CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – III

Service Tax Appeal No. 51973 of 2019 [DB]

[Arising out of Order-in-Original No. JAI-EXCUS-000-COM-03-19-20 dated 30.04.2019 passed by the Principal Commissioner of CGST & Central Excise, Jaipur]

M/s. AVVNL **...Appellant**
Vidyut Bhawan, Makarwali Road,
Panchsheel Nagar, Ajmer,
Rajasthan - 305004

VERSUS

Principal Commissioner of CGST
& Central Excise, Jaipur **...Respondent**
NCRB Building, C-Scheme,
Statue Circle, Jaipur – 302005 (Raj.)

APPEARANCE:
Shri Kunal Agarwal, Advocate for the Appellant
Shri Rajeev Kapoor, Authorized Representative for the Respondent

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE SHRI P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 19.02.2025
DATE OF DECISION: **03.03.2025**

FINAL ORDER No. 50354/2025

BINU TAMTA

The impugned order[1] has confirmed the demand made in the show cause notice for the period 01.04.2013 to 30.06.2017 towards service tax of Rs.2,39,18,841/- on the amount collected as 'Penalty' and 'Recovery' from the suppliers on account of breach of the terms of the contract like delay in delivery, delivery of goods which are less weighed than agreed etc.

2. Briefly stated, the appellant is registered as a public sector company with the service tax department for 'Works Contract

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1. **O-I-O No. JAI-EXCUS-000-COM-03-19-20 dated 30.04.2019**

Service' and 'Legal Consultancy Service' as service recipient. During the audit of the records of the appellant on 27.06.2018 and 28.06.2018 for the period from October, 2015 to June, 2017, it was found that they had recovered the amount under the head of 'Penalty' and 'Recovery' from their contractors amounting to Rs.17,84,65,282/- and did not discharge the service tax liability amounting to Rs.2,39,18,841/-.

3. The issue in the present appeal for demand of service tax under Section 66E(e) of the Finance Act, 1994[2] on the amounts collected as damages/penalties 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 the series of decision 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) South Eastern Coalfields Ltd. Vs. Commissioner of Central Excise and Service Tax[3]

(ii) Commissioner of Central Excise and Service Tax Vs. South Eastern Coalfields Ltd.[4]

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2. the Act
3. **2020 (12) TMI 912 – CESTAT New Delhi**
4. **2023 (8) TMI 606 – SC Order.**

(iii) MP Poorva Kshetra Vidyut Vitran Co. Ltd. Vs. Principal Commissioner, CGST & CE, Bhopal[5]

(iv) Rajcomp Info Service Ltd. Vs. Commissioner of Central Excise, Jaipur[6]

(v) Dy. GM (Finance), BHEL Vs. Commissioner of Customs & Central Excise, Bhopal[7]

(vi) Steel Authority of India Ltd., Salem Vs. Commissioner of GST & Central Excise, Salem[8]

(vii) Northern Coalfields Ltd. Vs. Commissioner of CGST, CE & Customs – Jabalpur[9]

(viii) Madhya Pradesh Power Transmission Company Ltd. Vs. Prinicpal Commissioner, CGST & CE, Bhopal[10]

(ix) Ajmer Vidyut Vitaran Nigam Ltd. Vs. Principal Commissioner of CGST & Central Excise Jaipur[11]

3. In the case of **South Eastern Coalfields**, 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 Builders**[12], **Union of India Vs. Intercontinental Consultants and Technocrats**[13] and the TRU Circular dated 20.06.2012, held as under:

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5. 2021 (46) GSTL 409 (Tri.-Del.)
6. 2022 (65) GSTL 103 (Tri.-Del.)
7. 2022 (9) TMI 1005 – CESTAT New Delhi
8. 2021 (7) TMI 1092 – CESTAT Chennai
9. 2023 (1) TMI 934-CESTAT New Delhi
10. 2023 (385) ELT 152 (Tri.-Del.)
11. Final Order No. 59900/2024 dated 26.11.2024.
12. 2018 (2) TMI 1325
13. 2018 (10) GSTL 401 (SC)

> *"**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.*
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> ***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."*

4. The Revenue had challenged the said order before the Hon'ble Apex Court, however vide order dated 11.07.2023, the appeals 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 itself, where the demand of service tax towards penalty for non-compliance with terms and conditions of tender was set aside.

5. 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 issued on merits stands decided in favour of the appellant.

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

[Order pronounced in the open court on **03.03.2025**]

(BINU TAMTA)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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