# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
# NEW DELHI

**PRINCIPAL BENCH, COURT NO. 3**

## SERVICE TAX APPEAL NO. 52206 OF 2021

[Arising out of Order-in-Appeal No.284(CRM) ST/JDR/2021 dated 16.09.2021 passed by the Commissioner (Appeals), Central Excise and Central Goods and Service Tax, Jodhpur]

**M/S.HINDUSTAN ZINC LTD.,**
Rampura Agucha Mines, Gulabpura, **....APPELLANT**
Distt.-Bhilwara (Raj.).

Vs.

**The Commissioner ,** **.....RESPONDENT**
**Central Excise & CGST**,
142-B, Sector-11, Hiran Magri,
Udaipur-313 001 (Rajasthan)

**Appearance:**
Present for the Appellant : Ms. Sukriti Das, Advocate
Present for the Respondent: Shri V.K. Jain , Authorised Representative

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

**FINAL ORDER NO. 51924/2025**

**Date of Hearing/Decision : 11.12.2025**

**BINU TAMTA:**

1. The issue involved in the present appeal is whether the amounts collected by the appellant in the nature of forfeiture of security deposits/earnest money and fines/penalties etc. against delayed completion of works is chargeable to service tax under Section 66E(e) of the Finance Act, 1994[1].

2. Briefly stated, show cause notice was issued to the appellant for the period April, 2016- June, 2017, alleging that the amounts collected

[1] Act, 1994

by the appellant in the form of fines/penalties, liquidated damages, forfeiture of earnest money/security deposits etc. from the contractors who failed to provide the services within the agreed stipulated time was in lieu of 'tolerating the act' of service providers/contractors like poor performance or not meeting the obligations and was therefore, chargeable to service tax amounting to Rs.10,01,501/- as the services rendered fall under Section 66E(e) of the Act. The Adjudicating Authority vide order dated 21.12.2018 confirmed the demand of Rs.50,35,481/- and dropped the remaining amount of Rs.29,59,886/-. The appeal filed by the appellant was dismissed by the Commissioner (Appeals) and the demand was confirmed. Hence, the present appeal has been filed before this Tribunal.

3. Heard both sides and perused the records of the case.

4. Ms. Sukriti Das, the learned Counsel for the appellant has submitted that the issue is no longer *res integra* and has been settled in the case of the appellant by the Tribunal in the following cases:-

(1) **South Eastern Coalfields Ltd. Vs. CCE & ST, Raipur**[2]

(2) **CCE & ST, Raipur Vs. South-Eastern Coalfields Ltd.**[3]

(3) **Hindustan Zinc Limited Vs. Commissioner of CGST & Central Excise, Udaipur.**[4]

(4) **Hindustan Zinc Limited Vs. Commissioner of CGST & Central Excise, Udaipur.**[5]

(5) **Hindustan Zinc Limited Vs. Commissioner of CGST & Central Excise, Udaipur.**[6]

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[2] 2021 (55) GSTL 549 (Tri.-Delhi)
[3] 11.07.2023 in Civil Appeal No.2372/2021
[4] Final Order No.50474/2025 dated 8.4.2025
[5] Final Order No.51039/2025 dated 17.07.25

(6) **Oil & Natural Gas Corporation Ltd. Vs. Commissioner of Central Goods & Service Tax, Dehradun**[7]

(7) **Hindustan Zinc Limited Vs. Commissioner of CGST & Central Excise, Udaipur.**[8]

(8) **Hindustan Zinc Limited Vs. Commissioner of CGST & Central Excise, Udaipur.**[9]

(9) **Hindustan Zinc Limited, Rajpura Dariba Mines Vs. Commissioner of Central Excise and CGST, Udaipur**[10]

(10) **Hindustan Zinc Limited, Rajpura Dariba Mines Vs. Commissioner of Central Excise and CGST, Udaipur.**[11]

We find that the above decisions in the case of the appellant have been rendered by heavily relying on the case of **South Eastern Coalfields Ltd Vs. CCE & ST, Raipur**[12]. The observations of the Tribunal are as follows:-

> **"25.** It is in the light of what has been stated above that the provisions of Section 66E(e) have to be analyzed. Section 65B(44) defines *service* to mean any activity carried out by a person for another for consideration and includes a declared service. One of the declared services contemplated under Section 66E is a service contemplated under clause (e) which service is agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act. There has, therefore, to be a flow of consideration from one person to another when one person agrees to the obligation to refrain from an act, or to tolerate an act, or a situation, or to do an act. In other words, the agreement should not only specify the activity to be carried out by a person for another person but should specify the :
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> (i) consideration for agreeing to the obligation to refrain from an act; or

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[6] Final Order No.50519/2025 dated 25.04.2025
[7] Final Order No.50415/2025 dated 18.03.2025
[8] Final Order No.50475-50476/2025 dated 8.4.2025
[9] Final Order No.59733/2024 dated 4.11.2024
[10] Final Order No.51523/2025 dated 30.09.2025
[11] Final Order No.50551/2025 dated 30.4.2025
[12] 2021 (55) GSTL 549 (Tri.-Delhi)

(ii) consideration for agreeing to tolerate an act or a situation; or

(iii) consideration to do an act.

**26.** Thus, a service conceived in an agreement where one person, for a consideration, agrees to an obligation to refrain from an act, would be a 'declared service' under Section 66E(e) read with Section 65B(44) and would be taxable under Section 68 at the rate specified in Section 66B. Likewise, there can be services conceived in agreements in relation to the other two activities referred to in Section 66E(e).

**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.

**28.** It also needs to be noted that Section 65B (44) defines "service" to mean any activity carried out by a person for another for consideration. Explanation (a) to Section 67 provides that "consideration" includes any amount that is payable for the taxable services provided or to be provided. The recovery of liquidated damages/penalty from other party cannot be said to be towards any service *per se*, since neither the appellant is carrying on any activity to receive compensation nor can there be any intention of the other party to breach or violate the contract and suffer a loss. The purpose of imposing compensation or penalty is to ensure that the defaulting act is not undertaken or repeated and the same cannot be said to be towards toleration of the defaulting party. The expectation of the appellant is that the other party complies with the terms of the contract and a penalty is imposed only if there is non-compliance.

**29.** The situation would have been different if the party purchasing coal had an option to purchase coal from 'A' or from 'B' and if in such a situation 'A' and 'B' enter into an agreement that 'A' would not supply coal to the appellant provided 'B' paid some amount to it, then in such a case, it can be said that the activity may result in a deemed service contemplated under Section 66E(e).

**30.** The activities, therefore, that are contemplated under Section 66E(e), when one party agrees to refrain from an act, or to tolerate an act or a situation, or to do an act, are activities where

> the agreement specifically refers to such an activity and there is a flow of consideration for this activity.
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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."

5. The Revenue did not pursue the appeal challenging the said decision of the Tribunal and the same were withdrawn on the statement made by the learned ASG that he has instructions to withdraw the appeal, as per order dated 11.07.2023 in C.A.No. 2372/2021. Thus the decision of the Tribunal in **South Eastern Coalfields** is the law which has binding effect and needs to be followed.

6. There are other series of decisions as relied on by the appellant and what emerges is that a consistent view has been taken that the amount charged has necessarily to be a consideration for the taxable service provided under the Finance Act and the amount which has no nexus with the taxable service is not a consideration for the service provided and therefore, does not become part of the value which is taxable. Such amounts have been held to be in the nature of penal charges on account of breach or non-performance of contract and are recovered with the intention to make good for the losses and to also act as a deterrent to ensure that buyer or supplier do not violate the terms of the contract. These amounts cannot be termed as 'consideration' in lieu of any service under Section 65B (44) of the Act. Further, it has been laid down that an activity to be covered as a declared service under Section 66E(e) of the Act, there must

necessarily be an independent agreement to refrain or tolerate or to do an act between the parties.

7. As noted in the earlier decisions, the Department has issued Circular No.214/1/2023-ST dated 28.02.2023 analysing the provisions of Section 66E(e) read with 66B(44) and clarified that the activities contemplated under Section 66E(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 agreement specifically refers to such an activity and there is a flow of consideration for this activity'. In view thereof, the amount in question is not a consideration for providing any services.

8. The present case is clearly covered by the decision in the earlier two cases of the appellant themselves as well as other line of decisions and therefore, the amount collected by the appellant is not towards rendering declared service. The impugned order is unsustainable and is hereby set aside. The appeal is, accordingly, allowed.

[Operative portion of the order already pronounced in open court.]

**(BINU TAMTA)**
**MEMBER ( JUDICIAL )**

**(HEMAMBIKA R. PRIYA)**
**MEMBER ( TECHNICAL )**

Ckp.