

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

PRINCIPAL BENCH - COURT NO. 1

**Service Tax Appeal No. 51287 of 2019**

(Arising out of Order-in-Appeal No. 07-Pr.COMMR-ST-BPL-II 2019 dated 01.03.2019 passed by Principal Commissioner CGST & Central Excise, Bhopal)

**M/s Madhya Pradesh Power Transmission  
Company Ltd.**

..... Appellant

Through its Regional Accounts Officer of Bhopal Region  
Old Power House Road, 1 Shaktikunj, Near Railway Station  
Bhopal (MP)

**Versus**

**Principal Commissioner, CGST & Central Excise  
Bhopal**

.....Respondent

35-C GST Bhavan Arera Hills, Jail Road  
Bhopal

**APPEARANCE:**

Shri Himanshu Khemka, Advocate & Shri Manoj Jain, CA for the Appellant

Dr. Radhe Tallo, Authorized Representative of the Department

**CORAM: HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT  
HON'BLE MS. HEMAMBIKA R.PRIYA, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 50441/2023**

**DATE OF HEARING: 16.03.2023  
DATE OF DECISION: 10.04.2023**

**JUSTICE DILIP GUPTA**

Madhya Pradesh Transmission Company Limited<sup>1</sup> has filed this appeal to assail the order dated 01.03.2019 passed by the Principal Commissioner confirming the demand of Rs. 13,43,09,415/- towards service tax on the amount collected by the appellant towards liquidated damages, supervision charges and hire charges.

2. The appellant is a public sector undertaking established by the Government of Madhya Pradesh for transmission of electricity within the

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**1. The appellant**

city of Jabalpur and is a successor company of the State Electricity Board. For the transmission of electricity, the appellant is required to erect or construct electric sub-stations, electricity poles, electrical lines, provide consultation for transmission of electricity from one point to another, transmit electricity from the power grid or dams or power generation area to the city limits or to the customers.

3. A show cause notice dated 22.05.2018 was issued to the appellant for the period 2014-2015 to 2016-2017 on the following grounds:

- a. Non-payment of service tax on 'consultancy' charges to the extent of Rs. 3,24,50,528/-;
- b. Non-payment of service tax on 'liquidated damages' or 'penalty' to the extent of Rs. 10,12,79,544/-; and
- c. Non-payment of service tax on 'hire charges' amounting to Rs. 5,79,343/-.

4. The appellant filed a reply to the show cause notice, but by an order dated 01.03.2019 the Commissioner confirmed the demand proposed in the show cause notice with penalty and interest.

5. Shri Himanshu Khemka, learned counsel assisted by Shri Manoj Jain, learned chartered accountant submitted that service tax is not leviable on the amount collected by the appellant towards consultancy services and in support of this contention learned counsel placed reliance upon the decision of this Tribunal in **Madhya Pradesh Kshetra Poorva Vidyut Vitran Co. Ltd. vs Principal Commissioner**<sup>2</sup>. Learned counsel also submitted that service tax could also not have been levied on the appellant on the amount collected by the appellant towards liquidated damages or penalties and in support of this contention, reliance was placed upon a Division Bench decision of the Tribunal in

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**2. Service Tax Appeal No. 51649 of 2019 decided on 14.01.2021**

**M/s Madhya Pradesh Poorva Kshetra Vidyut Vitaran Company Ltd. vs Commissioner of CGST & Central Excise, Jabalpur<sup>3</sup>.** The

learned counsel also pointed out that the Commissioner committed an illegality in holding that the appellant was liable to pay service tax on hire charges.

6. Dr. Radhe Tallo, learned authorized representative appearing for the department pointed out that for the hire charges the appellant could not substantiate the factual aspects and so the Commissioner was justified in confirming the demand.

7. The submissions advanced by learned counsel for the appellant and the learned authorized representative appearing for the Department have been considered.

8. Each of the heads under which service tax has been confirmed will be dealt with separately.

**CONSULTANCY SERVICES**

9. The appellant provides consultancy services to contractors and power DISCOMS while laying the power or electricity transmission lines, erection of electricity poles and construction of electricity sub-stations. The appellant collects the amount for consultation services which are incidental to the transmission activities as the appellant has the expertise in power transmission. If the poles, lines or sub-stations are not erected or constructed as per the specifications, it will not be possible to transmit electricity.

10. The issue that arises for consideration is as to whether service tax could be levied on the amount collected by the appellant towards consultancy charges. This issue was examined by a Division Bench of

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**3. Service Tax Appeal No. 50289 of 2019 decided on 12.04.2022**

the Tribunal in **Madhya Pradesh Poorva Kshetra Vidyut Vitaran Company Ltd.** decided on 14.01.2021 and after placing reliance upon the decision of the Gujarat High Court in **Torrent Power Ltd. vs Union of India<sup>4</sup>**, the Tribunal observed as follows:-

28. It is clear from the aforesaid judgment of the Gujarat High Court that the activities that are related/ancillary to transmission and distribution of electricity would be exempt from payment of service tax since transmission and distribution of electricity is exempted. It is also clear from aforesaid decision that all services related to transmission and distribution of electricity are bundled services, as contemplated under section 66F(3) of the Finance Act, and are required to be treated as a provision of a single service of transmission and distribution of electricity, which service is exempted from payment of service tax.

11. In the present case the amount collected towards consultation services is in connection with services which are incidental to the transmission activities carried out by the appellant. The demand, therefore, cannot be sustained in the view of the aforesaid decision of the Tribunal.

#### **LIQUIDATED DAMAGES**

12. The second issue that arises for consideration in this appeal is relating to the amount collected by the appellant towards liquidated damages or penalty. This issue was also examined by the Division Bench of the Tribunal in **Madhya Pradesh Poorva Kshetra Vidyut Vitaran Company Ltd.** decided on 12.04.2022 and after referring to the decision of the Tribunal in **M/s Southeastern Coal Fields vs Commissioner of Central Excise and Service Tax, Raipur<sup>5</sup>** which decision has been accepted by the Board, observed that no service tax can be levied on the amount collected towards liquidated damages or penalty for breach of any of the terms of the contract.

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**4. Special Civil Application No. 5443 of 2018 decided on December 19, 2018**

5. ST/50567/2019 decided by ST/51651/2020 dated 22.12.2020

**HIRE CHARGES**

13. The Commissioner has confirmed the demand proposed on the amount received as 'hire charges' for the reason that these charges have been recovered for use of equipments and machineries rented to the vendors and contractors without giving legal right of possession and effective control. Learned counsel for the appellant has not been able to controvert the findings recorded by the Commissioner in the impugned order. The confirmation of the demand under this head is, therefore, justified.

**CONCLUSION**

14. In the result the confirmation of demand on the amount collected on account of consultancy charges or liquidated damages cannot be sustained and is set aside. However, the confirmation of demand under hire charges is upheld. The order dated 01.03.2019 passed by the Commissioner is accordingly modified to the said extent and the appeal is allowed to the extent indicated above.

(Order pronounced in the Open Court on 10.04.2023 )

**(JUSTICE DILIP GUPTA)**  
**PRESIDENT**

**(HEMAMBIKA R.PRIYA)**  
**MEMBER (TECHNICAL)**