CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 54884 of 2023

[Arising out of Order-in-Appeal No. 54 (RLM)ST/JPR/2023dated06.03.2023 passed by the Commissioner of Central Excise & CGST (Appeals), Jaipur]

M/s. National Engineering Industries Ltd. **...Appellant**
Khaitpura Road, Jaipur, Rajasthan - 302006

VERSUS

Commissioner of CGST & Central Excise – Jaipur **...Respondent**
NCRB, Statue Circle, Jaipur,
Rajasthan - 302005

APPEARANCE:
Shri Shivam Batra, Advocate for the Appellant
Shri S.K. Meena, Authorized Representative for the Respondent

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

DATE OF HEARING: 29.04.2026
DATE OF DECISION: **25.08.2026**

FINAL ORDER NO. 51405/2026

DR. RACHNA GUPTA

M/s. National Engineering Industries Ltd., the appellant herein, is engaged in the manufacture of Bearing, Bearing Components, Machines etc. and were also holding service tax registration for providing the services of Business Auxiliary Service, Erection Commissioning & Installation, Maintenance & Repair Service, Renting of Immovable Property and receiving the services of Business Auxiliary Service, Consulting Engineer Service, Legal Service Maintenance and Repair, Man Power Service, Rent-a-Cab, Sponsorhip Service, GTA and Work Contract Service.

1.1 During the course of audit, it was observed that assessee had transferred retention amounts from its vendors, advance payments from its customers etc. to unclaimed/unpaid balance in its Books of Account. It appeared that these amounts were a consideration received by the appellant for tolerating an act and the assessee had to pay service tax on the amounts so received but payment had not been made. In view of the above, department observed that Rs.1,46,91,645/- was the income for the assessee on which it had not paid the Service Tax of Rs.20,40,513/- in contravention of Section 66E(e) of the Finance Act, 1994. The said amount of service tax was proposed to be recovered from the appellant vide Show Cause Notice No. 19/2016-17 dated 10.02.2020 along with interest, at applicable rates under Section 75 of the erstwhile Finance Act, 1994 read with Section 174 of the CGST Act, 2017. Penalty was also proposed to be imposed upon them under Section 78 of the erstwhile Finance Act, 1994, read with Section 174 of the CGST Act, 2017. The said proposals were initially confirmed vide Order-in-Original 05/2021-22 dated 30.06.2021. The appeal against the same has been dismissed by the Commissioner (Appeals) vide Order-in-Appeal No. 54/2023 dated 06.03.2023. Being aggrieved the appellant is before this Tribunal.

2. We have heard Shri Shivam Batra, learned Advocate for the appellant and Shri S.K.Meena, learned Authorized Representative for the department.

3. Learned counsel for the appellant submitted that the department has merely alleged that the appellant was responsible to pay service tax on the written off amounts received but no

payment was made. The burden to prove taxability is on the department. Demand cannot be sustained on vague and incoherent show cause notice, which lacks sufficient evidence. Department has produced nothing on record to establish that declared service under Section 66E(e) of the Finance Act was provided by the appellant while retaining the written off amounts. In this regard, reliance is placed on the following cases, wherein it is held that demand cannot sustain on vague and incoherent show cause notices:

(i) Commissioner Vs. Brindavan Beverages (P) Limited, reported as 2007 (213) ELT 487 (SC)

(ii) Commissioner, Service Tax Commissiionerate, Delhi-III Vs. CBM Industries Limited and CBM Industries Limited Vs. Commissioner of Service Tax Commissionerate, Delhi-III Final Order No. 55485-55486/2024 dated 08.04.2024

3.1 While submitting on merits, it is submitted that issue is no longer res integra. Retention of unclaimed/unpaid amounts is not susceptible to service tax in the absence of flow of consideration. In the present case there is neither any flow of consideration from the vendors, employees, etc., to the appellant nor is there any activity undertaken by the appellant against retaining said amount. It is submitted that impugned order has confirmed the demand of service tax solely on the basis of accounting entries, wherein the appellant has written off the amounts pertaining to retention money and unclaimed balances. Such accounting entries only in accordance with the generally accepted accounting principles and practices followed for writing back credit balance which remained outstanding in the books of accounts. It is wrongly alleged to be declared service, the taxable activity. In this regard, reliance is placed on Chartered Accountant Certificate dated 22.05.2023. Reliance is also placed on the decision of **Futura Ployester Ltd. Vs. Commissioner of Central Excise, Chennai-I reported as 2013 (29) S.T.R. 371 (Tri.-Chennai).**

3.2 It is further submitted that to be covered under Section 66E(e) of the Finance Act, there must necessarily be an independent agreement to refrain or tolerate, or to do an act between the parties. Further, penal implications under contract do not constitute such an agreement as Section 66E(e) contemplates performance of something and not breach of something. Reliance in this regard is placed on the following decisions/judgements wherein the issue regarding the taxability of such penal amounts recovered from the service providers on account of delayed/unsatisfactory work has been examined and it is held that no service tax is leviable on such charges:

(i) South Eastern Coalfields Ltd. Vs. Commissioner of Central Excise and Service Tax reported as 2021 (55) GSTL 549 (Tri.-Del.), as maintained by the Hon'ble Supreme Court vide Order dated 11.07.2023 passed in the case of Commissioner of Central Excise and Service Tax Vs. South Eastern Coalfields Ltd., Civil Appeal No. 2372/2021

(ii) Hindustan Zinc Limited Vs. Commissioner of CGST & Central Excise, Udaipur, Final Order No. 50474/2025 dated 08.04.2025.

3.3 Reference is also made to CBIC's Circular No.214/1/2023-ST dated 28.02.2023 and Circular No. 178/10/2022-GST dated 03.08.2022 wherein it has been clarified that an agreement to do an act or abstain from doing an act or to tolerate an act or a situation cannot be imagined or presumed to exist just because there is a flow of money from one party to another. Similarly, taxability of retention money is no longer res-integra as it is settled that service tax is not leviable on the same. Reliance is placed on the following decisions:

(i) Hindustan Zinc Limited Vs. Commissioner of CGST & Central Excise, Udaipur, Final Order No.50551/2025 dated 30.04.2025.

(ii) National Aluminium Company Limited Vs. Principal Commissioner, CGST & Central Excise, Bhubaneswar, Final Order No. 75658/2024 dated 21.03.2024.

3.4 Also taxability of unclaimed bonus is no longer res-integra as it is settled that service tax is not leviable on the same. Reliance is placed on the following decisions:

(i) GE T and D India Limited (formerly Alstom T and D India Limited) Vs. Deputy Commissioner of Central Excise reported as 2020 (35) GSTL 89 (Mad.)

(ii) Miraj Products Private Limited Vs. Commissioner of CGST, Udaipur, Final Order No. 50293/2026 dated 03.02.2026.

With these submissions, the appeal is prayed to be allowed.

4. Learned Departmental Representative on the other hand has reiterated the findings of the impugned order and has prayed for dismissal of appeal.

5. Having heard both the sides and perusing the records, we observe and hold as follows:

5.1 Section 65B (44) of the Finance Act which defines the term ‘service’, to mean any activity carried out by a person for another for consideration, including a declared service. We have also perused the meaning of the term ‘declared service’ as is defined in Section 65B(22) to mean, an activity carried out by one person for another for consideration and declared as such under Section 66E. Thus, activities enlisted in Section 66E and carried out by one person for another for consideration qualify as ‘declared service’ under Section 65B (22) and consequently as ‘service’ under Section 65B(44).

5.2 Reverting to the facts of the present case, we observe that the amounts retained by the appellant on account of unclaimed balances, namely, non-payment to the vendors for a period of three years, which were treated as lapsed and accordingly, were written off; cheques becoming invalid as the vendors failed to present them to the bank for encashment within a period of three months. Merely because some ‘income’ was recorded by the appellant in its financial records as per the relevant accounting practices, service tax cannot be levied without first establishing that the same was towards rendering of any taxable service by the appellant.

5.3 CBIC's Circular No. 178/10/2022-GST dated 03.08.2022 clarifies about declared service under the CGST Act. The meaning of "Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act" in para 5(e) of Schedule II of CGST Act is strikingly similar to the definition of contract in the Contract Act, 1872. The Contract Act defines 'Contract' as a set of promises, forming consideration for each other. 'Promise' has been defined as willingness of the 'promisor' to do or to abstain from doing anything. 'Consideration' has been defined in the Contract Act as what the 'promisee' does or abstains from doing for the promises made to him.

5.4 A perusal of the entry at serial 5(e) of Schedule II would reveal that it comprises the aforementioned three different sets of activities viz. (a) the obligation to refrain from an act, (b) obligation to tolerate an act or a situation and (c) obligation to do an act. All the three activities must be under an 'agreement' or a 'contract (whether express or implied) to fall within the ambit of the said entry. In other words, one of the parties to such agreement/contract (the first party) must be under a contractual obligation to either (a) refrain from an act, or (b) to tolerate an act or a situation of (c) to do an act. Further some "consideration" must flow in return from the other party to this contract/agreement (the second party) to the first party for such (a) refraining or (b) tolerating or (c) doing. Such contractual arrangement must be an independent arrangement in its own right. Such arrangement or agreement can take the form of an independent stand-alone contract or may form part of another contract. Thus, a person (the first person) can be said to be making a supply by way of refraining from doing something or tolerating some act or situation to another person (the second person) if the first person was under an obligation to do so and them performed accordingly.

5.5 We have also seen 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 berequired 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].*
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> *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 :*
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> *(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.*
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> *(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. PoorvaKshetra 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."

In view of above and absence of any evidence by the department to the contrary, we hold that the amount written off is wrongly held to be the consideration for declared service.

Extended period also is held to have been wrongly invoked for want of any evidence of any positive act on part of the appellant to evade tax. As discussed, the appellant had not reduced any taxable activity.

6. In light of the discussion above, the order under challenge is set aside and the appeal is hereby allowed.

[Order pronounced in the open court on **25.08.2026**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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

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