

Liquidated Damage- No Service Tax on Penalty for Un-authorized Use of Electricity

2021 (2) TMI 821 - CESTAT New Delhi in M.P. Poorva Kshetra Vidyut Vitran Co. Ltd. Versus Principal Commissioner CGST And C.E Bhopal

Facts of the Case

Appellant is engaged in the business of distribution of electricity.

In the course of business, certain contracts were executed by the appellant in which a clause provided for levy of penalty for non-observance/breach of the terms of the contract.

Theft charges are collected from the consumer of electricity for unauthorized use of electricity by means of tampering of meters, unauthorized or direct connection from the pole of electricity or for the purpose other than for which the uses of electricity was authorized within the meaning of Section 135 of Electricity Act, 2003

The period of dispute is from July, 2012 upto March, 2016.

Department Contention

This amount collected by the appellant towards liquidated damages and theft of electricity would be for a declared service under section 66E(e) of the Finance Act, which is a service for agreeing to the obligation to refrain from an act, or to tolerate an act for a situation, or to do an act.

Appellant has to tolerate whenever there is a theft of electricity. To tolerate an act or situation is covered under declared service and declared service is covered under definition of service itself as stipulated above

Decision Relied Upon

- 1. M/s South Eastern Coalfields Ltd. Versus Commissioner of Central Excise and Service Tax, Raipur - 2020 (12) TMI 912 - CESTAT New Delhi**

An agreement has to be read as a whole so as to gather the intention of the parties. The intention of the appellant and the parties was for supply of coal; for supply of goods; and for availing various types of services. The consideration contemplated under the agreements was for such supply of coal, materials or for

availing various types of services. The intention of the parties certainly was not for flouting the terms of the agreement so that the penal clauses get attracted.

The recovery of liquidated damages/penalty from other party cannot be said to be towards any service per se, since neither the appellant is carrying on any activity to receive compensation nor can there be any intention of the other party to breach or violate the contract and suffer a loss. The purpose of imposing compensation or penalty is to ensure that the defaulting act is not undertaken or repeated and the same cannot be said to be towards toleration of the defaulting party. The expectation of the appellant is that the other party complies with the terms of the contract and a penalty is imposed only if there is non-compliance.

2. M/s K.N. Food Industries Pvt. Ltd. Versus The Commissioner of CGST & Central Excise, Kanpur - 2020 (1) TMI 6 - CESTAT Allahabad

In a situation when the capacity of the assessee was not fully utilized by M/s Parley, ex-gratia charges were claimed so as to compensate the assessee from financial damage or injury.

As such the present ex-gratia charges made by the M/s Parle to the appellant were towards making good the damages, losses or injuries arising from "unintended" events and does not emanate from any obligation on the part of any of the parties to tolerate an act or a situation and cannot be considered to be the payments for any services."

3. M/s Lemon Tree Hotel Versus Commissioner, Goods & Service Tax, Central Excise & Custom - 2019 (7) TMI 767 - CESTAT New Delhi

Whether forfeiture of the amount received by a hotel from a customer on cancellation of the booking would be leviable to service tax under section 66E(e).

Held that the customers pay an amount to the appellant in order to avail the hotel accommodation services, and not for agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and chargeable on full value and not on abated value.

Accordingly, I hold that no service tax is attracted under the provisions of Section 66 E(e) of the Finance Act.

Order passed by Tribunal

Thus, for all those reasons stated above, it is not possible to sustain the order passed by the Principal Commissioner confirming the demand of service tax on the amount collected towards liquidated damages and theft of electricity.
