

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

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 40360 of 2022

(Arising out of Order-in-Appeal No. 17/2022 (CTA-II) dated 06.04.2022 passed by the Commissioner of G.S.T. and Central Excise (Appeals-II), Newry Towers, 2nd Floor, No. 2054/I, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

M/s. GKN Driveline India Limited

: Appellant

Plot No. B-13, SIPCOT Industrial Park,
Vaipur, A&B Oragadam, Sriperumbudur Taluk,
Kanchipuram District – 602 105

VERSUS

The Commissioner of G.S.T. and Central Excise

: Respondent

Chennai Outer Commissionerate
Newry Towers, 2nd Floor, No. 2054/I, II Avenue,
12th Main Road, Anna Nagar, Chennai – 600 040

APPEARANCE:

Shri Vishal Sundar, Advocate for the Appellant

Shri M. Ambe, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 40325 / 2022

DATE OF HEARING: 15.09.2022

DATE OF DECISION: **22.09.2022**

Order :

This appeal is filed by the assessee against the Order-in-Appeal No. 17/2022 (CTA-II) dated 06.04.2022 passed by the Commissioner of G.S.T. and Central Excise (Appeals-II), Chennai.

2. The only issue to be decided in this appeal is: whether the Revenue was justified in demanding Service Tax on the liquidated damages under Section 66E(e) of the Finance Act, 1994?

3. Shri Vishal Sundar, Learned Advocate appearing for the appellant, submitted at the outset that the issue is no more *res integra* as the same is decided by this very Bench of the CESTAT in the case of *M/s. Neyveli Lignite Corporation Ltd. v. Commissioner of Customs, Central Excise & Service Tax & anor.* as reported in 2021 (53) G.S.T.L. 401 (Tribunal – Chennai) and the Delhi Bench of the CESTAT in *M/s. South Eastern Coalfields Ltd. v. Commissioner of Central Excise & Service Tax, Raipur* as reported in 2021 (55) G.S.T.L. 549 (Tribunal – Delhi).

4. *Per contra*, Shri M. Ambe, Learned Deputy Commissioner appearing for the Revenue, contended that the Hon'ble Apex Court has admitted the Revenue's appeal against the order passed in *M/s. South Eastern Coalfields Ltd. (supra)* as reported in 2021 (54) G.S.T.L. 154 (S.C.); but however, no stay was granted by the Hon'ble Apex Court.

5. I have heard the rival contentions and have gone through the decisions/orders relied upon during the course of arguments.

6.1 After hearing both sides, I find that this Bench of the Tribunal in the case of *M/s. Neyveli Lignite Corporation Ltd. (supra)* has followed the earlier decision of the co-ordinate Delhi Bench in the case of *M/s. South Eastern Coalfields Ltd. (supra)*, wherein it was observed as under:-

"17. In this connection it would be appropriate to reproduce the relevant portions of the decision of the Tribunal in *South Eastern Coalfields*

18. and they are as follows :

.
.
.

28. It also needs to be noted that section 65B(44) defines "service" to mean any activity carried out by a person for another for consideration. Explanation (a) to section 67 provides that "consideration" includes any amount that is payable for the taxable services provided or

to be provided. 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.

29. The situation would have been different if the party purchasing coal had an option to purchase coal from 'A' or from 'B' and if in such a situation 'A' and 'B' enter into an agreement that 'A' would not supply coal to the appellant provided 'B' paid some amount to it, then in such a case, it can be said that the activity may result in a deemed service contemplated under section 66E(e).

..."

6.2 The Bench has thereafter concluded as under:-

"20. In view of the aforesaid decisions of the Tribunal, it is not possible to sustain the view taken by the Commissioner that since BHEL did not complete the task within the time schedule, the appellant agreed to tolerate the same for a consideration in the form of liquidated damages, which would be subjected to service tax under Section 66E(e) of the Finance Act."

7. In view of the above precedents, I do not see any reasons to sustain the order of demand and consequently, the impugned order is set aside.

8. The appeal is allowed with consequential benefits, if any, as per law.

(Order pronounced in the open court on **22.09.2022**)

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