

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

PRINCIPAL BENCH – COURT NO. 4

Service Tax Appeal No. 50096 of 2022

(Arising out of Order-in-Appeal No. 264(AK)ST/JDR/2024 dated 16.05.2024 passed by the Principal Commissioner of Central Excise & Central Goods and ST(Appeals), Jodhpur)

M/s RajComp Info Services Limited

Yojna Bhawan, C-Block, 1st Floor,
Tilak Marg, C-Scheme, Jaipur,
Rajasthan - 302005

Appellant

Versus

**Principal Commissioner of CGST
& Central Excise Commissioner, Jaipur**

New Central Revenue Building,
Statue Circle, C-Scheme, Jaipur

Respondent

Appearance:

Present for the Appellant: Shri Kunal Aggarwal, Advocate

Present for the Respondent: Shri Suresh Nandanwar, Authorized Representative

CORAM:

Hon'ble Dr. Rachna Gupta, Member (Judicial)

Hon'ble MRS. HEMAMBIKA R. PRIYA, Member (Technical)

Date of Hearing : 17.10.2025

Date of Decision : 03.02.2026

Final Order No. 50209/2026

Dr. Rachna Gupta:

M/s Rajcomp Info Services Ltd., the appellant herein is registered with the Service Tax Department for providing/receiving the taxable services including Management or Business Consultant Service, Legal Consultancy Service, Rent-a-Cab Scheme Operator Service etc. During the course of the audit of appellant records, the

Department, for the financial year 2014-15, 2015-16 & 2016-17, observed the following:

- (i) The appellant collected tender fee under e-procurement from various clients for bidding and also provided services for Digital Signature Certificate under e-procurement. The service tax liability on the services has been calculated treating the gross receipts as inclusive of service tax and paid to the Government without producing any evidence to substantiate that the gross amount charged by them in their document was inclusive of service tax payable, accordingly the service tax amounting to Rs. 32,61,876/- was found not paid by the appellant during the aforementioned financial years.
- (ii) The appellant was also observed to have received the Rs 61,01,363/- on account of forfeiture of Security Deposit (SD) and Earnest Money Deposit (EMD) amount for delay in completion of work. The Department found an opinion that the aforesaid amount was the consideration for rendering the declared service/ taxable service as defined under clause (e) of Section 66E of Finance Act, 1994 i.e. 'agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act.' The appellant was alleged to have not deposited service

tax amounting to Rs. 8,26,764/- on the aforesaid amount received.

- (iii) The appellant was also found to have received Rs. 28,08,000/- on account of tender fee from various customers/applicants. The Department alleged that the said amount was received as consideration for activities of empanelment and pre & post tender arrangements as well as for miscellaneous expenditure to meet out the tender formalities including sale of tender documents. The said activity was also alleged to be the declared service in terms of Section 66(E)(e) of the Finance Act, 1994. The service tax amounting to Rs. 3,94,994/- was alleged to be not paid by the appellant.

1.1 Based on the above observations, during audit, that the show cause notice bearing No. 335/2017-18 dated 03.02.2020 was served upon the appellant proposing the recovery of total service tax amounting to Rs. 44,83,634/-(32,61,876/-+8,26,764/-+3,94,994/-). The interest at the proportionate rate and the appropriate penalties were also proposed to be imposed. The said proposal was confirmed vide the Order-in-Original 51/2020 dated 20.10.2020. In an appeal against the said order, Commissioner (Appeals) has set aside the service tax demand of Rs. 32,61,876/- on receipts of 'tender fee under e-procurement' for bidding and fee receipts for providing Digital Signature Certificates by the appellants. The remaining demand of Rs 12,21,758/- has been confirmed. Being aggrieved, the appellant is before this Tribunal.

2. We have heard Shri Kunal Aggarwal, learned counsel for the appellant and Shri Suresh Nandanwar, learned Authorized Representative for Revenue.

3. The learned counsel for the appellant has submitted that the appellant is a wholly owned undertaking of the Government of Rajasthan which acts as a nodal agency in the implementation of various IT related projects of the Department of Information Technology & Communication, Government of Rajasthan. The order under challenge has dropped the partial demand however has confirmed demand on following two counts:

(i) service tax on the forfeited amount of Security deposit and Earnest Money Deposit amount.

(ii) service tax on tender and empanelment fee.

3.1 Both the demands have been confirmed while invoking Section 66E(e) of the Finance Act, 1994. The learned counsel submitted that issue is no more res integra viz-a-viz the taxability of forfeited amount of Security deposit and Earnest Money Deposit on account of breach of the terms of the contract. Decision in the case of ***South Eastern Coalfields Ltd Vs. Commissioner of Central Excise and Service Tax, reported in 2020 (12) TMI 912-CESTAT, Tribunal Delhi*** affirmed by the Hon'ble Supreme Court in the decision titled as ***2023 (8) TMI 606 SC***, reliance has also been placed on circular o. 178/10/2022-GST dated 03.08.2022. with the submissions, the demand on the forfeited amount is prayed to be set aside.

3.2 With respect to the demand viz-a-viz tender fee collected from the bidders; it is submitted that the said fee was collected to avoid any dummy bids and for supply of tender documents. The fee was fixed by the Department of Rajasthan Government itself. There cannot be charged any service tax for the supply of documents. The demand alleging the activity to be declared service is therefore liable to be set aside otherwise also Department has failed to establish as to how and what activity, in lieu of which the tender fee was received would fall under clause (e) to Section 66E of the Finance Act, 1994. Decision in the case of ***Commissioner of Cus. (Import), Mumbai Vs. Dilip Kumar & Company reported as 2018 (361) ELT 577 (SC) is relied upon.***

3.3 Finally, it is submitted that the impugned show cause notice has been issued while invoking the extended period of limitation. The appellant was maintaining all the records and the demand has been proposed based on appellant's records only. No element of fraud or suppression on part of appellant, has been established by the Department. The appellant was under bonafide belief of not being liable to pay tax. Hence extended period should not have been invoked in this case. Reliance is placed on the decision in the case of ***M/s MTNL Vs. UOI reported in 2023-TIOL-407-HC-Delhi.*** For the similar reasons, the order of demanding interest and imposing penalty is also liable to be set aside. With these submissions, the appeal is prayed to be allowed.

4. While rebutting these submissions, the learned Departmental Representative, at the outset, has reiterated the findings arrived at by the original adjudicating authority. It is however, acknowledged

that the Department has not filed any appeal viz-a-viz the order dropping partial demand passed by the Commissioner (Appeals). Learned authorized representative further submitted that duty is liable to be paid on the services rendered to the other person for consideration as is mandated in Section 65B (44) of the Finance Act, 1994. In the present case, the appellant was rendering the service to the bidders against which it was receiving the tender fee. No documentary proof has been submitted by the appellant as proof of sale of documents. Resultantly, there is no infirmity in the order when the demand has been confirmed on this account.

4.1 With respect to the demand viz-a-viz forfeited amount of (SD) and (EMD), the learned DR has acknowledged that the issue is no more res integra. The appeal is however, prayed to be dismissed.

5. Having heard both the parties, it is observed that initially the demand was confirmed, by the original adjudicating authority on three of the counts as were pointed out and proposed in the impugned show cause notice. However, Commissioner (Appeals) had dropped the major demand viz-a-viz the amount of tender fee under e-procurement for bidding and providing the digital signature certificates by the appellants, the demand which still has been confirmed is on following two counts:

(i) On the amount of (SD) and (EMD) forfeited on amount of breach of terms of contract (delay in completion work/non-performance of work under contract). The service tax amounting to Rs. 8,26,764/- towards the said activity.

(ii) The demand of service tax amounting to Rs. 3,94,994/- on the amount of tender fee collected from prospective bidders.

5.1 Both the demands have been confirmed invoking Section 66E(e) of Finance Act, 1994. The demand of forfeited amount (the first issue is acknowledged to have been no longer res integra) this Tribunal has time and again held that the amount of security deposits or earnest money deposits cannot be called as consideration as for an amount to qualify as consideration there has to be "quid pro quo" or "activity for such consideration", nor even, while forfeiting such amount on account of violation of agreed terms and conditions; no activity being undertaken against the forfeited amount. Hence, the amount cannot be called as the consideration towards the activity which can be called as service defined as 65B (44) of the Act.

5.2 The demand under Section 66E(e) of the Act is not sustainable towards such amounts. Following decisions of this Tribunal have already set this issue at rest.

- **M/s Hindustan Zinc Limited Vs. Commissioner of Central Excise and CGST-Udaipur 2025 (10) TMI 452-CESTAT New Delhi.**
- **M/s Oil & Natural Gas Corporation Ltd. Vs. Commissioner of Central Goods & Service Tax, Dehradun 2025 (3) TMI 969-CESTAT New Delhi.**
- **M/s Western Coalfields Ltd. Vs. Commissioner of CGST & Central Excise, Nagpur 2023 (4) Centax 271 (Tri.-Bom.).**

Not only this, the circular No. 214/1/2023-ST dated 28.02.2023 has clarified that the amount collected as liquidated damages are not susceptible to tax. It reflects that the non-taxability of the forfeited EMD and SD amounts on account breach of the contract is well settled and stands accepted by the Department. The Commissioner (Appeals) is held to have committed an error while ignoring the settled position of the decided case law and department's own circular. The demand on first issue is therefore liable to be set aside for the said reasons.

6. With respect to the tender fee collected from the bidders, it has been the appellant's stand since beginning, that the said amount was received to give tender documents to the appellants. Thus, the activity was understood to be an act of sale of documents. The appellant was under bona fide belief of not being liable to pay any service tax amount. The said submission of the appellant has not been considered. Otherwise also, for any activity to be liable to service tax, it has to fulfill the condition of Section 65B(44) of the Finance Act. However, there is no contractual arrangement between the appellant and the bidder viz-a-viz the payment of tender fee. The department has absolutely failed to establish the same. On the contrary, it is apparent that since the tender is merely an invitation to the bidder, the fee collected towards providing the said tender document cannot have any element of service. In this case also, there is no 'quid pro quo' while receiving the said amount. The appellant is Government local authority. In view of the Department Circular No. 192/02/2016-ST dated 13.04.2016, the services provided in lieu of the being

charged by the Government or local authority shall be taxable if an only the payment is made for getting a service in return. As already observed above against receiving the tender fee no service has been rendered by the appellant except providing the tender documents to the bidders which is as good as sale of documents. Otherwise also the tender is merely an offer and not an agreement (as already observed above). Hence, it is held that the tender cost/fee is wrongly held to be an amount received towards provision of service. The order confirming the demand of service tax on this amount is therefore liable to be set aside, we draw our support from the decision of this Tribunal in the case of ***M/s Ajmer Vidyut Vitaran Nigam Ltd. Vs. Principal Commissioner of CGST & Central Excise, Jaipur 2024 (11) TMI 1445-CESTAT New Delhi.***

7. Finally, coming to the issue of invoking extended period of limitation as already observed above that the appellant was not paying the service tax under the belief of inviting no liability for the same. One of the issue on which the demand has been confirmed was already settled issue in favour of the assessee. In such circumstances, it was incumbent upon the Department to produce the proof of some positive act on part of the appellant to reflect the malafide intent of the appellant so as to evade the payment of tax but there is no such evidence on record. The Hon'ble Apex Court has time and again settled that for invoking the extended period of limitation, there should be an intent to evade duty as was held in ***M/s Cosmic bychemical Vs.CCE, Bombay reported as 1995 (75) ELT 721 SC.*** It has also been held that extended period is

applicable only when something positive other than mere in-action or failure on part of the assessee is proved. Conscious and deliberate act is necessary for invoking the extended period as was held in ***M/s Gopal Zarda Udyog Vs. CCE, Delhi reported as 2005 (188) ELT 251 SC***. Both these elements are absolutely absent in the present proceedings. Hence, it is held that the extended period should not have been invoked. Thus the demand for the period till March 2017 is held barred by limitation. In the absence of any mala fide suppression etc, it is held that extended period is wrongly invoked. For the normal period the demand is held to be wrongly confirmed (as discussed above).

8. As a result of entire discussion, the order under challenge is hereby set aside. Resultantly, the appeal is allowed.

(Pronounced in open Court on **03.02.2026**)

(Dr. Rachna Gupta)
Member (Judicial)

(HEMAMBIKA R.PRIYA)
Member (Technical)

Kailash