

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 40333 of 2021

(Arising out of Order-in-Original No. 08/2021 dated 27.02.2021 passed by the Commissioner of G.S.T. and Central Excise, Chennai Outer, Newry Towers, No. 2054-I, II Avenue, Anna Nagar, Chennai – 600 040)

M/s. Bharat Heavy Electricals Limited

: Appellant

(BAP)-Indira Gandhi Industrial Complex, BHEL,
Ranipet, Vellore, Tamil Nadu – 632 406

VERSUS

Commissioner of G.S.T. and Central Excise

: Respondent

Chennai Outer Commissionerate
No. 2054-I, II Avenue, Anna Nagar, Chennai – 600 040

APPEARANCE:

Shri Raghav Rajeev, Advocate for the Appellant

Smt. Anandalakshmi Ganeshram, Superintendent for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 40789 / 2023

DATE OF HEARING: 23.08.2023

DATE OF DECISION: 13.09.2023

Order : [Per Hon'ble Mr. P. Dinesha]

Brief facts, as could be gathered from the impugned Order-in-Original, are that the appellant is paying Service Tax under forward charge on various services, namely, commercial training or coaching, mandap keeper service, renting of immovable property service, technical inspection and certification agency service, maintenance or repair service, erection commissioning and installation service, consulting engineer service, etc., and on various other services as service recipient under reverse charge mechanism.

2.1 The Revenue appears to have noticed, based on specific intelligence, that the appellant was charging and recovering liquidated damages from the outstanding payment due to suppliers / service providers for delay in supply contract and service contract, but had not paid Service Tax on the same, whereafter an inquiry appears to have been initiated against the appellant.

2.2 During verification of the records submitted by the appellant for the period from 01.07.2012 to 30.06.2017, it was apparently noticed by the Revenue that the appellant had received certain amounts from suppliers / contractors against 'liquidated damages' as mentioned in the contracts and declared in their trial balance under the accounting head no. 5380/81 as "Recovery from suppliers/contractors towards penalty damages". Entertaining a doubt, it appeared to the Revenue that the aforesaid amounts were recovered by the appellant from their suppliers/contractors for agreeing to bear the damages for failure to deliver the goods/perform the services as per schedule and that the amounts were being collected for tolerating the act of supply of goods/services beyond schedule and that the same falls under the category of "declared services" as stipulated under Section 66E(e) of the Finance Act, 1994 attracting Service Tax with effect from 01.07.2012.

3. Consequently, Show Cause Notice dated 03.04.2018 came to be issued, proposing the following demands: -

- i. An amount of Rs.4,86,41,012/- towards Service Tax on the liquidated damages recovered.
- ii. Interest under Section 75 of the Act.
- iii. Penalty under Sections 76, 77 and 78 of the Act.

under proviso to Section 73(1) of the Finance Act, 1994.

4. It appears that the appellant filed a detailed reply dated 09.06.2018 rebutting the allegations in the Show Cause Notice and thereby denying any tax liability on the liquidated damages as alleged therein.

5. During the personal hearing before the adjudicating authority, it appears that the appellant had placed reliance on an order of the Ld. co-ordinate Delhi Bench of the CESTAT in the case of *South Eastern Coalfields Ltd. v. Commissioner of C.Ex. & S.T., Raipur* [2021 (55) G.S.T.L. 549 (Tri. – Del.)].

6. After considering the explanation of the appellant, during adjudication, the Commissioner vide impugned Order-in-Original No. 08/2021 dated 27.02.2021 has confirmed the demands as proposed in the Show Cause Notice.

7. It is against this order that the present appeal has been filed before this forum.

8.1 Today, when the matter was taken up for hearing, Shri Raghav Rajeev, Ld. Advocate appeared for the appellant. He would submit at the outset that the issue of demand of Service Tax on liquidated damages is no more *res integra* as the same has been settled in favour of the taxpayer in the following orders: -

- i. *Neyveli Lignite Corporation Ltd. v. Commissioner of Cus., C.Ex. & S.T.* [2021 (53) G.S.T.L. 401 (Tri. – Chennai)]
- ii. *Steel Authority of India Ltd., Salem v. Commissioner* [2021 (7) TMI 1092 – CESTAT, Chennai]
- iii. *South Eastern Coalfields Ltd. v. Commissioner of C.Ex. & S.T., Raipur* [2021 (55) G.S.T.L. 549 (Tri. – Del.)]
- iv. *M.P. Poorva Kshetra Vidyut Vitran Co. Ltd. v. Principal Commissioner* [2021 (2) TMI 821 – CESTAT, New Delhi]
- v. *Bharat Heavy Electricals Ltd. v. Commissioner of G.S.T. & C.Ex., Tiruchirappalli* [2023 (4) TMI 1196 – CESTAT, Chennai] (Final Order No. 40311 of 2023 dated

26.04.2023 – Service Tax Appeal No. 41500 of 2019 – CESTAT, Chennai)

- vi. *Dy. GM (Finance), BHEL v. Commissioner of Cus. & C.Ex., Bhopal [2022 (9) TMI 1005 – CESTAT, New Delhi] (Final Order No. 50879 of 2022 dated 20.09.2022 – Service Tax Appeal No. 50080 of 2019 – CESTAT, New Delhi)*
- vii. *Bharat Heavy Electricals Ltd., Pswr v. Commissioner of C.Ex. & S.T., Nagpur [2023 (5) TMI 11 – CESTAT, Mumbai] (Final Order No. A/85628/2023 dated 26.04.2023 – Service Tax Appeal No. 85781 of 2019 – CESTAT, Mumbai)*

8.2 He would further refer to Circular No. 214/1/2023-Service Tax dated 28.02.2023 to contend that vide the said Circular, the Board has accepted the views of the CESTAT and decided not to pursue appeals before the Hon'ble Apex Court against such orders.

9. *Per contra*, Smt. Anandalakshmi Ganeshram, Ld. Departmental Representative, relied upon the order of the lower authority.

10. Having heard the rival contentions and having perused the order of the lower authority, we find that the only issue to be decided by us is: whether the demand of Service Tax on the liquidated damages is justified?

11.1 We have carefully gone through the orders relied upon and we agree with the contentions of the Ld. Advocate that the demand of Service Tax on liquidated damages has been set aside in those orders.

11.2 We have also considered the Circular No. 214/1/2023-Service Tax dated 28.02.2023 relied upon by the Ld. Advocate wherein the Board has chosen not to pursue Civil Appeals filed by the Department against some of the Orders of the Tribunal before the Hon'ble Supreme Court.

12. In view of the above and following the *ratio decidendi* of the above orders, we set aside the impugned order and the demand and allow the appeal with consequential benefits, if any, as per law.

(Order pronounced in the open court on **13.09.2023**)

Sd/-
(M. AJIT KUMAR)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sdd