CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi

PRINCIPAL BENCH – COURT NO. 4

SERVICE TAX APPEAL NO. 51033 OF 2021

[Arising out of Order-in-Appeal No. 152(SM) ST/JPR/2021dated 22.03.2021 passed by the Commissioner (Appeals) Central Excise and CGST, Jaipur]

M/S AJMER VIDYUT VITARAN NIGAM LIMITED ...APPELLANT
AO-EA Cash, Vidyut Bhawan Panchsheel
Nagar Makadwali Road, Ajmer

Vs.

PRINCIPAL COMMISSIONER OF CGST & CENTRAL EXCISE, JAIPUR ......RESPONDENT
NCR Building, Statute Circule C-Scheme Jaipur, Rajasthan-305005

APPEARANCE:

Shri Kunal Agarwal, Advocate for the Appellant

Shri Shashank Yadav, Authorized Representative for the Respondent

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

FINAL ORDER NO. 50035 /2026

DATE OF HEARING: 15.10.2025
DATE OF DECISION: 07.01.2026

P.V. SUBBA RAO

M/s. Ajmer Vidyut Vitaran Nigam Limited[1] has filed this appeal to assail the Order dated 22.3.2021[2] passed by the Commissioner (Appeals) in which he upheld the order dated 30.8.2019 passed by the Additional Commissioner confirming demand of service tax of Rs. 1,04,68,524/- under section 73 (1) of

1. **The appellant**
2. **Impugned order**

the Finance Act, 1994[3] and imposed a penalty of Rs. 10,46,852/- under section 76 of the Act and rejected the appellant's appeal.

2. We have heard learned counsel for the appellant and the learned authorized representative for the Revenue and perused the records. The demand of service tax has been confirmed on three counts:

a) Demand of service tax under reverse charge basis on the amounts which the appellant had paid to the State Police Department for the security services provided by the police;

b) Service tax on vendor registration charges, tender cost, inspection charges and Board of Director Settlement fee; and

c) Service tax on amounts recovered as penalty on non-fulfilment of the conditions of the tender.

3. The appellant does not dispute paying the amounts to the state police or receiving the amounts towards (b) and (c) above but contends that it is not liable to pay service tax on these amounts. We find that for demands on these three issues for an earlier period were confirmed by the Commissioner and on appeal, this Tribunal, by Final Order No. 59900 of 2024 dated 26 November 2024 passed in Service Tax Appeal No. 52634 of 2018, set aside the demands. Relevant portions of this order are reproduced below:

> "2. The facts of the case are that the appellant is engaged in the provisions of technical inspection and clarification services. An audit was conducted for the period April 2011 to March 2016 and the Appellant was issued the SCN proposing to demand service tax of Rs.3,12,84,627/- along with interest and penalties. The demand was confirmed by way of impugned order. The details of the issues are as under:-

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3. **Act**

Sl. No.	Demand Category	Amount	Proposal in the SCN	Findings in the Impugned Order
1.	Support Services	Rs. 2,43,67,998	The Appellant has received services of the State Police Department for protection of members of its raid party deployed for conducting raids against thieves of electricity to prevent theft of electricity. Such services could have been performed by the staff of the Appellant, and therefore, such activities do not qualify as 'sovereign function'. Accordingly, the Appellant has received support services from the State Police Department and has reimbursed the salaries and allowances of the officers to the Police Department. The amounts reimbursed is taxable in the hands of the Appellant on reverse charge basis.	The sovereign activities assigned to the State Police Authority are to protect life and property without consideration. Ajmer Discom has been created for distribution and supply of electricity. The State Police Department has rendered services on the request of the Appellant and has received fees which is prescribed by the Directorate General of Police. Such services are not covered under sovereign functions of the Police but are covered under the scope of 'support service' by way of security. Hence, the Appellant is liable to pay service tax on reverse charge basis.
2.	Nature of service not mentioned	Rs. 17,99,833	The Appellant has collected an amount of Rs. 1,40,48,259/- on account of: i. Vendor registration charges: Charges enabling a vendor to appear in the tender process; ii. Tender Cost: Charges based on value of tender; iii. Inspection charges of meters or other apparatus; and iv. Board of Settlement Committee Fee: Amount collected as fee to present case of any service provider / service recipient for settlement of matter before the Board of Directors. That the activities of the Appellant are covered under Section 65B(44) of the Act and therefore, service tax is payable on the amounts received by the Appellant.	Service Tax of Rs. 17,50,692 has been paid along with interest in respect of vendor registration charges, tender cost, inspection charges and settlement fees. However, the Appellant tried to mislead the department by asserting the non-taxability of these amounts, and therefore, penal action is warranted against the Appellant under Section 78(1) of the Act.
3.	Service of tolerating an act.	Rs. 51,16,796	The Appellant has received amounts on account of: a. pre-term resignation of the employees; and b. penalty for non-compliance with terms and conditions of tender. These amounts are collected towards agreeing to the obligation of tolerating an act or situation, and therefore are taxable in terms of Section 66E(e) of the Act.	That by tolerating the resignation of employees prior to their term and compromising on the terms and conditions of the tender / work order, the Appellant has rendered the service of agreeing to tolerate an act or situation. Accordingly, the amounts received by the Appellant were taxable under Section 66E(e) of the Act.

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12. We find that the main contention pertains to demand of service tax of Rs. 2,43,67,998/- under support service. The said demand has been raised on the appellant under reverse charge mechanism as the period involved in this matter is from July 2012 and the demand has been raised against the appellant by invoking erstwhile under the provisions of Section 65 (104c) the Finance Act, 1994 readwith Section 65 (105) (zzzq) of the Finance Act. In fact from July,2012 onwards the negative list regime came into existance and the activity undertaken by the appellant if taxable, the demand can be raised under Section 65B (49) of the Act. The said provisions has not been invoked to demand service tax from the appellant. Moreover, for support services of business, the service tax is required to be paid by the service provider not by the service recipient and the appellant is before us is a service recipient, therefore, no demand can be raised in the hands of the service recipients under support services of business. In that circumstances, the recovery of the said amount if payable, cannot be levied on the appellant. Moreover, the issue whether reimbursement of salaries of Policemen by the appellant is chargeable to tax under business support service or not. The said issue has been settled by this Tribunal in the case of **Superintendent of Police vs. Commissioner of Central Excise, Jaipur (supra)** wherein this Tribunal observed as under:-

> 15. The short point to be decided by us is if the Police provides guards to banks or other commercial concerns and charges a fee as per the rates determined by the Government whether service tax can be charged under "Security Agency Services" on such fee or otherwise. The lower authorities have held since the term "business concern" in the definition of "Security Agency Service" has been replaced with "any person" even the Police are covered under the "Security Agency Service". A perusal of the definition of "Security Agency" shows that it has to be "any person engaged in the business of providing security". Police provide security as a part of their statutory obligations. In most cases they do not charge any fee for such security but in some cases they charge a fee as determined by the State Government. Merely because they are charging a fee, Police do not become "person engaged in the business of providing security". As per clarification issued by the CBEC Circular No. 89/07/2006-ST dated 18/12/2006 charges recovered by any sovereign or public authority for carrying out any statutory function will not be liable for service tax fees if three conditions are fulfilled.
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> 16. The first condition is that the statutory authority must perform a duty which is in the nature of statutory or mandatory obligations to be fulfilled in accordance with law. We have no doubt that the police has a statutory duty to provide security. The Second condition is that the fee should be collected as per law. Section 46 of the Police Act provides for the State Government providing Police Force for fee for user charges in some cases. The present demand is on the amounts collected as user fee which are levied upon the Section 46 of the Police Act, and therefore,

> the second condition is also fulfilled. The third condition is that the amount so collected must be deposited into the Government treasury. There is no doubt in the entire proceedings that the amount so received was deposited in the Government treasury. In view of above, we find that all conditions required in the above circular of CBEC are fulfilled. Therefore, no service tax chargeable under Security Agency Services upon the Appellant. The CBEC circular being binding on the department, a demand to the contrary is not sustainable and needs to be set aside."

Therefore, on merits as well as on technical grounds, we hold that the appellant is not liable to pay service tax for support services amounting to Rs.2,43,67,998/-. Accordingly, the said demand is set- aside.

13. With regard to amount collected by the appellant on account of inspection charges, tender cost and vendor registration charges, we find that the activity of meter inspection charges is related to the distribution of electricity of the appellant and the said activity is exempt from payment of service tax, in that circumstances, on inspection charges of the electric meter, the appellant is not liable to pay service tax. Accordingly, the said demand is also set-aside.

14. With regard to vender registration charges and tender cost, these are the charges recovered by the appellant from persons who are getting registration and a part of bidding process that cannot be termed as any service provided by the appellant, therefore, on this vendor registration charges and tender cost, the appellant is not liable to pay service tax.

15. With regard to pre-term resignation of the employees and the penalty for non-compliance with terms and conditions of tender, these are not consideration for providing any service by the appellant. The said amount has been collected in compensation of the loss incurred by the appellant and not towards condition of any service, therefore, no service tax is payable by the appellant on the said amount. The said issue has been settled by the Hon'ble Madras High Court in the case of **GET & D India Limited vs. Deputy Commissioner of Central Excise, 2020 (1) TMI 1096-Madras High Court** wherein the High Court has observed as under:-

> "10. The provisions of Section 66E(e) appear to have given rise to some ambiguity, on this very issue, clarified by the Central Board of Excise and Customs (CBEC) in CBECS Guidance Notes dated 20.06.2012. At para 2.9.3 the Board states as follows:
>
> 2.9 Provision of service by an employee to the employer is outside the ambit of service.
>
> 2.9.3. Would amounts received by an employee from the employer on premature termination of contract of employment be chargable to service tax?
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> No, such amounts paid by the employer to the employee for premature termination of a contract of employment are treatable as amounts paid in relation to services provided by the employee to the employer in the course of employment. Hence, amounts so paid would be chargeable to service tax However any amount paid for

> not joining a competing business would be liable to be taxed being paid for providing the service of forbearance to act."

> Therefore, we hold that the appellant has received tender cost for non-fulfilment of conditions of tender which is towards the said amount is collected for damage or loss incurred by the appellant and not for providing any service, in that circumstances no service tax can be demanded from the appellant by invoking the provisions under Section 66E (e) of the Act.
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> 16. With these terms, we pass the following order:-
>
> (a) demand under support service amounting to Rs. 2,43,67,998/- is set-aside
>
> (b) demand of service tax on account of vendor registration charges, tender cost and inspection charges of meters are also set-aside
>
> (c) demand of service tax of Rs. 51,16,796/- for the amount recovered on account of pre-term resignation of the employees and penalty for non-compliance with terms and conditions of tender are set-aside.
>
> In the facts and circumstances of the case, no penalty can be imposed on the appellant. Accordingly, the penalties imposed on the appellant are set-aside."

4. We find no reason to take a different view for this demand pertaining to a subsequent period in respect of the same appellant on the same issues. Respectfully following the Final Order dated 26 November 2024, we set aside demand of service tax, interest and penalty.

5. The appeal is allowed and the impugned order is set aside with consequential relief to the appellant.

[Order pronounced on **07/01/2026**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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

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