

(2025) 01 CESTAT CK 0003

Customs, Excise And Service Tax Appellate, New Delhi

Case No: Service Tax Appeal No. 50804 of 2020

Madhya Pradesh Poorva Kshetra
Vidyut Vitaran Co. Ltd.

APPELLANT

Vs

Commissioner, Central Excise &
CGST, Jabalpur

RESPONDENT

Date of Decision: Jan. 1, 2025

Acts Referred:

- Finance Act, 1994 - Section 65(B)(44), 66EE, 67, 73, 74
- Central Excise Act, 1944 - Section 11AC
- Indian Contract Act, 1872 - Section 2(b)

Hon'ble Judges: Dr. Rachna Gupta, Member (J); Hemambika R. Priya, Member (T)

Bench: Division Bench

Advocate: Rajeev Agarwal, Rajeev Kapoor, Aejaz Ahmed

Final Decision: Allowed

Judgement

S.No., Issue Involved, Submissions on behalf of appellant

1., "Payment of service tax of Rs. 5,68,451/- for

November, 2015 through challan mentioning

Service Tax Registration of Regional Unit

belonging to Appellant", Demand completely time barred

2., "Short payment of service tax of Rs. 42,188/- for

the period from June 2015 to September 2015.", "Tax already paid. Demand completely

time barred

3., "Short payment of Swacch Bharat Cess (SBC) of Rs. 22,344/- from November 2015 to March 2016.", "Tax already paid. Demand Completely time-barred.

4., "Service Tax of Rs. 2,10,11,500/- on Liquidated Damages/Penalty for the period April 2014 to June 2017.", "Issue already decided in favour in Appellant's other Units cases

It is also clearly apparent that those demands pertain to the year 2015-2016 and were proposed to be recovered vide show cause notice dated,,

9.10.2019. The entire period under three of these issues is therefore, beyond the normal period prescribed under Section 73 of Finance Act, 1994 /",,,

11AC of Central Excise Act, 1944. Both these observations and that there is no other evidence except appellant's own document to prove the",,,

alleged act of suppression on part of appellant, we hold that the aforesaid provisions have wrongly been invoked while issuing the show cause notice.",,,

Therefore, the show cause notice is held to be barred by them. We draw our support from the decision of Hon'ble Apex Court in the case titled",,,

as CCE Vs. Chemphar Drugs & Liniments - 1989 (40) ELT 276 (SC) - "Extended period is applicable only when something positive other than mere",,,

inaction or failure on the part of the manufacturer is proved. Conscious and deliberate withholding of the information manufacturer is necessary for",,,

invoking the extended period. If the department had full knowledge or the manufacturer had reasonable belief that he is not required to give a",,,

particular information, only normal period of limitation i.e. one year is applicable. Resultantly, the demand of these issues is held purely barred by",,,

period of limitation. The demand on three of the issues (i), (ii) and (iii) as mentioned above is liable to be set aside.",,,

8. Coming to the demand of service tax amounting to Rs. 2,10,11,500/- alleging it to be an amount received for rendering declared services defined",,,

under Section 66E, we foremost peruse the provision, it reads as follows:",,,

Declared services.",,,

66E. The following shall constitute declared services, namely:",,,

(a) renting of Immovable property:,,

(b) construction of a complex, building, civil structure.",,,

(c) temporary transfer or permitting the use or enjoyment.,,,

(d) development, design, programming, customization",,,

(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act:",,,

(f) transfer of goods by way of hiring, leasing",,,

(g) activities in relation to delivery of goods on hire purchase or any,,

(h) service portion in the execution.,,,

(i) service portion in an execution,,

(j) assignment by the government of the right.â€",,,

9. It is clear from the perusal of clause (e) of the said section that the said clause intent to levy of service tax only when there is an agreement entered,,

into between the parties in terms of which the promisee agrees to refrain himself from an act or to tolerate a situation or to do an act in return of a,,

consideration from the promiseer. However, in the present case, subject matter of agreement is to supply various goods or services or both these",,,

stipulated period. There is no agreement by the other party to not to supply the goods or to not to render the services nor there can be the intention of,,

the other parties to get penalized.,,,

10. Declared service, otherwise, has first to be a service which in terms of Section 65(B)(44) of Finance Act, 1944 is any activity carried by a person",,,

for another for consideration. The term consideration is defined in explanation (a) to Section 67 of the Act to mean any amount that is payable for the,,

taxable service. â€œSection 2(b) of Indian Contract Act, 1872 also defines â€˜considerationâ€™ as when at the desire of the promisor the promise or",,,

any other person has done or abstained from doing, or does or abstains from doing or promises to do or to abstain from doing, something, such act or",,,

abstinence or promise is called a consideration for the promise.â€ In the present case there is no agreement nor any intention to breach the terms of,,

the agreement. The appellant herein has simply agreed to be compensated by deducting charges from the bills for any loss or admitted cause to them,,

from the breach of contract on part of the contractor. Resultantly, the recovery of liquidated damages/penalty from the other parties cannot be called",,,

as service and the amount so received cannot be called as the amount of consideration. The activity of receiving such an amount of penalty is wrongly,,

alleged to be an amount towards rendering the declared services. The act of receiving such an amount/liquidated damages is otherwise covered under,,

Section 73 and 74 of the Contract Act. The issue is otherwise no more res integra. We rely upon the decision in the case of South Eastern Coalfields,,

Ltd. Vs. Commissioner of C.Ex. & ST, Raipur reported in 2021 (55) GSTL 549 (Tri.-Del.)",,,

11. Further, it has been observed that in appellant's own case the amount of liquidated damages recovered being a penalty imposed on",,,

contractor/suppliers for failing to supply goods or executing the work within the stipulated time schedule and for the loss suffered on account of breach,,

of contract of purchase or sale. The demand was set aside by the department itself by Commissioner (Appeals) vide an order August 2, 2019. The",,,

appeal against the said order has been dismissed by this Tribunal vide Final Order No. 50610 of 2022 in Service Tax Appeal No. 50824 of 2020. We,,

have no reason to differ from the said findings. Hence we hold that on demand even on issue No. (4) has been wrongly confirmed and the same is,,

also liable to be set aside. However, learned counsel has also stated at bar that the appellant shall not be applying for the refund of the amount",,,

deposited vis-À-vis issue No. (i), (ii) and (iii), no order for any consequential benefit to appellant is announced.",,,

11. In view of entire above discussion, the order under challenge confirming four of the demand and holding that the extended period is invocable is",,,

hereby set aside. Consequent thereto, the appeal is hereby allowed.",,,

(Pronounced in open Court on 01.01.2025),,,