

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – III

Service Tax Appeal No.52596 of 2019

[Arising out of Order-in-Original No.18/COMMR./DDN/2019 dated 08.07.2019 passed by the Commissioner of CGST, Dehradun.]

M/s. Oil & Natural Gas Corporation Ltd., **...Appellant**
Keshav Dev Malviya Institute of Petroleum Exploration,
9, Kaulagarh Road,
Dehradun, Uttarakhand-248 002.

VERSUS

Commissioner of Central Goods & Service Tax, Dehradun, **...Respondent**
E-Block, Nehru Colony, Haridwar Road,
Dehradun, Uttarakhand-248001.

APPEARANCE:

Ms. Sukriti Das and Ms. Daliya Singh, Advocates for the Appellant
Ms. Jaya Kumari, Authorized Representative for the Respondent

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING:21.02.2025
DATE OF DECISION:18.03.2025

FINAL ORDER No. 50415/2025

BINU TAMTA

1. By the impugned order¹, the Adjudicating Authority confirmed the demand under the show cause notice dated 20.08.2018 on the amounts received in the nature of "Liquidated damages, forfeiture of security deposits, fines/penalties/Earnest Money deposit, etc." as compensation for the losses incurred on account of delay on part of the contractors/vendors in completion of the work project etc.,

¹ **Order-in-Original No.18/Commr./DDN/2019 dated 8.7.2019**

amounts to toleration of an act, hence is a Declared Service, and taxable in terms of Section 66E(e) of the Finance Act, 1994 ².

2. The appellant is engaged in exploration of oil and natural gases and was registered with the Service Tax Authorities. On an intelligence, the officers of Directorate General of Central Excise, Delhi, now known as Directorate General of GST Intelligence ³ alleged that the appellant had collected an amount of Rs.34,13,05,380/- in the form of fines/penalties, liquidated damages, forfeiture of performance guarantees/Earnest Money deposits/security deposits/bid security etc. from the contractors as a compensation for the losses incurred for failure to provide the services within the agreed stipulated time and breached the terms and conditions of the contract/bid agreement. Therefore, it was alleged that the said amounts retained/collected by appellant is in lieu of 'tolerating the act' of contractors like poor performance or not meeting the obligations in full, less than expected quality of work and poor or unsatisfactory work as per terms of contract, and hence, falls within the ambit of 'Declared Service' in terms of Section 66E(e) of the Act and is susceptible to tax.

3. The issue in the present appeal for demand of service tax under Section 66E(e) of the Act on the amounts collected as "Liquidated damages, forfeiture of security deposits,

² The Act

³ DGGSTI

finances/penalties/Earnest Money deposit, etc.” as compensation for the losses incurred on account of delay on part of the contractors/vendors in completion of the work project etc., amounts to toleration of an act, hence is a ‘Declared Service’ and taxable in terms of Section 66E(e) of the Act on account of breach of the terms of the contract, is no longer res integra as submitted by the learned counsel for the appellant and fairly agreed to by the learned Authorized Representative. Learned counsel for the appellant has referred to series of decisions in support of her submissions that the penal charges are charged with the intention to make good for the losses and so as to act as a deterrent to ensure that terms of the contract are not violated by the buyer or the supplier. The details of the decisions are as under:

- (i) **Hindustan Zinc Limited Vs. Commissioner of Central Goods, Service Tax and Central Excise, Customs, Udaipur⁴**
- (ii) **Hindustan Zinc Limited Vs. Commissioner of Customs, Udaipur, Rajasthan⁵**
- (iii) **Mangalam Cement Limited Vs. Commissioner of Central Goods Service Tax, Central Excise, Udaipur⁶**
- (iv) **Bharat Aluminium Co.Ltd. Vs. Pr. Commissioner of Central Tax & Central Excise,Raipur⁷**
- (v) **SSE (O&M) Ltd. Vs. Commissioner, CGST & CE,Bhopal⁸**
- (vi) **Satpura Thermal Power Station Ltd. Vs. Commissioner, GST & Central Excise and Customs, Bhopal⁹**
- (vii) **Pankaj Ispat Ltd. Vs. CCE, Raipur¹⁰**
- (viii) **Steel Authority of India Ltd. Vs. Pr. Commissioner, Central Tax, CE and Customs, Raipur¹¹**
- (ix) **Northern Coalfields Ltd. Vs. Commissioner of CGST, CE & Customs ¹²**

⁴ Final Order No.50025/2025 dated 01.01.2025-CESTAT, New Delhi.

⁵ Final Order No.59733/2024 dated 4.11.2024 –CESTAT New Delhi.

⁶Final Order No.58512/2024 dated 5.9.2024-CESTAT, New Delhi

⁷ Final Order NO.50128/2024 dated 17.01.2024 –CESTAT, New Delhi

⁸ Final Order No.59425/2024-CESTAT, New Delhi.

⁹ Final Order No.55790-55791/2024 dated 15.05.2024 –CESTAT, New Delhi

¹⁰ Final Order No.56219/2024 dated 24.07.2024, CESTAT, New Delhi.

¹¹ Final Order No.50898/2023 dated 6.7.2023 –CESTAT, New Delhi

¹² 2023(71) GSTL 63 (Tri-Delhi)

- (x) **Bharat Heavy Electricals Ltd. Vs. Commissioner of CGST, Dehradun¹³**
- (xi) **M/s.Bharat Heavy Electricals Ltd. Vs. Commissioner of Customs, Excise & ST, Faridabad-I, ¹⁴**
- (xii) **South Eastern Coalfields Ltd. Vs. Commissioner of Central Excise and Service Tax¹⁵**
- (xiii) **Commissioner of Central Excise and Service Tax Vs. South Eastern Coalfields Ltd.¹⁶**
- (xiv) **MP Poorva Kshetra Vidyut Vitran Co. Ltd. Vs. Principal Commissioner, CGST & CE, Bhopal¹⁷**
- (xv) **Rajcomp Info Service Ltd. Vs. Commissioner of Central Excise, Jaipur¹⁸**
- (xvi) **Dy. GM (Finance), BHEL Vs. Commissioner of Customs & Central Excise, Bhopal¹⁹**
- (xvii) **Steel Authority of India Ltd., Salem Vs. Commissioner of GST & Central Excise, Salem²⁰**
- (xviii) **Northern Coalfields Ltd. Vs. Commissioner of CGST, CE & Customs – Jabalpur²¹**
- (xix) **Madhya Pradesh Power Transmission Company Ltd. Vs. Prinicpal Commissioner, CGST & CE, Bhopal²²**
- (xx) **Ajmer Vidyut Vitaran Nigam Ltd. Vs. Principal Commissioner of CGST & Central Excise Jaipur²³**

4. In the case of **South Eastern Coalfields²⁴**, the Principal Bench of this Tribunal after considering the provision of Section 65B(44) defining 'service', Section 66E(e) enumerating the 'declared services' and the provisions of Section 67 dealing with the valuation of taxable service for charging service tax and referring to the decision of the Hon'ble Apex Court in the case of **Commissioner of Service Tax Vs. M/s. Bhayana Builders²⁵** and **Union of India Vs. Intercontinental Consultants and**

¹³ Final Order No.50329/2023 dated 16.02.2023-CESTAT New Delhi

¹⁴ Final Order No.60227/2024 dated 7.5.2024-CESTAT-Chandigarh.

¹⁵2020(12) TMI 912 –CESTAT-New Delhi.

16.2023 (8) TMI 606 – SC Order.

¹⁷ 2021(46) GSTL 409 (T-Delhi)

¹⁸ 2022 (65) GSTL 103 (Tri.-Del.)

¹⁹ 2022 (9) TMI 1005 –CESTAT New Delhi.

²⁰ 2021 (7) TMI 1092 –CESTAT-Chennai.

²¹ 2023(1) TMI 934 –CESTAT New Delhi.

²² 2023 (385) ELT 152 (Tri.-Del.)

²³ Final Order No.59900/2024 dated 26.11.2024.

²⁴ 2021(55)GSTL 549 (Tri.-Del.)

²⁵2018 (2) TMI 1325

Technocrats²⁶ and the TRU Circular dated 20.06.2012, held as under:

"27. It is trite that an agreement has to be read as a whole so as to gather the intention of the parties. The intention of the appellant and the parties was for supply of coal; for supply of goods; and for availing various types of services. The consideration contemplated under the agreements was for such supply of coal, materials or for availing various types of services. The intention of the parties certainly was not for flouting the terms of the agreement so that the penal clauses get attracted. The penal clauses are in the nature of providing a safeguard to the commercial interest of the appellant and it cannot, by any stretch of imagination, be said that recovering any sum by invoking the penalty clauses is the reason behind the execution of the contract for an agreed consideration. It is not the intention of the appellant to impose any penalty upon the other party nor is it the intention of the other party to get penalized.

43. It is, therefore, not possible to sustain the view taken by the Principal Commissioner that penalty amount, forfeiture of earnest money deposit and liquidated damages have been received by the appellant towards "consideration" for "tolerating an act" leviable to service tax under section 66E(e) of the Finance Act."

5. The Revenue had challenged the said order before the Hon'ble Apex Court, however vide order dated 11.07.2023, the appeals filed by the Revenue were dismissed as withdrawn in view of the statement made by the learned ASG. The aforesaid view has been repeatedly followed by the Tribunal in subsequent decisions, referred to above and also in the case of the appellant

²⁶ 2018 (10)GSTL 401 SC

itself, where the demand of service tax towards penalty for non-compliance with the terms and conditions of the tender was set aside.

6. Learned counsel for the appellant has brought to our notice the order-in-original No.KKD-EXCUS-JC-52/16-17 dated 15.09.2016, whereby the Joint Commissioner had dropped the demand of service tax proposed on account of receipt of amount in the nature of Liquidated damages, fine and penalty, etc from the contractors.

7. There is no reason to differ with the settled principles of law as enunciated by the decision in the case of **South Eastern Coalfields Ltd.** We, therefore, hold that the amount recovered by the appellant towards penalty is not a consideration for any activity which has been undertaken by the appellant and as a result there is no 'service' in terms of Section 65B(44) of the Act. The facts of the present case do not suggest that there is any other independent agreement to refrain or tolerate, or to do an act between the parties hence the issue is decided in favour of the appellant. The other issues related to invocation of extended period of limitation, penalty and interest are not required to be gone into as the issue on merits stands decided in favour of the appellant.

8. The learned Counsel for the appellant has also submitted that in certain transactions, the amounts received in the nature of

liquidated damages/forfeited amounts from the contractors located outside India, i.e., in Canada, Hong Kong, Singapore, etc there cannot be any service tax liability on the alleged service of tolerating the act of delay in the hands of the appellant. The learned Counsel referred to the provisions of Rule 3 of the Place of Provision of Service Rules, 2012 as the recipient of the service would be located outside India and would, therefore, qualify as export, which cannot be taxed in India. Reference is also invited to the provisions of Section 64, which makes the Act applicable to the whole of India. Also, the provisions of Section 65B(52) of the Act defining 'taxable territory to mean the territory' to which the provisions of Chapter V of the Act applies. Therefore, the amount received from the contractors or vendors located abroad would be deemed to have been provided outside India and cannot be taxed in India. In support of her submissions, reference is invited to the decision of the Delhi High Court in **Indian Association of Tour Operators versus Union of India & Anr.**²⁷ and of the Apex Court in **Union of India versus Mohit Minerals Pvt. Ltd.**²⁸, **Sal Steel Ltd. versus Union of India**²⁹ and **Commissioner Vs. Weizmann Forex Ltd**³⁰, whereby the view taken by the High Court of Gujarat was affirmed that services provided outside the taxable territory are not chargeable to service tax under the Act. Since we have otherwise held the issue in favour of the appellant on merits, it is not necessary to go into the said argument raised

²⁷2017 (5) GSTL 4 (Del.)

²⁸2022 (61)GSTL 257 (SC)

²⁹2020 (82)GSTR 320

³⁰2018(11) GSTL J187 (SC)

by the learned Counsel. The amount received from the recipients located abroad is hereby set aside.

9. The impugned order deserves to be set aside. The appeal is, accordingly allowed.

[Order pronounced in the open court on 18th March, 2025]

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Ckp.