity by the Petitioner is not liable to service tax under any of sub-clauses of clause (105) of section 65 of Chapter V of the Finance Act, 1994 (upto 30.06.20 12) and from 01.07.2012 under section 65B(44) of the Finance Act, 1994, as same is subject matter of taxes by State under State List of VII Schedule of the Constitution of India and outside the scope of levy of service tax by Union of India;

C) issue a Writ of certiorari/ mandamus or any other appropriate Writ/ order/ direction by quashing the impugned show cause notice dated 18.10.2016 and 08.05.2017 and as well as order-in-original dated 30.11.2017 by declaring that demanding and levying of service tax on the charges collected for sale/ supply of electricity by the Petitioner is illegal and without authority of law and against the Article 265 of the Constitution of India;

D) issue a Writ of certiorari/ mandamus or any other appropriate Writ/ order/ direction against the Respondent No. 6 has passed the impugned



*order-in-original dated 30.11.2017 without any authority of law and void and illegal;
E) issue a Writ of certiorari/ mandamus or any other appropriate Writ/ order/ direction by quashing the impugned show cause notice dated 18.10.2016 issued by the Respondent No. 2 without jurisdiction over the Petitioner and void and illegal;”*

In effect, therefore, the prayer of the Petitioner is that no service tax is liable to be paid on actual electricity charges.

Submissions on behalf of the Parties

14. Mr. J. K. Mittal, Id. Counsel for the Petitioner has made detailed submissions. At the outset, it is submitted by him that based on the documents filed, the electricity charges collected by the Petitioner are identical to those that were being levied by the distribution companies directly on the consumers. To support this position, various bills have been placed on record by the Petitioner to show that the unit rate that was being charged by the Petitioner from its tenants was same to that of the distribution company.

15. Id. Counsel for the Petitioner further submits that though the impugned order has been passed in respect of various issues, the only issue which is being agitated and pressed in this writ petition is *qua* electricity charges. It is submitted on behalf of the Petitioner that the legal position stands settled that electricity constitutes goods and hence, no service tax would be payable on the same.

16. Id. Counsel for the Petitioner also submits that to include electricity charges into maintenance charges would be incorrect as the electricity which is being received from the distribution company *i.e.*, NDPL is being directly



permitted to be used by the tenants and the bills as raised on the basis of units consumed as per the electricity sub-meters installed in respect of the tenants. No amount is added over and above what is charged by the distribution companies. Thus, in his submission, there is no providing of services by the Petitioner.

17. Mr. J. K. Mittal, Id. Counsel for the Petitioner has placed reliance upon the decision of the Supreme Court in ***State of A.P. v. National Thermal Power Corpn. Ltd., (2002) 5 SCC 203*** to argue that electricity is a ‘good’ and hence, not liable for service tax. The Supreme Court in the said decision relied upon the decision in ***CST v. M.P. Electricity Board, Jabalpur, (1969) 1 SCC 200*** to affirm that due to its characteristics, electricity shall be considered as goods. The Supreme Court in the said decision also placed reliance on the judgment in ***Indian Aluminium Co. v. State of Kerala, (1996) 7 SCC 637***, wherein it was observed that all the three steps, namely sale, supply, and consumption of electricity, occur simultaneously without any hiatus, thereby emphasizing the characteristics of electricity as goods. The relevant portion of the decision in ***State of A.P. (Supra)*** reads as under:

“Electricity, what it is

20. Before we deal with the constitutional aspects, let us first state what electricity is, as understood in law, and what are its relevant characteristics. It is settled with the pronouncement of this Court in CST v. M.P. Electricity Board, Jabalpur [(1969) 1 SCC 200 : (1969) 2 SCR 939] that electricity is goods. The definition of goods as given in Article 366(12) of the Constitution was considered by this Court and it was held that the definition in terms is very wide according to which “goods” means all kinds of movable property. The term “movable property” when considered with



reference to “goods” as defined for the purpose of sales tax cannot be taken in a narrow sense and merely because electrical energy is not tangible or cannot be moved or touched like, for instance, a piece of wood or a book, it cannot cease to be movable property when it has all the attributes of such property. It is capable of abstraction, consumption and use which if done dishonestly, is punishable under Section 39 of the Indian Electricity Act, 1910. If there can be sale and purchase of electrical energy like any other movable object, this Court held that there was no difficulty in holding that electric energy was intended to be covered by the definition of “goods”. However, A.N. Grover, J. speaking for the three-Judge Bench of this Court went on to observe (at SCC p. 205, para 9) that electric energy “can be transmitted, transferred, delivered, stored, possessed etc. in the same way as any other movable property”. In this observation we agree with Grover, J. on all other characteristics of electric energy except that it can be “stored” and to the extent that electric energy can be “stored”, the observation must be held to be erroneous or by oversight. Science and technology till this day have not been able to evolve any methodology by which electric energy can be preserved or stored. [Ed. : This is largely true for the scale of operation under discussion in this case. A very small amount of electrical energy, however, can be stored in accumulators which can be retrieved and used by inverters, as commonly called.]

21. Another significant characteristic of electric energy is that its generation or production coincides almost instantaneously with its consumption. To quote from Aiyar's Law Lexicon (2nd Edn., 2000)—

“Electricity in physics is ‘the name given to the cause of a series of phenomena exhibited by various substances, and also to the phenomena themselves’. Its true nature is not understood.
Imperial Dictionary (quoted



in Spensley v. Lancashire Ins. Co. [54 Wis 433, 442, 11 NW 894] where the court, quoting from the same authority, said, ‘we are totally ignorant of the nature of this cause whether it be a material agent or merely a property of matter. But as some hypothesis is necessary for explaining the phenomena observed, it has been assumed to be a highly subtle, imponderable fluid, identical with lightning, which pervades the pores of all bodies, and is capable of motion from one body to another’.”

This characteristic quality of electric energy was judicially noticed in Indian Aluminium Co. v. State of Kerala [(1996) 7 SCC 637] . Vide para 25 this Court has noted : (SCC p. 650)

“Continuity of supply and consumption starts from the moment the electrical energy passes through the meters and sale simultaneously takes place as soon as meter reading is recorded. All the three steps or phases (i.e. sale, supply and consumption) take place without any hiatus. It is true that from the place of generating electricity, the electricity is supplied to the substation installed at the units of the consumers through electrical high-tension transformers and from there electricity is supplied to the meter. But the moment electricity is supplied through the meter, consumption and sale simultaneously take place ... as soon as the electrical energy is supplied to the consumers and is transmitted through the meter, consumption takes place simultaneously with the supply. There is no hiatus in its operation. Simultaneously sale also takes place.”

These properties of electricity as goods are of immense relevance as we would state hereafter.”

18. Ld. Counsel for the Petitioner further place reliance upon the decision in ***Orient Paper and Industries Ltd. v. Orissa State Electricity Board, 1989***



SCC OnLine Ori 104, wherein it is held that electricity has value, utility, and transferability, bringing it within the definition of ‘goods’ under Article 366(12) of Constitution of India.

19. Mr. J. K. Mittal, Id. Counsel for the Petitioner has also placed reliance upon the decision in **Delhi Chit Fund Association v. Union of India, 2013:DHC:2027-DB** to argue that the levy of service tax cannot be sustained where the activity in question constitutes a mere transaction in money or actionable claim, which stands excluded from the ambit of ‘service’ under Section 65B (44) of the Act. Id. Counsel further submits that, as interpreted by a Co-ordinate Bench of this Court in the aforesaid decision, there are four essential elements of a ‘service’ under Section 65B (44) of the Act, and hence, the services provided by the Petitioner to its tenants do not satisfy the requirements of the said four elements. The said four elements are as under:

- a) There must be a person providing the service;
- b) There must be a recipient of the service;
- c) There must be an actual rendering of the service; and
- d) There must be consideration for the service.

The relevant portion of the decision in **Delhi Chit Fund Association (Supra)** reads as under:

*“9. We shall first address the argument that what is excluded is only a service in relation to an activity which constitutes merely a transaction in money or actionable claim. The basis of this argument is the principle that a provision cannot exclude something from the definition, unless it is included in the definition. Section 65B(44) defines “service” as any activity carried out by a person for another for consideration. **This implies, as pointed out on behalf of the petitioner, that there are four***



elements therein: the person who provides the service, the person who receives the service, the actual rendering of the service and, lastly, the consideration for the service. The opening words of the definition consist of the above four aspects or characteristics and unless all the four are present, the activity cannot be charged with service tax. A mere transaction in money or actionable claim cannot under the ordinary notions of a service be considered as a service, neither can it be considered as falling within the first part of the definition because it lacks the four constituent elements which are required by the definition. In a mere transaction in money or actionable claim, no service is involved; there is just the payment and receipt of the money. The word “money” is defined in section 65B(33) in the following manner:

“(33) “money” means legal tender, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveler cheque, money order, postal or electronic remittance or any similar instrument but shall not include any currency that is held for its numismatic value;”

20. The Special Leave Petition assailing the said decision in ***Delhi Chit Fund Association (Supra)*** being ***SLP(C) No. 024998 /2013*** titled ***Union of India v. Delhi Chit Fund Association*** is also stated to have been dismissed vide order dated 7th January, 2014.

21. Mr. Harpreet Singh, Id. SCC for the Respondent has vehemently urged that the Petitioner is not a distribution company and uninterrupted supply of electricity is an integral part of maintenance and other services provided by the Petitioner and hence, the Petitioner liable to payment of service tax.

Analysis and Findings

22. At the outset, the challenge to the various provisions of the Act and the



Notifications is not pressed by Mr. Mittal, Id. Counsel for the Petitioner. On facts, the case of the Petitioner is that no service tax is liable to be paid.

23. Broadly, therefore, the only question that arises for consideration is whether service tax is liable to be paid on electricity charges collected by the Petitioner from its tenants or not.

24. Notice in the present petition was issued on the limited issue of *vires* of **Notification No. 32/2010-ST** date 22nd June, 2010 and Clause (k) of the Section 66D of the Act. The relevant portion of the order dated 16th May, 2018 reads as under:

“Issue notice limited to vires of Notification No.32/2010-Service Tax dated 22nd June, 2010 and Clause (k) of Section 66D of the Finance Act, 1994.”

25. Thereafter, *vide* order dated 16th January 2023, this Court has already observed as under:

“CM APPL. 4008/2018 (for exemption from filing certified copies of annexures)

1. Exemptions allowed, subject to all just exceptions.

2. The application stands disposed of.

W.P.(C) 948/2018

3. The petitioner has filed the present petition inter-alia praying as under:

“A) issue a Writ of certiorari/ mandamus or any other appropriate Writ/ order/ direction against the Respondents by quashing impugned provisions of section 66D(k) of the Finance Act, 1994 (reproduced in para 7 of writ petition) and the impugned Notification No. 32/2010-Service Tax, dated 22-6-2010 (reproduced in para 6 of writ petition) by declaring that same



lack legislative competency, ultra vires to the Finance Act, 1994 and transgress the provisions and the power granted under the Constitution of India, hence unconstitutional;

B) issue a Writ of certiorari/ mandamus or any other appropriate Writ/ order/ direction declaring that sale/ supply of electricity by the Petitioner is not liable to service tax under any of sub-clauses of clause (1 05) of section 65 of Chapter V of the Finance Act, 1994 (upto 30.06.20 12) and from 01.07.2012 under section 65B(44) of the Finance Act, 1994, as same is subject matter of taxes by State under State List of VII Schedule of the Constitution of India and outside the scope of levy of service tax by Union of India;

C) issue a Writ of certiorari/ mandamus or any other appropriate Writ/ order/ direction by quashing the impugned show cause notice dated 18.10.2016 and 08.05.2017 and as well as order-in-original dated 30.11.2017 by declaring that demanding and levying of service tax on the charges collected for sale/ supply of electricity by the Petitioner is illegal and without authority of law and against the Article 265 of the Constitution of India;

D) issue a Writ of certiorari/ mandamus or any other appropriate Writ/ order/ direction against the Respondent No. 6 has passed the impugned order-inoriginal dated 30.11.2017 without any authority of



law and void and illegal;

E) issue a Writ of certiorari/ mandamus or any other appropriate Writ/ order/ direction by quashing the impugned show cause notice dated 18.10.2016 issued by the Respondent No. 2 without jurisdiction over the Petitioner and void and illegal.”

4. The petitioner challenges the provisions of Section 66Dk of the Finance Act, 1994 (hereinafter “the Act”) and the notification dated 22.06.2010 as ultra-vires to the Constitution of India.

5. Section 66Dk of the Act reads as under:

“SECTION 66D. Negative list of services.—

The negative list shall comprise of the following services, namely :—

(k) transmission or distribution of electricity by an electricity transmission or distribution utility;”

6. In terms of Section 66B of the Act, services other than the services specified in the negative list are chargeable to tax. Thus, clause (k) of 66D postulates that the services relating to transmission or distribution of electricity by an electricity transmission or distribution utility are not be exigible to service tax under the provisions of Section 66D of the Act. Clearly, the said clause cannot be construed to mean that consumption of electricity is otherwise chargeable to service tax.

7. The petitioner’s challenge to Section 66Dk of the Act is premised on the basis that placing the service relating to transmission or distribution of electricity by electricity transmission or distribution utility would mean that consumption of electricity is chargeable to service tax. Clearly, the provisions of Section



66Dk cannot be read to mean the aforesaid.

8. Insofar as the petitioner's challenge to the notification dated 22.06.2010 is concerned, it is relevant to note that by virtue of the said notification, the Government of India has "exempted taxable services provided to any person by a distribution licensee, a distribution franchisee or any other person by whatever mean called as authorized to distribute the power under the Electricity Act, 2003, from the scope of Section 66 of the Act". This notification also cannot be construed to mean that consumption of electricity as otherwise is chargeable to tax but for the said notification.

9. According to the petitioner, electricity is goods and, therefore, sale of the said goods is not chargeable to service tax. The impugned notification has no bearing on this contention. In view of the above, the prayer (A) made as above does not arise in the facts of the present case."

26. After considering the above, and holding that prayer '(A)' is not maintainable, this Court on the said date proceeded to consider prayer '(B)'.

In respect of the said prayer, the Court records as under:

"10. In terms of prayer (B), the petitioner seeks a declaration that sale and supply of electricity is not chargeable to service tax under any of the sub clauses of Section 65 of the Act (or Section 65 B of the Act). According to the petitioner, the levy of tax on sale of electricity would be ultra-vires to the Constitution of India.

11. The petitioner manages a mall. The petitioner receives supply of 4000 KV from the electricity distribution company for Non-Domestic High Tension on 11 KVA for its own use at the given



premises (Plot no.67, DLF Industrial Area, Najafgarh Road, Delhi-110015 - hereafter the Mall). The petitioner has entered into agreements with various shop owners / licensees in the said mall and makes available the electricity on sub meter basis. The petitioner claims that the charges received from various shop keepers are essentially towards service charges as well as for the purchase of the electricity.

12. It is his contention that not limiting the levy of service tax to the component of services provided by the petitioner and extending it to the costs of electricity is impermissible. According to petitioner, no service tax can be levied on the component which constitutes the cost of the electricity. Therefore, the petitioner seeks a declaration that service tax is not payable on the cost of supply / generation of electricity.”

After recording the above, this Court directed Mr. Harpreet Singh, Id. SSC for the Respondent to seek instructions in the matter.

27. On 27th February 2023, this Court again considered various issues raised and observed as under:

“5. The principal question to be addressed is whether any amount recovered by the petitioner on account of supply of electricity is chargeable to service tax under the Finance Act, 1994.

6. The petitioner seeks a declaration that sale and supply of electricity is not chargeable to service tax under any of the subclauses of Section 65 of the Finance Act, 1994 or under Section 65B of the said act. The petitioner is particularly aggrieved by the Show Cause Notice issued by the respondent and contends that by virtue of the impugned Show Cause Notice, the petitioner has been called upon to show cause as to why it has



not paid service tax on electricity charges received from his customers.

7. Mr. Harpreet Singh submits that the question whether in terms of the agreements between the petitioners and various persons who have taken space in the mall on the licensed basis from the petitioner, the consideration received can be split into consideration for electricity charges and charges for other services.

8. He submits that it is required to be examined whether the amount recovered by the petitioner from various licensees are consolidated charges for providing electricity and maintaining the backup and other services or whether the same can be split between electricity charges and charges for other attendant services. He states that if the electricity charges have been collected as reimbursement of the charges paid by the petitioner, the same may not be exigible to service tax; however, if the petitioner has recovered a composite amount for supply of electricity and other services, the question regarding the taxability of a composite charge requires examination.

9. He seeks time to prepare for addressing submissions on the question whether any amount recovered by the petitioner from other licensees, if the same includes charges for electricity, is chargeable to service tax. He also seeks time to examine whether any service tax is payable on supply of electricity.

28. Thereafter, this Court had, during the course of arguments, directed the Petitioner to prove that the rates charged to the tenants by the Petitioner are the same as what is charged by the distribution companies to the Petitioner. *Vide* order dated 7th January 2025, this Court directed as under:



“3. After some hearing, the Petitioner is directed to produce any sample electricity bills raised by the power distribution company during the relevant period for which sample debit notes have been placed on record from page 8 onwards of the additional affidavit. The said documents would be required to ascertain the per unit charge being raised by the distribution company on the Petitioner and in return the per unit charge raised by the Petitioner upon its licensees.”

29. The Petitioner has also filed an additional affidavit stating that electricity charges have been collected separately by the Petitioner from the tenants and the same have not been included in the revenue collected as lease rent or otherwise. Ld. Counsel for the Petitioner also submits that the amount shown in the balance sheet as electricity charges pertains only to electricity charges billed to tenants.

30. Moreover, under the directions from the Court, various documents had been placed on record to show that the charges received by the Petitioner are solely for supply of electricity. The sub-meters which are installed in the premises of the tenants, show the actual consumption and bills are based on the units consumed as recorded in the sub-meters. Ld. Counsel for the Petitioner has also highlighted that the charges which are collected for off-peak hours, peak hours and normal hours are different as prescribed by NDPL. The same are *pro-rata* distributed and invoices in respect thereof have been placed on record.

31. In support thereof, the electricity charges for the contemporaneous period raised by the distribution companies are placed on record by the Petitioner. A perusal of the same would *prima facie*, show that the unit rates



being charged are in fact, the same as what is being billed by the Petitioner to its tenants.

32. Accordingly, the short question is as to whether the Order-in-Original is liable to be quashed or not.

33. In the counter affidavit, the stand of the Department is that an appeal has been filed by the Petitioner in which *vide* Order-in-Appeal bearing no. 202/Central Tax/Appl-II/Delhi/2018 dated 23rd April 2018 (hereinafter, ‘*appellate order*’), the case has been remanded back to the Adjudicating Authority for adjudication. The relevant portion of the appellate order is set out below:

“The present appeal has been filed by M/s Anant Raj Projects Limited, Plot No. 67, Moments Mall, Najafgarh Road, DLF- Industrial Area, New Delhi-110015 (here-in-after referred to as "appellant") against the Order-in-Original No. 03/GST/DL-West/RR/2017-18 dated 30.11.2017 passed by the Additional Commissioner. CGST, Delhi West Commissionerate (here-in-after referred to as "Adjudicating Authority") wherein the Adjudicating Authority has confirmed the demand of Service Tax of Rs. 1,78,60,449/- (Rs. 1,24,40,055/- + Rs. 2,21,434/- + Rs 1,17,020/- + Rs. 50,81,940/-) along with interest as applicable against the appellant and also imposed penalties under Section 76, 77 & 78 of Finance Act, 1994.

xxxx

(ii) I find that the appellant have challenged the leviability of Service Tax on the sale/supply of electricity mainly on two grounds that (a) the electricity is goods. So the sale of electricity is the sale of goods. No service tax can be levied on the



sale of goods: (b) Nothing has been retained by the appellant in the sale of electricity. The electricity has been purchased by them from M/s Tata Power. The electricity charges are collected by them on actual basis from the shop-keepers as per the electricity reading of sub-meter. Nothing has been retained by them in supplying of electricity. Thus, no consideration is involved in this transaction and as such, no Service Tax is payable by them. The appellant have also filed writ petition dated 30.01.2018 impugning the levy of Service Tax on the sale of electricity on the plea that Section 66(D)(k) of the Finance Act, 1994 and Notification No. 32/2010-ST dated 22.06.2010 are ultra vires to the finance Act, 1994 and unconstitutional. As of now, this writ petition is pending decision in the Hon'ble High Court of Delhi. So it would not be proper to decide the issue at this stage since the matter is already pending before the Hon'ble High Court. Accordingly, this issue is remitted back to the Adjudicating Authority with direction to pass the order, after the decision in the said writ petition, as per the judgment of Hon'ble High Court in this writ petition.

xxxx

.....In the result, the issue of leviability of Service Tax on the sale of electricity is remitted back to the Adjudicating Authority to decide the same as per para 4(ii) above. The demand in respect of reversal of Cenvat Credit on parking service is liable to be set aside subject to production of necessary evidence as per para 4(iii) by the appellant before the Adjudicating Authority. The rest of the demand along with interest and penalty is set aside.”

The said appellate order has been passed during the pendency of the present



writ petition.

34. The counter affidavit filed by the Department admits that supply of electricity is considered as '*supply of goods*'. However, enablement of flow of electricity constitutes service. According to the Department, since the Petitioner is not a distribution utility, it is not entitled to any exemption from payment of service tax on electricity. It is only a distribution utility as under the Electricity Act, 2003 which is exempted from levy of service tax as it would fall under the '*Negative List*'.

35. The appellate order dated 23rd April 2018 passed by the Commissioner of Central Tax, Appeals-II Delhi, had remanded the matter *qua* the issue of electricity charges to the Adjudicating Authority. However, the present writ petition has remained pending before this Court prior to the passing of the order by the Appellate Authority and this Appellate Authority's order is not specifically challenged.

36. The bills raised by the distribution company *i.e.*, NDPL upon the Petitioner and the charges collected by the Petitioner from its tenants would show *prima facie* that there is no addition to the charges being collected by the distribution company in comparison to what is being collected by the Petitioner. However, this issue would have to be factually established by the Petitioner before the concerned Adjudicating Authority which would have to examine the same.

37. In the present writ petition, the initial issue that was for consideration is the Constitutional *vires* of Section 66D(k) of the Act, in respect of which, the Court has already given its decision *vide* order dated 16th January 2023 in paragraph number 9 as extracted above.

38. Considering that the initial notice having been issued only on the



abovementioned issue and the appellate order having not been challenged before this Court though passed during the pendency of this writ petition, this Court is of the opinion that the matter deserves to be remanded to the concerned Adjudicating Authority for decision on the short point as to whether the electricity charges collected by the Petitioner are liable to service tax or not.

39. Moreover, this Court is of the opinion that the petition does not deserve to be decided on merits while exercising writ jurisdiction as analysis on the factual aspects would be required to be made. The Petitioner has *prima facie* shown that the charges being collected by it were the same as was being charged by the Distribution company. However, the bills etc., would have to be examined before arriving at a finding. Since the Appellate Authority has already remanded the matter the Petitioner deserves to be relegated to the Adjudicating Authority.

40. It is well-settled in law that the High Court, despite being vested with wide and extensive powers under Articles 226 and 227 of the Constitution of India, must exercise such powers within the bounds of judicial discipline and established legal principles. The jurisdiction of the High Court does not extend to reappreciation of evidence or interference with factual findings recorded by the competent authorities. The High Court cannot assume the role of an Appellate Authority for adjudication of disputed questions of fact. This position has been affirmed by the Supreme Court in the decision of ***Shamshad Ahmad v. Tilak Raj Bajaj***, (2008) 9 SCC 1. The relevant portion of the said decision reads as under:

“38. Though powers of a High Court under Articles 226 and 227 are very wide and extensive



over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction, such powers must be exercised within the limits of law. The power is supervisory in nature. The High Court does not act as a court of appeal or a court of error. It can neither review nor reappreciate, nor reweigh the evidence upon which determination of a subordinate court or inferior tribunal purports to be based or to correct errors of fact or even of law and to substitute its own decision for that of the inferior court or tribunal. The powers are required to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts and inferior tribunals within the limits of law

39. In *Chandavarkar Sita Ratna Rao v. Ashalata S. Guram* [(1986) 4 SCC 447] this Court stated : (SCC p. 458, para 16)

“16. ... unless there was any grave miscarriage of justice or flagrant violation of law calling for intervention it was not for the High Court under Articles 226 and 227 of the Constitution to interfere. If there is evidence on record on which a finding can be arrived at and if the court has not misdirected itself either on law or on fact, then in exercise of the power under Article 226 or Article 227 of the Constitution, the High Court should refrain from interfering with such findings made by the appropriate authorities.”

41. The Supreme Court in the decision in **Civil Appeal No. 5121/2021** dated 3rd September, 2021 titled ‘**The Assistant Commissioner of State Tax & Ors. v. M/s Commercial Steel Limited**’, held as under:

“11. The respondent had a statutory remedy under section 107. Instead of availing of the remedy, the respondent instituted a petition under Article 226. The



existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution. But a writ petition can be entertained in exceptional circumstances where there is:

- (i) a breach of fundamental rights;
- (ii) a violation of the principles of natural justice;
- (iii) an excess of jurisdiction; or
- (iv) a challenge to the vires of the statute or delegated legislation.

12 In the present case, none of the above exceptions was established. There was, in fact, no violation of the principles of natural justice since a notice was served on the person in charge of the conveyance. In this backdrop, it was not appropriate for the High Court to entertain a writ petition. The assessment of facts would have to be carried out by the appellate authority. As a matter of fact, the High Court has while doing this exercise proceeded on the basis of surmises. However, since we are inclined to relegate the respondent to the pursuit of the alternate statutory remedy under Section 107, this Court makes no observation on the merits of the case of the respondent.

13. For the above reasons, we allow the appeal and set aside the impugned order of the High Court. The writ petition filed by the respondent shall stand dismissed. However, this shall not preclude the respondent from taking recourse to appropriate remedies which are available in terms of Section 107 of the CGST Act to pursue the grievance in regard to the action which has been adopted by the state in the present case”

42. The said legal position has also been reiterated by this Court in ***M/s Sheetal and Sons & Ors. v. Union of India & Anr.***, 2025: DHC: 4057-DB and by the Allahabad High Court in ***Writ Tax No. 753 of 2023*** titled ‘***Elesh Aggarwal v. Union of India***’ wherein the Allahabad High Court has held that



no ground is made for interference on merits in exercise of extra ordinary jurisdiction. The relevant portion of the decision in *M/s Sheetal and Sons & Ors. (Supra)* reads as under:

“15. The Supreme Court in the decision in Civil Appeal No 5121 of 2021 titled ‘The Assistant Commissioner of State Tax & Ors. v. M/s Commercial Steel Limited’ discussed the maintainability of a writ petition under Article 226. In the said decision, the Supreme Court reiterated the position that existence of an alternative remedy is not absolute bar to the maintainability of a writ petition, however, a writ petition under Article 226 can only be filed under exceptional circumstances....

XXXX

16. In view of the fact that the impugned order is an appealable order and the principles laid down in the abovementioned decision i.e. The Assistant Commissioner of State Tax & Ors. (Supra), the Petitioners are relegated to avail of the appellate remedy.”

43. In view of the above, the present case is remanded back to the concerned Adjudicating Authority. It is directed that the said Adjudicating Authority shall take a decision within three months in accordance with law.

44. The Adjudicating Authority shall issue to the Petitioner, a notice for personal hearing. The personal hearing notice shall be communicated to the Petitioner on the following mobile no. and e-mail address:

- **Mobile No.: 9810158797**
- **E-mail Address: jkmittalservicetax@gmail.com**

45. All rights and remedies of the parties are left open.

46. Needless to add, this Court has not gone into the merits of the case.

47. The petition along with pending applications, if any, is disposed of in



2025:DHC:8800-DB



the aforesaid terms.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

OCTOBER 6, 2025
kk/ck