CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No. 50774 of 2022-SM

(Arising out of order-in-appeal No. IND-EXCUS-000-APP-144-2020-21 dated 09.03.2021 passed by the Commissioner (Appeals), Customs, Central Goods, Service Tax & Central Excise, Indore (M.P.).

M.P. Audyogik Kendra Vikas Nigam (Indore) Limited — **Appellant**

Free Press House, First Floor
3/54, Press Complex
Agra Mumbai Road, Indore (M.P.)

(Now MPIDC RO, 1st Floor
Atulya IT Park, Near Crystal IT Park
Khandwa Road, Indore (M.P.)

VERSUS

Commissioner, Central Goods, Service Tax and Central Excise — **Respondent**

Manik Bagh Palace, P.O. Box No. 10
Indore, M.P.-452001.

APPEARANCE:

Sh. Ankur Upadhyay, Advocate for the appellant
Ms. Tamanna Alam, Authorised Representative for the respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

FINAL ORDER NO. 50492/2022

DATE OF HEARING/DECISION: 03.06.2022

ANIL CHOUDHARY:

Heard the parties.

2. The issue involved in this appeal is whether the appellant M. P. Audyogik Kendra Vikas Nigam (Indore) Limited, is liable to

service tax on the amount of penalty (liquidated damages) collected from their contractor.

3. Brief facts of the case are that the appellant is registered with the Service Tax Department and engaged in providing taxable services under the head renting of Immovable Properties, Legal Consultancy, Manpower Supply Service etc., Show cause notice dated 04.04.2019 was issued relating to the period 2016-17 upto June, 2017, proposing to demand of service tax under Section 66E(e) of the Finance Act on the – charge of penalty levied and collected by the appellant from their contractor(s). It appeared to Revenue that during the period 2016-17, the appellant have received or collected an amount of Rs. 6,94,225/- and during the period April, 2017 to June, 2017 they have recovered an amount of Rs. 39,500/-, totalling Rs. 7,36,725/-. Further, penalty was proposed under Section 76 alongwith interest under Section 75.

4. Show cause notice was adjudicated on contest and the proposed demands was confirmed with equal amount of penalty under Section 78 (which was not proposed in the show cause notice). Further, interest was also ordered to be calculated and collected.

5. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals) who was pleased to dismiss the appeal upholding the order-in-original. Being aggrieved, the appellant is before this Tribunal.

6. Learned Counsel for the appellant states that the amount collected by them from their contractor, is in the nature of liquidated

damage for non performance. Thus, there is no amount received for any service, as defined in Section 66E(e) of the Act. Section 66E(e) inter alia provides, the declared service includes – agreeing to the obligation to refrain from an act or to tolerate an act or a situation or to do an act. Ld. Counsel further submits that there was no contract between the parties i.e. appellant and the contractor, that the appellant shall do any of the act stipulated under Section 66E(e)and hence the amount being in the nature of liquidated damages, do not fall in the mischief as provided under this Section. Learned Counsel relied upon the ruling in the case of **Lemon Tree Hotel vs. Commissioner, GST, CE & Customs, Indore -2020 (34) GSTL 220 (Tri. Del.).**

7. Learned Authorised Representative appearing for the Revenue relies on the impugned order.

8. Having considered the rival contentions, I find that under the facts and circumstances there is no contract between the appellant and their contractor - to refrain from an act or to tolerate an act or a situation or to do an act in favour of their contractor or to tolerate any act or situation. Further, for such alleged act or tolerance, no remuneration is prescribed in the contract. The amount of liquidated damages levied by the appellant from their contractor is in the nature of penalty, and not by way of any consideration for any service as defined under Section 66E(e). This Tribunal in the case of **Lemon Tree Hotel** (supra) under the fact that their customer used to book accommodation by making advance payment, and upon cancellation of the booking, the hotel was retaining or forfeiting some

of the advance deposit in the nature of penalty, by way of cancellation charges. This Tribunal held that the said amount collected by the hotel is in the nature of penalty, and not consideration as defined under Section 66E(e) of the Finance Act, 1994.

9. Accordingly, in view of my findings as above, I allow this appeal and set aside the impugned order. The appellant is entitled to consequential benefits.

(Dictated and pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

Pant