

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**DELHI BENCH 'I', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER**

**AND**

**SH. C.N. PRASAD, JUDICIAL MEMBER**

**ITA No.3202/Del/2014**  
**Assessment Year: 2004-05**

<b>DCIT Circle – 13 (1) New Delhi</b>	<b>Vs</b>	<b>Nokia Siemens Networks India Pvt. Ltd. 10<sup>th</sup> Floor, Raheja Towers, 26-27, M. G. Road Bangalore PAN No.AABCS9839H</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

**ITA No.5486/Del/2017**  
**Assessment Year: 2007-08**

<b>Addl. CIT Special Range- 6 New Delhi</b>	<b>Vs</b>	<b>Nokia Solutions &amp; Networks India Pvt. Ltd., 1507, Regus Business Centre, EROS Corporate Tower, Nehru Place, New Delhi-110019 PAN No.AACCN3871F</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

**ITA No.1013/Del/2015**  
**Assessment Year: 2010-11**

<b>Nokia Solutions &amp; Networks India Pvt. Ltd., (Formerly known as Nokia Siemes Networks Pvt. Ltd. ) 7<sup>th</sup> Floor, Building 9A, DLF Cyber City, Sector-25A, Gurgaon – 122002 PAN No.AACCN3871F</b>	<b>Vs</b>	<b>Addl. CIT Range-18 New Delhi</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

<b>Appellant</b>	<b>Sh. Deepak Chopra, Advocate Sh. Ankul Goyal, Advocate Ms. Mansavini Bajpai, Advocate</b>
<b>Respondent</b>	<b>Sh. Rajesh Kumar CIT DR</b>

<b>Date of Hearing</b>	<b>03.10.2023</b>
<b>Date of Pronouncement</b>	<b>13.10.2023</b>

**ORDER**

**PER N. K. BILLAIYA, AM:**

ITA No.3202/Del/2014, 5486/Del/2017 and 1013/Del/2015 are three separate appeals remanded by the Hon'ble High Court of Delhi for reconsideration by this Tribunal vide order dated 28.07.2023 in ITA No.761/2018 for A.Y. 2004-05. ITA No.823/2018 for A.Y. 2007-08 and ITA No.302/2022 for A.Y. 2010-11.

2. In view of parity of facts A.Y.2004-05 is taken as a lead year.

3. The entire quarrel revolves around the provisions of the liquidated damages in the revenue's appeal before the Hon'ble High Court. The revenue had questioned the decision of this Tribunal on the grounds that the Tribunal had not given a definitive finding whether the said provision represented an ascertained liability. The relevant findings of the Hon'ble High Court read as under :-

*"13. Having examined the record, there is no dispute qua the following aspects:*

- (i) The respondent/assessee entered into a contract for supply of specified goods with BSNL.*
- (ii) The contract contained a provision for imposition of liquidated damages for delay in supply. The rate for imposition of liquidated damages was pegged at 0.5% of the value of the delayed supply for each week of delay, or part thereof for the period up to 10 weeks, and thereafter, the rate would stand enhanced to 0.7% of the value of the delayed supply for each week of delay or part thereof for another 10 weeks of delay. [Clause 15.2 of the contract executed between the respondent/assessee and BSNL captures this aspect of the matter],*
- (iii) The AO disallowed the provision amounting to Rs. 17.61.99.671/-, which was the difference between the provision created during the year i.e.,Rs.19,66,51,910/- and the amount actually utilized i.e., Rs.2,04,52,238 although the actual difference is Rs. 17,61,99,672/-. According to the AO, the said amount i.e., Rs.17,61,99,671/- represented unascertained liability.*
  - (iv) The CIT(A), via the order dated 26.02.2014, reversed this view, which, as indicated above, was, in turn, overturned by the Tribunal, in the first round, via order dated 30.06.2017.*

(v) The Tribunal, upon remand by a coordinate bench of this court via the order dated 23.11.2017, reexamined the matter. While reexamining the matter, the Tribunal noted in extenso the order of the CIT(A) passed in the first round. After extracting the order of the CIT(A), the Tribunal made the following observations, which are contained in paragraph 8. For the sake of convenience, the said observations are set forth:

“8. In the present case from page no. 136 of the assessee’s book, it is noticed that total provision for liquidated damages was of Rs. 19,66,51,910 - out of which Rs.2,04,52,238/- were utilized and credited written back the remaining amount of Rs. 17,61,99,672/- was the actual amount of the damages which were accounted for in the profit and loss account. In the instant case, the learned CIT(A) categorically stated that when the payments were actually made, the accounts were adjusted with reference to any remission or waiver that the company may get in respect of damages payable for the late delivery and the same was brought to tax u/s 411) of the Act by crediting the liquidated damages accounts. **Therefore. the impugned amount was not only the provision but the actual amount of the liquidated damages pertaining to the period of delay falling within the previous year relating to the assessment year under consideration. The learned CIT(A) categorically stated that the assessee was following this method consistently.** We, therefore, do not see any valid ground to interfere with the factual findings given by the learned CIT(A) and accordingly do not see any merit in the ground raised by the Department. ” [Emphasis is ours]”

4. Thereafter the Hon’ble High Court held that the Tribunal failed to give a clear finding as to whether the provision of liquidated damages is in the nature of an ascertained liability. The relevant observation of the Hon’ble High Court read as under :

“The issue which the Tribunal had to grapple with, and clearly return a finding one way or the other, was whether the said amount i.e. INR

*17,61,99,672/- in the given facts and circumstances of the case represented an ascertained liability.”*

5. The directions of the Hon'ble High Court are very specific which say that the Tribunal will re-examine the issue based on the material on record and return a finding one way or the other as to whether amount of Rs.176199672/- represented an ascertained liability.

6. The representatives of both the sides were heard at length. Case records carefully perused in the light of the decision of the Hon'ble High Court of Delhi (supra). The written submission of the DR has been thoughtfully considered. We do not find much relevance in the submissions made by the DR as the directions of the Hon'ble High Court are very specific which say that the Tribunal will re-examine the issue based on the material on record.

7. In the assessment order dated 15.12.2006 on examination of the claim of provision for liquidated damages to the tune of Rs.176199761/- the AO made the following observations while disallowing the said provision :-

*“It could be seen from the above that the liability shown as liquidated damages is on a provisional basis and is not very certain to accord and has not crystallised when it was quantified. These are contingent in nature, the actual liability crysatallises only when the customer finalises Assessee's bills after negotiation. The Assessee's contention that such liability is provided as per the accounting standards fixed by the CBDT is not acceptable since such liabilities will depend on many factors like the customer making claim either as per the terms of the contract or otherwise agreed to and exhausting the possibility of waiver or reduction. The liability will be ascertained only after the supply is made and the ascertained of the actual damages claimed by the customer subject to reduction or waiver etc. and not on the date of sale. As on this date, this*

*will be just as estimate and contingency in nature. Mere anticipation of damages that might become a liability at a point of time in future could be termed only as a contingent liability. The variation in the amount of claim and the amount of settlement also indicated that the anticipated liability is not on any reasonable estimate. Therefore, the provision made for liquidated damages amount to Rs.176199671 is considered as unascertained liability in the nature of contingent liabilities and the amount of Rs.17,61,99,671 is disallowed.....”*

8. When the said decision of the AO was challenged before the CIT(A) the CIT(A) has given the following findings :-

*“4.4.1 Ground no. 5 of appeal is directed against disallowance of a sum of Rs. 17,61,99,671/- towards provision for liquidated damages. During the year the assessee has claimed provision of liquidated damages to the tune of Rs. 17,61,99,671. The assessee stated that in terms of the purchase order received from customers liquidated damages @0.5% per week subject to a maximum of 0.7% or such other rate, as per the contract would be imposed for the late delivery of equipment. The stipulation in the purchase order clearly shows that the liability for liquidated damages is certain, accrued and is not dependent upon the happening of any event other than delay in deliveries. As the company defaulted in the delivery terms, the liquidated damages have been rightly considered as business expenditure. The company is following the method on consistent basis. When the payment was actually made the accounts were adjusted with reference to any remission or waiver that the company may get in respect of damages payable for the late delivery and the same are brought to tax u/s. 41(1) of*

*the IT Act, 1961 by crediting the liquidated damages account.*

*4.4.2 The Supreme Court in the case of Bharat Earth Movers Ltd. Vs. CTT (245ITR 428) held that if a business liability has definitely arisen in the accounting year, the deduction should be allowed although the liability may have to be quantified and discharged at a future date. What should be certain is the incurring of the liability. It should be capable of being ascertained with reasonable certainty though the actual quantification may not be possible. If these requirements are satisfied then the liability is not a contingent one. Similar disallowance was deleted by the CIT(A) in Ay 2005-06 following the decision of Thermax Babcock Wilcox Ltd. Vs. Addl. CIT (304 ITR 130 (AR). In view of the above factual and legal position the addition of Rs. towards provision of liquidated damages made by the AO is not legally sustainable. Therefore, the same is deleted. The appeal is allowed on this ground.*

9. This finding of the CIT(A) was confirmed by this Tribunal.

10. Given a specific mandate of the Hon'ble High Court (supra) all that needs to be adjudicated and a specific finding given is whether the amount of Rs.17619967/- being the provision for liquidated damages was an ascertained liability or not.

11. The quarrel relating to the allowability of provision has to be considered in the light of the ratio laid down by Hon'ble Supreme Court in the case of Rotork Controls India (P) Ltd. 180 taxmann 422 wherein the Hon'ble Supreme Court for determination of whether a provision is an ascertained liability enunciated following principles :-

- a. *A provision is a liability which can be measured only by using a substantial degree of estimation.*
- b. *A liability is said to be ascertained where there is present obligation of a past event (obligating event);*
- c. *Probable that an outflow of resources will be required to settle the obligation;*
- d. *A reliable estimate can be made of the amount of the obligation*

12. The above principles have to be applied on facts of the case in hand.

13. The assessee is engaged in the business of supplying telecom equipment and during the period under consideration has supplied equipment to BSNL and MTNL. At this stage it would be appropriate to consider the contract wise details of liquidated damages including provision movement which is as under :-

**SIEMENS PUBLIC COMMUNICATION NETWORKS P.LTD  
CONTRACTWISE DETAILS OF LIQUIDATED DAMAGES  
INCLUDING PROVISION MOVEMENT  
ANNEXURE - 2**

Order No.	During 03-04		Balance as on 31.3.2004
	Creation	Utilisation/ Release	
<u>April 1999 to March 2000</u> DOT 455 K			20,930,000
<u>April 2000 to March 2001</u> DOT 455 K DOT 67 K 63K MTNL		6,427,000 13,510,000	36,090,000
<u>April 2001 to March 2002</u> BSNL/ESWD			1,821,000
<u>April 2002 to March 2003</u> HPCL SURIAPET AP HPCL SURIAPET AP BSNL/ESWD LIQUIDATED DAMAGES 338K-DTAX Execution Nepal Comm		232,865 151,007  131,366	56,021,000
<u>April 2003 to March 2004</u> BSNL/ESWD LIQUIDATED 512 K *1 \$ BSNL STM 16 \$ RWSID 125K *2 \$ BTSOL Karnal BTSOL Karnataka BTSOL Karozataka BTSOL Nasik-dhuls BTSOL ahmed plmkhd reare BSNL LMDS \$ 88.5 K EWSD *3 \$ BTSOL Ranchi-Gaya	48,571,194 41,520,000 37,480,000 1,433,941 7,083,704 1,213,225 2,169,348 2,131,585 23,009,343 29,922,000 2,117,570		48,571,194 41,520,000 37,480,000 1,433,941 7,083,704 1,213,225 2,169,348 2,131,585 23,009,343 29,922,000 2,117,570
<b>Total:</b>	<b>196,651,910</b>	<b>20,452,238</b>	<b>311,513,910</b>

Documents Enclosed

- \*1 BSNL Order No.A.P.O.No.117-01/2001-MMD/SPCNL dated 01.11.2006
- \*2 BSNL Order No.117/01/2002-MMD/SPCNL dated 31.01.2003
- \*3 Mahanagar Telephone Nigam Limited Order No.MTNL/20-80(284)/2002-MM/ Switching Equipment/2002-2003/VOL.III/Siemens dated 10.07.2003
- § Voucher copies detailing the calculations

14. A perusal of the above show that in respect of contracts executed between April -2003 to March -2004 owing to the delay in supplies the total provision created by the assessee towards liquidated damages amounted to Rs.196651920/-. It can be seen from the above table the utilization and release which pertain to

prior periods amounted to Rs.20452238/-. Hence, the net amount of Rs.176199672/- was debited to P & L account.

15. The procurement orders from BSNL are on record wherein in clause-5 the delivery schedule of the ordered quantity has been mentioned wherein under sub clause-3 it is directed specifically that any slippages in actual supplies from the month wise delivery schedules shall invite liquidated damages charges as per clause - 15. The delivery schedule is as under :-

*5.0 Delivery Schedule:*

*i) The delivery of the equipment shall commence immediately on placement of Purchase order and shall be completed in Eight months Goods shall remain at the risk of suppliers until delivery has been completed. The delivery of equipment will be to ultimate consignees as given in PO.*

*ii) Delivery Schedule shall be as follows for the ordered quantity as detailed in Annex I:*

<i>3 months from date of PO</i>	<i>20%</i>
<i>4 month from date of PO</i>	<i>16%</i>
<i>5 month from date of PO</i>	<i>16%</i>
<i>6 month from date of PO</i>	<i>16%</i>
<i>7 month from date of PO</i>	<i>16%</i>
<i>8 month from date of PO</i>	

*Balance Qty.*

*Any slippages in actual supply from the month-wise delivery schedule shall invite LD charges as per Clause 15, and the prices for such Extension shall be governed by as per clause 11 (b) of general (commercial) conditions of the contract encased as per Annexure-II.*

*The supplier shall provide software to meet the requirement of TEC Spec. No, G/LLT-01/04 Dec 90 (Vol. 1&1) with Amenamant-1 Section "C" Chapter 3 and software maintenance shall be as per Chapter-4 Section -E of TEC Specification No GILLT-01/04Der.98 with Amendment-1 Detailed technical specification of the equipment will be as por Annexure-VA and Software shall be V13 version.*

*7.0 All the new hardware/Software required to implement the new features/ functions will be validated by TEC in the first exchange to be supplied against this lender. However as a special case, the equipment can be despatched to the sites without waiting for results for validation, thus delinking despatch of the equipment from validation. Following payment forms would be applicable*

*a) 90% on proof of despatch pending validation.*

*b) 5% after completion of validation and implementation in balanced exchanges procured against this tender. c) Balance 5% against TOC.*

*8.0 Inspection of the equipment shall be carried out by the representative of Telecom QA Circle, Bangalore as per prescribed test schedule and commercial supplies to be accepted after QA Certificate is issued by Quality Assurance Wing and after Excise Gate Pass issued by Excise Authority, Govt. of India*

*9.0 Ali required technical assistance for Installation, commissioning and monitoring of equipment shall be provided by the supplier at no*

*extra cost during laboratory evaluation, validation, type approval and field trial*

*10.0 Tools/Testers/instruments and simulators require for CCS-7 and ISDN Testing Validation and Acceptance Testing (AT) of each se shall be provided by the bidder on returnable basis*

*11.0 Spares including consumables not included in material list bui required will be supplied free of cost over a period of three years starting from the date of final acceptance*

*12.0 in case validation of the exchanges is not completed within the original delivery schedule the warranty period shall be deemed to have been extended by the corresponding period of delay*

*13.0 The supplier is bound to supply additional quantities of item to the extent o'10% of the value of the order as per Clause 9 of Annexure-Vill, i e Special Conditions of Contract*

*4.0 Payment terms and coraition regarding repair of PCBs. Export Supervision Charges, Per Line installation Charges etc. are placed as Annexure.VI. Work of installation, testing and commissioning is generally to be done by Department Staff This work snail be awarded to vendor only in eventuality of shortage of installation staff with the specific approval of Head of Circle and his IFA.*

*15.0 l any of the field units wants to procure any other PCBs which is not included in the material list, the same has to be done in consultation with MM Cell of BSNL HQ only*

*16.0 The contracto: shall furnish firm training schedule including now features/procedures (Both hardware & software). He should*

*provide training free of cost for at least two persons per site and within two months prior to the supply of equipment to that site.*

*17.0 For governing this supply all the mandatory. clauses of TEC GRS MTS, all general commercial conditions special conditions as indicated vide following Annexures (attached with this A.P.O.) are to be complied.*

- |  |                      |
|--|----------------------|
| <i>(i) General commercial conditions of contract</i>       | <i>Annexure-VII</i>  |
| <i>(ii) Special conditions of Contract</i>                 | <i>Annexure-VIII</i> |
| <i>(iii) Activities/Special conditions of the Contract</i> | <i>Annexure-IV</i>   |

16. The relevant schedule for liquidated damages charges read as under :-

*“15.1 The date of delivery of the stores stipulated in the acceptance of tender should be deemed to be essence of the contract and delivery must be completed not later than the dates specified therein. Extension will not be given except in exceptional circumstances. Should, however, deliveries be made after expiry of the contract delivery period without prior concurrence of the purchaser and be accepted by the consignee such deliveries will not deprive the purchaser of his right to recover liquidated damages under clause 15.2 below. However, when supply is made within 2 days of the contracted original delivery period the consignee may accept the stores and in such cases the provisions of clause 15.2 would not apply.*

**15.2** *Should the tenderer fail to deliver the stores or any consignment thereof within the period prescribed for delivery the purchaser shall be entitled to*

*recover 0.5% of the value of the delayed supply for each week of delay or part thereof for a period up to 10 weeks and thereafter at the rate of 0.7% of the value of the delayed supply for each week of delay or part thereof for another 10 weeks of delay. **In the case of package supply where the delayed portion of the supplies materially hampers installation and commissioning of the system LD charged shall be levied as above on the total value of the concerned package of the PO. Quantum of liquidated damages assessed and levied by the purchaser shall be final and not challengeable by the supplier.***

17. A pertinent question arose while hearing the appeal whether the amount of liquidated damages were ever disputed by the assessee. The answer is found in the order by the Hon'ble High Court of Delhi dated 01.10.2018 where the assessee was specifically asked to furnish an affidavit to explain whether the amount of liquidated damages were never disputed by the assessee. The order of the Hon'ble High Court and the affidavit of the assessee read as under :-

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

+ **ITA 761/2018**

THE PR. COMMISSIONER OF INCOME TAX -6 ..... Appellant

Through : Mr.P.Bhatia , Ms.Vibhooti Malhotra  
and Mr.Puneet Rai, Advocates.

versus

NOKIA SEIMEANS NETWORKS INDIA P. LTD. .... Respondent

Through : Mr.Deepak Chopra, Mr.Ankul Goyal  
and Mr.Amit Shrivastava, Advocates.

+ **ITA 823/2018**

THE PR. COMMISSIONER OF INCOME TAX -6 ..... Appellant

Through : Mr.P.Bhatia with Ms.Vibhooti Malhotra  
and Mr.Puneet Rai, Advocates.

versus

NOKIA SOLUTION & NETWORKS INDIA P. LTD..... Respondent

Through : None.

**CORAM:**

**HON'BLE MR. JUSTICE SANJIV KHANNA**

**HON'BLE MR. JUSTICE CHANDER SHEKHAR**

**ORDER**

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**01.10.2018**

Mr. Deepak Chopra, Advocate, who appears on advance notice, states that liquidated damages were due and payable. Liquidated damages were calculated keeping in view the actual period of delay in supply in terms of the contract. He states that the respondent-assessee did not dispute its liability to pay liquidated damages to BSNL to

whom supplies were made. Hence, it was not a mere provision or unascertained liability, but a case in which the admitted liability in fact had accrued.

The respondent would file affidavit to the said effect within a period of two weeks from today.

Relist on 22<sup>nd</sup> November, 2018.

**SANJIV KHANNA, J**

**CHANDER SHEKHAR, J**

**OCTOBER 01, 2018**

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THE HIGH COURT OF DELHI AT NEW DELHI  
INCOME TAX APPEAL NO. 823 OF 2018

In the matter of:

Pr. Commissioner of Income Tax-6 .....Appellant

Versus

Nokia Siemens Networks India Pvt. Ltd. ....Respondent

(Merged with Nokia Siemens Networks Private Limited and now known as  
Nokia A.Y. 2007-08

Solutions and Networks India Private Limited).

AFFIDAVIT

I, Sanjay Ajmera, son of Shri Vallabh Das Ajmera, aged about 45 years, resident of Flat 701, Tower 6, Orchid Petals, Sohna Road, Gurugram presently at New Delhi, do hereby solemnly affirm and declare as under-

1. That I am a Director in the Respondent company and am fully conversant with the facts of the case and as such am competent to swear this affidavit. The present affidavit is being filed in compliance of the Hon'ble Court's directions dated 1.10.2018.

2. That for the period under consideration, the Respondent company was engaged in the business of manufacturing, trading and supply of



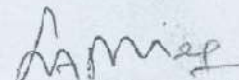
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telecom network equipment, development of computer software and rendering software services. It was also engaged in provision of various services in the nature of installation and commissioning of networking equipment and other related support services to its customers. The Respondent company entered into various contracts with customers in India for providing the switching systems, which had applications in the telecommunication industry. The Respondent was required, contractually, to supply the equipment as per a delivery schedule (please refer clause 5 of the LOA on page 37 of paper book). These contracts provided for levy of liquidated damages in the event of delay in supply as per the delivery schedules (please refer clause 15.2 on page 45 of the paper book).

3. That for assessment year 2007-08 the Appellant had claimed a deduction of INR 3,24,11,982 on account of (net) provision for liquidated damages owing to delay in delivery of equipment as per the delivery schedules. Following the matching concept, the provision for liquidated damages is made in the year of raising the invoice for supplies and where delay in delivery had already occurred and which is as per accounting guidelines. Subsequently, as and when the Customers levied the liquidated damages and recovered the amount from the running bills, the said amount was debited to the provision account and differential is debited or credited to the profit and loss account and offered as income or expensed off in that year.



4. Further, as per clause 15.2, it is specifically provided that liquidated damages assessed and levied by the purchaser (customer) shall be final and not challengeable by the Respondent company (supplier). Hence, in terms of the contract, it was not possible to the Respondent company to challenge the liquidated damages finalized by the customers in the event of delay in supply of equipment by the supplier.

  
Deponent

#### VERIFICATION

That I, Sanjay Ajmera the deponent named above do hereby solemnly affirm and declare that the contents of the above affidavit are true and correct and nothing has been concealed there from.

18. In the light of the above it can be safely concluded that the assessee could not dispute / challenge the levy of liquidated damages and the fact relating to the delay has never been questioned by the revenue at any stage in the earlier round of litigation and not even today before us. Therefore, two things have crystallized undisputedly, firstly there was a delay and secondly the liquidated damages were never disputed by the assessee. The principles laid down by the Hon'ble Supreme Court in the case of Rotork Controls India (P) Ltd. (supra) apply on the facts of the case in hand. At this stage it would be pertinent to consider the following movement of provision of liquidated damages :-

Assessment Year	Opening Balance	ation during the year	Utilization	Release/ Written back	Closing Balance	Debited to PI
AY 2004- OS	135.314,238	196.651.910	20,452.238		311,513,910	176,199,672
AY 2005- 06	311.513.910	29.602.855	4.643.188	110,046.185	226.427.392	24,959,667
AY 2006- 07	226,427,392	59.373,585	44.391.108	79,030,343	162.379,526	14,982,477
AY 2007- 08	162.379.526	102.684.554	70.272.572	50.392.194	144.399.314	32,411,982

19. The observations of the AO that till the customer actually raised the claim for liquidated damages the provision would be unascertained liability is in direct conflict with what the Hon'ble Supreme Court has held in the case of Rotork India (P) Ltd. (supra).

20. Summarizing the entire controversy facts, on record show that the assessee could not dispute / challenge the levy of liquidated damages. In term of clause-15.2 mentioned elsewhere, it is clear that if the assessee failed to deliver the equipment as per the schedule the purchaser would be entitled for the recovery of 0.5% of the value of the delayed supply for each week of delay or part thereof for a period up to 10 weeks and thereafter @ 0.7% for the next 10 weeks. Thus, given the mandate of the Hon'ble Supreme Court in the case of Rotork Controls India (P) Ltd (supra) and the happening of the event being the necessary condition, the moment assessee defaulted for the supply of equipment as per the given schedule it immediately incurred the liability to pay liquidated damages. It is being re-emphasize here that the revenue never disputed the delay in the delivery. Pursuant to the specific directions of the Hon'ble High Court of Delhi at para 18.1 of its

order in ITA No.761/Del/2018 dated 28.07.2023 we decide the captioned appeals in favour of the assessee and against the revenue. The provisions for liquidated damages are directed to be allowed.

The order is pronounced in the open court on 13.10.2023.

Sd/-  
**[C.N PRASAD]**  
**JUDICIAL MEMBER**

Sd/-  
**[N.K. BILLAIYA]**  
**ACCOUNTANT MEMBER**

Dated: 13<sup>th</sup> October, 2023.

Neha, Sr PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi