CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH-COURT NO. 4

SERVICE TAX APPEAL NO. 52156 OF 2019

[Arising out of Order in Appeal No. 387-CRM-ST-JDR-2019 dated 24.04.2019 passed by the Commissioner (Appeals) Central Excise & Central Goods and Service Tax, Jodhpur]

M/S HINDUSTAN ZINC LTD **......APPELLANT**

Rajpura Dariba Mines,
Dariba, Rajsamand, Rajasthan

Vs.

COMMISSIONER OF CGST & CENTRAL EXCISE-UDAIPUR **......RESPONDENT**

Central Excise & CGST Commissionerate
Udaipur (Rajasthan)

Appearance:

Present for the Appellant : Ms. Sukriti Das, Advocate
Present for the Respondent: Shri Shashank Yadav, Authorised Representative

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 50474 /2025

Date of Hearing : 12/03/2025
Date of Decision : 08/04/2025

DR. RACHNA GUPTA

1. The present order disposes of this appeal filed by M/s Hindustan Zinc Limited assailing the order-in-appeal No. 387-CRM-ST-JDR-2019 dated 24.04.2019.

2. The facts relevant for present adjudication, in brief, are as follows: The appellants are engaged in the manufacture of zinc lead ingots, copper sulphate solutions, HZP dust etc. During the course of the audit of the appellant’s record, the department observed that for the period from 2013 to March 2016 the appellant received

miscellaneous income in the name of fine, penalties from contractors and in the name of security deposit, earnest money it has failed to pay service tax on the said amount. The department formed the opinion that the said amount is received for agreeing to the obligation to refrain from an act, or to tolerate an act or a situation or to do an act which is amount to 'Declared Service' in terms of Section 66 E(e) of the Finance Act, 1994 and the that said service is liable to taxed. Accordingly a show cause notice bearing no. 559/2016/269 dated 13.04.2018 was served upon the appellant proposing recovery of service tax amounting to Rs. 40,69,943/- along with interest and the appropriate penalties. The proposals was initially confirmed vide order-in-original no. 18/2018 dated 30.08.2018. The appellant against the said order has been rejected vide order-in-appeal bearing 387(CRM)ST/JDR/2019 dated 24.04.2019. The original adjudicating authorities confirmed the respective demand along with the interest and the appropriate penalties vide the respective orders as mentioned above in the table. The appeal against these order-in-original has been rejected vide the order-in-appeal no. 387-CRM-ST-JDR-2019 dated 24.04.2019.

3. Being aggrieved the appellant is before this Tribunal.

4. Learned counsel for the appellant has mentioned that the amount recovered by the appellant is not a consideration as for an amount to qualify as consideration there has to be '*quid pro quo*' or an "*activity for such consideration*". However, the appellant has not undertaken any activity against the recovery of amounts in question. Hence, there is no element of 'service' which is defined under section

65B (45) of the Finance Act. The activity has wrongly been taxed under section 66E(e) of Finance Act. The disputed amounts are nothing but the penal charges which have been recovered by the appellant with the intention to make good the losses and to also act as a deterrent to ensure that buyer or supplier do not violate the terms of contract any further.

5. It is submitted that this issue is no longer *res integra* its sands decided in an appellant's own case. The order-in-appeal under challenge has ignored such previous decisions, hence the impugned O-I-A is prayed to be set and appeal is prayed to be allowed.

6. Learned authorized representative has conceded the earlier decisions in favour of the assessee, however, has reiterated the findings arrived at by the Commissioner (Appeals).

7. Having heard both the parties. We observe that the issue involved in the present case is:

"Whether the income received as "forfeiture of security Deposit/ Earnest Money Deposit" and "Fine penalties recovered from contractors" by the appellant is a taxable declared service under section 66E of the Finance Act, 1994 and liable to service tax."

8. We have also perused the decisions relied upon by the appellant. We observe that this Tribunal in the case of **South Eastern Coal Fields Ltd. vs. CCE & ST, Raipur** reported in **2021 (55) GSTL 549** has considered the same issue as above. It has already been held as follows:-

> "There is marked distinction between "conditions to a contract" and "considerations for the contract". A service recipient may be

required to fulfill certain conditions contained in the contract but that would not necessarily mean that this value would form part of the value of taxable services that are provided. Hence, payment of the impugned „compensation charges" in the present case merely amounts to fulfillment of the condition envisaged in Para No. 6.5.3 of the Agreement dated 12-7-2011 and not consideration for the said contract [Agreement dated 12-7-2011].

12.Further, the issue of leviability of Service tax on penalty, liquidated damages, compensation, forfeiture amounts, cancellation charges etc. stands settled by various pronouncements wherein it has consistently been held that the said amounts recovered as charges for breach or non-compliance of contractual terms and conditions cannot be construed as „consideration" for „refraining or tolerating an act" and were thus not leviable on Service Tax in terms of Section 66E(e) of the Finance Act, 1994. Reliance in this regard is placed on the following decisions :

(i) M/s. K.N. Food Industries Pvt. Ltd. v. Commissioner of CGST & Central Excise, Kanpur [2019-VIL-731-CESTAT-ALH-ST] wherein it was held that if a contract provides for an eventuality which is uncertain and also remedy if that eventuality occurs, such charges made towards making good the damages, losses or injuries arising from unintended events cannot be considered to be the payments for any services under Section 66E(e) of Finance Act, 1994.

(ii) M/s. Monnet Ispat & Energy Ltd. v. CCE & ST, Raipur [2018 (9) TMI 1514] - while deciding whether Service Tax liability arises on the UI Charges received by the Company in terms of Section 66E(e) of the Finance Act, 1994, the Court held that UI Charges have been received by the Appellant only in those cases where the buyer has drawn more electricity than what was scheduled for him and does not amount to consideration for declared service.

(iii) 7 ST/51462 /2019 M/s. Lemon Tree Hotels v. Commissioner, GST, Central Excise & Customs - 2020 (34) G.S.T.L. 220 (Tri. - Del.)/[2021] 127 taxmann.com 247 (New Delhi - CESTAT) [2019 (7) TMI 676] wherein it was held that „cancellation charges" collected in lieu of cancellation of booking of hotel room does not attract Service Tax in terms of Section 66E(e) of the Finance Act.

(iv) In M/s. South Eastern Coalfields Ltd. v. CCE & ST, Raipur [supra]-The Tribunal held that 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 cannot be sustained and also relied on the following decisions of the Hon"ble Supreme Court :

(a) Commissioner of Service Tax v. M/s. Bhayana Builders (P.) Ltd. [2018 (2) TMI 1325] = 2018 (10) G.S.T.L. 118 = [2018] 91 taxmann.com 109/66 GST 320 wherein the Apex Court observed that any amount charged which has no nexus with the taxable service and is not a consideration for the service provided does not become part of the value which is taxable under the Finance Act.

(b) Union of India v. International Consultants and Technocrats [2018 (10) G.S.T.L. 401 (S.C.)] - since Service Tax is with reference to the value of service, as a necessary corollary, it is the value of the services which are actually rendered, the value whereof is to be ascertained for the purpose of calculating the Service Tax payable thereupon.

(v) M/s. M.P. Poorva Kshetra Vidyut Vitran Co. Ltd. v. Principal Commissioner CGST and CE, Bhopal [2021 (2) TMI 821]/2021 (46) G.S.T.L. 409 (Tri. - Del.), wherein the ratio of the decision in the case of M/s. South Eastern Coalfields (supra) was followed and the order confirming the demand of Service Tax on the amount collected towards liquidated damages and theft of electricity was set aside."

9. From the perusal of these decisions it becomes abundantly clear that the issue of considering a forfeited amount as an amount of consideration towards declared services stands already settled in favour of the assessee. The same is already held to not to be the consideration towards rendering declared service defined under section 66E(e) of the Finance Act, 1944. In fact the cancellation of contract itself is held to not to be a service. We find no reason to differ from these findings.

10. We further observe that department also vide Circular No.214/1/2023-ST dated 28th February, 2023 has clarified about leviability of service tax on the declared services, "agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act" under clause (e) of section 66E of Finance Act, 1994 and has clarified that the activities contemplated under section 66 E (e)

i.e. when one party agrees to refrain from an act or to tolerate an act or a situation, or to do an act, are the activities where the agreements specifically refers to such an activity and there is a flow of consideration for this activity. The decision of this Tribunal in the case of Dy. General Manager (Finance), Bharat Heavy Electricals Limited in appeal No.50080 of 2019 wherein the earlier decision of the Tribunal in the case of M/s. South Eastern Coalfields (supra) was dealt with, has been referred in this Circular.

11. The Board has decided to not to file any appeal against the decision in M/s. South Eastern Coalfields (supra). The said decision has also been upheld by Hon'ble Supreme Court vide its order dated 11.07.2023 passed in the case of Commissioner of Central Excise and Service Tax vs. South Eastern Coal Fields Limited in Civil Appeal No. 2372/2021.

12. In appellant's own case vide **Final order No. 59733/2024 dated 04.11.2024, CESTAT Delhi,** while relying upon the decision of **South Easter Coal (supra)** has set aside the demand of service tax confirmed on the identical allegations holding that the penalties, fines and forfeited amounts cannot be treated as consideration towards declared services defined under section 66 E(e) of the Finance Act.

13. In light of this discussion, we observe that adjudicating authorities below have ignored the earlier decisions. Hence, the act of the authority is held to be an act of judicial indiscipline. The authorities below are warned to be careful in future. Such an order of

reflecting judicial indiscipline is otherwise not sustainable. We draw our support from the decision in the case of **Vishnu Traders** vs. **State of Haryana and Others 1995 Suppl. (1) SCC 461.**

> "In the matter of interlocutory orders principle of binding precedents cannot be said to apply. However, the need for consistency of approach & uniformity in the exercise of judicial discretion respecting similar course and desirability to eliminate occasions for grievances of discriminating treatment requires that all similar matters should receive similar treatment except when factual differences require a different treatment so that there is assurance of consistency. Uniformity, predictability and certainty of judicial approach."

14. In the light of the entire above discussion the order under challenge is hereby set aside. Resultantly, the appeal is allowed.

[Order pronounced on **08/04/2025**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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

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