

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH - COURT NO. III**

Service Tax Appeal No. 54719 of 2023

(Arising out of Order-in-Original No. 15/Pr.Commr/ST/IND/2022 dated 23.12.2022 passed by the Principal Commissioner of CGST & CEx., Indore)

Chhattisgarh State Power Transmission Company Ltd.Appellant
2nd Floor, SLDC Bldg.,
CSPTL, Daganiya, Raipur
Chhattisgarh

VERSUS

**Commissioner of CGST & Service Tax,
Excise & Customs, Indore**Respondent
Manik Bagh Palace, Post Box no. 10,
Indore, MP

APPEARANCE:

Shri A K Batra, Chartered Accountant for the appellant
Shri Shashank Yadav, Authorised Representative for the respondent

CORAM:

**HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)
HON'BLE SHRI P V SUBBA RAO, MEMBER (TECHNICAL)**

FINAL ORDER No: 50991/2026

DATE OF HEARING : 13.04.2026
DATE OF DECISION : 25.05.2026

Per: AJAY SHARMA

The present appeal has been preferred by the Appellant-M/s Chhattisgarh State Power Transmission Company Limited, a Government of Chhattisgarh undertaking engaged in the construction and maintenance of power transmission lines,

challenging the Order-in-Original dated 23.12.2022 passed by the Principal Commissioner, CGST & Central Excise, Indore, Madhya Pradesh. By the Impugned Order, the learned Commissioner confirmed a demand of Service Tax amounting to Rs.7,64,25,688/- along with interest thereon under Section 75 of the Finance Act, 1994 and imposed an equal penalty under Section 78 *ibid*. An additional penalty of Rs.10,000/- was separately imposed u/s. 77 *ibid*.

2. The following issues arise for our consideration:

(i) Whether the mandatory payments deposited by the appellant - a transmission line company into the *Compensatory Afforestation Fund* as a statutory condition for obtaining permission for the use of forest land for non-forest purposes can constitute '*consideration*' for a taxable service within the meaning of Section 65B(44) of the Finance Act, 1994?

(ii) Whether such mandatory and statutory payments deposited into the Compensatory Afforestation Fund established under the Compensatory Afforestation Fund Act, 2016 — an amount earmarked exclusively for afforestation, forest regeneration and wildlife protection, with 90% allocated to the States and 10% to the Central Government — constitute consideration for a '*declared service*' within the meaning of Section 66E(e) of the Act, namely, the service of '*agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act*', so as to attract liability to Service Tax under Reverse Charge Mechanism?

3. The Appellant is engaged in the construction of power transmission lines in the State of Chhattisgarh. As part of this

activity, it became necessary to lay transmission lines through areas constituting reserved and/or protected forests. In order to carry out such non-forest activities on forest land, prior approval was obtained from the Ministry of Environment, Forest and Climate Change, Government of India under the Forest (Conservation) Act, 1980. A mandatory pre-condition for the grant of such forest clearance was the deposit of Net Present Value (in short "NPV") charges into the *Compensatory Afforestation Fund Management and Planning Authority* (in short "CAMPA"). These deposits were made by the Appellant strictly in compliance with the legal mandate.

4. The Directorate General of Goods & Service Tax Intelligence (*formerly the Directorate General of Central Excise Intelligence*), Raipur Zonal Unit (hereinafter "DGGI") gathered intelligence suggesting that the Appellant had not discharged its liability of Service Tax under the Reverse Charge Mechanism ('RCM') on the said NPV payments. Revenue proceeded on the premise that the act of the Ministry of Environment in granting forest clearance is, in fact providing service of '*agreeing to the obligation to refrain from an act, or to tolerate an act or situation*' by *tolerating* the diversion of protected or reserved forest land for non-forest activities which constitutes a '*Declared Service*' under Section 66E(e) of the Act, and that the NPV deposited by the Appellant represents the '*consideration*' for that service.

5. Revenue's position was further anchored on the *National Forest Policy*, under which such approvals are sanctioned in the larger national interest but not at the cost of ecological imbalance. Revenue contended that approval for non-forest use of forest land is effectuated in exchange for a compensatory deposit of amounts/NPV with the '*Compensatory Afforestation Fund Management and Planning Authority*' (in short 'CAMPA') which amounts to a taxable event under Section 66E(e) *ibid* as the Government i.e. Ministry of Environment is allowing an activity which otherwise is prohibited by mandatorily depositing of amount by the appellant for compensatory afforestation with CAMPA. Accordingly, a Show Cause Notice dated 18.10.2021 was issued, invoking the extended period of limitation, for the period 1.4.2016 to 30.6.2017, demanding Service Tax of Rs.7,64,25,688/- under Section 73(1) of the Act, along with interest and penalties under various provisions thereof. The impugned Order confirmed this demand in its entirety.

SUBMISSIONS:-

6. We have heard the learned Chartered Accountant for the Appellant as well as the learned Authorised Representative for Revenue. We have also carefully perused the case records, the synopsis and written submissions filed by both sides, and the case laws placed on record.

7. The Appellant's primary submission is that the NPV payments made to CAMPA are purely statutory obligations imposed by operation of law under the Forest (Conservation)

Act, 1980 read with the Compensatory Afforestation Fund Act, 2016, and bear no character of '*consideration*' for any service. It is contended that there is no consensual, bilateral, or commercial arrangement between the Appellant and the Government; that the Government does not render any service to the Appellant; and that the very notion of a sovereign regulatory act of granting or withholding environmental clearance being transmuted into a taxable '*service*' under the Finance Act, 1994 is legally untenable. Reliance is placed on decisions of coordinate Benches of this Tribunal, as detailed hereinafter.

8. Per contra, learned Authorised Representative appearing for Revenue contends that the Ministry of Environment, in allowing what would otherwise be a prohibited activity i.e. use of forest land for non-forest purposes, is *tolerating* an act or situation at the Appellant's request, and that this falls squarely within the definition of '*declared service*' under Section 66E(e) of the Act. Revenue contends that the NPV payment is the *consideration* flowing from the Appellant in exchange for this tolerance, and that the transaction is therefore exigible to Service Tax under the Reverse Charge Mechanism.

RELEVANT STATUTORY PROVISIONS :-

9. For the purposes of the present dispute, the following provisions of the Finance Act, 1994 are relevant:

- (a) Section 65B(44) defines '*Service*' to mean "*any activity carried out by a person for another for*

consideration, and includes a declared service." It further expressly excludes, inter alia, any activity that constitutes merely a transfer of title in goods or immovable property, or an activity that is treated as sale of goods under the Central Sales Tax Act, 1956.

(b) Section 66E(e) defines "declared service" and it states that *"The following shall constitute declared services, namely: (e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act."*

10. The Service Tax Rules, 1994 provides for the levy of Service Tax under Reverse Charge Mechanism on the recipient of certain services. The threshold of any liability to Service Tax, even in respect of a '*declared service*', is the existence of a '*service*' as defined under Section 65B(44) *ibid*. There is no escaping the foundational requirement that there must be an *activity carried out by one person for another for consideration*. The word '*consideration*' is fundamental, absent consideration in the legal sense, no taxable service can come into existence.

ANALYSIS AND FINDINGS :-

11. We have given our careful and anxious consideration to the rival submissions. In our considered view, Revenue's case is fundamentally misconceived and cannot be sustained, for the reasons that follow.

12. The first and most critical question is: do the NPV payments made to CAMPA constitute '*consideration*' for any

service rendered by the Government? We hold, unequivocally, that they do not. The concept of '*consideration*' in the law of contract, and as understood in tax jurisprudence, connotes something given in return for, and as the price of, a promise or an act. It is the *quid pro quo* that cements a bilateral arrangement. Where a payment is not a matter of choice or voluntary contract but is mandated by statute as a condition of law, independent of any consensual arrangement, it cannot constitute consideration in the legal sense.

13. In the present case, the NPV charges are not paid by the Appellant pursuant to any agreement with the Government. They are levied and collected by operation of the Forest (Conservation) Act, 1980 and the Compensatory Afforestation Fund Act, 2016. These are legal obligations. The Appellant has no choice in the matter as the deposit is a statutory precondition, not a negotiated price. The funds deposited are not retained by the Ministry or used for its own benefit; they are disbursed for the purposes of compensatory afforestation, forest regeneration, and wildlife protection - a public purpose entirely removed from any supposed service to the Appellant. Ninety per cent of the fund goes to the States and ten per cent to the Centre, to be used for ecological conservation. There is, in the whole transaction, no trace of any bilateral agreement, no element of choice, no commercial relationship, and no *quid pro quo* between the Appellant and the Government.

14. For a transaction to be exigible as a '*declared service*' u/s 66E(e) *ibid*, the following elements are indispensably necessary:

- (a) There must be a consensual, bilateral arrangement between two parties;
- (b) One party must agree, voluntarily and for consideration, to refrain from an act, to tolerate a situation, or to do an act at the behest of the other;
- (c) There must be a definite consideration flowing from one party to the other in exchange for the said obligation; and
- (d) The arrangement must have the character of a commercial or quasi-commercial transaction, as opposed to a purely statutory or regulatory obligation.

15. None of these elements are present in the facts before us. The Ministry of Environment does not *agree* with the Appellant to tolerate the use of forest land in exchange for CAMPA deposits. It acts as a sovereign regulator, discharging a statutory duty. The forest clearance is either granted or refused on the basis of statutory criteria and policy considerations. The NPV charge is not the Appellant's '*price*' for the clearance. It is a levy imposed by law, the proceeds of which are dedicated to the public purpose of compensatory afforestation. The relationship is between the State and a private party in the context of a regulatory regime, not a bilateral service arrangement.

16. We are also guided in this regard by CBEC Circular No. 89/7/2006-ST dated 18.12.2006, as brought to our notice by the learned Chartered Accountant, which clarifies that activities performed by Government authorities in discharge of statutory obligations, for which fees are collected as per law, do not

constitute taxable services. Meaning thereby that the statutory levies collected by the Government in the discharge of regulatory duties are not '*services*' rendered by the Government.

17. Revenue's reliance on Section 66E(e) *ibid* presupposes the existence of an *agreement* to tolerate. We find no such agreement here. The word '*agreeing*' in Section 66E(e) is not superfluous, it denotes a consensual act, not a regulatory compulsion. Importing the concept of 'tolerance' into a purely statutory and regulatory context, where the Government is simply performing its sovereign and constitutional duty of regulating the use of natural resources, would be to stretch the provision beyond its reasonable intendment and to distort the plain meaning of the statute. We decline to adopt such an interpretation.

CASE LAWS/PRECEDENTS:-

18. The issues raised herein are, in our view, no longer *res integra* and have already been answered by a series of decisions of coordinate Benches of this Tribunal.

19. In *Mahanadi Coalfields Ltd. (Orient Area) v. Commissioner of CGST & Central Excise, Rourkela; 2023(7)TMI 1336-CESTAT Kolkata*, a coordinate Bench of this Tribunal was confronted with a factually identical situation. The appellant therein had obtained forest clearance from the Ministry of Environment to use forest land for mining and had deposited NPV charges in CAMPA fund as mandated by law. Revenue demanded Service Tax of

approximately Rs.3.37 crores, arguing that the Government was *'tolerating'* the diversion of forest land , a declared service and that NPV constituted *'consideration'* for a declared service under Section 66E(e) *ibid*. The Tribunal while allowing the appeal, held that NPV payment is made by operation of law and not by any choice, thus such amounts cannot by any stretch of imagination be characterised as *'consideration'* for an alleged service. The Tribunal expressly held that forest clearance cannot be considered a *'Declared Service'* u/s 66E(e) *ibid*, and that the demand of Service Tax along with interest is not sustainable. The Tribunal also held that there was no suppression of facts and the extended period could not be invoked. The Tribunal relied upon its *Final Order No.75689/2021 dated 10.11.2021 in MNH Shakti Ltd. vs. Commissioner, CGST & Central Excise, Rourkela* and has held as under:-

"9. We observe that the facts of the present appeal are similar to that of the decision cited above. Relying on the above decision, we hold that the clearance granted by Ministry of Environment, Forest and Climate Change for usage of the forest land falling under the said project for non forest purposes, cannot be considered as a 'Declared Service' as defined under Section 66E(e) of the Finance Act, 1944 and the charges of NPV paid by the Appellant cannot be considered as 'Consideration' for the said service. Accordingly, we hold that the demand of service tax along with interest, in the impugned order is not sustainable. We observe that the Appellant has not suppressed any information from the department. In fact the entire NPV was paid to the CAMPA Fund as per law. Hence, extended period

cannot be invoked to demand Service tax. As there is no suppression established, penalty under Section 78 of the Finance Act, 1994 not imposable in this case. Accordingly we set aside the impugned order.

10. In view of the above findings, we allow the appeal filed by the Appellant.”

20. The aforesaid position was further reiterated by the Tribunal in *Mahanadi Coalfields Ltd., Odisha v. Commissioner of CGST & CX, Rourkela; 2023-TIOL-1142-CESTAT-KOL*, where the Bench, relying on its earlier decision, once again held that the clearance granted by Ministry of Environment, for usage of the forest land for non-forest purposes, cannot be considered as a 'Declared Service' u/s. 66E(e) ibid and the charges of NPV paid by the Appellant therein cannot be considered as 'Consideration' for the said service and hence the demand of service tax along with interest is not sustainable.

21. These decisions were followed by this Principal Bench of the Tribunal in *South Eastern Coalfields Ltd. v. Principal Commissioner, CGST & Central Excise; 2024(1)TMI 5-CESTAT New Delhi*, where, on an identical issue, the appeal was allowed in favour of the assessee, affirming the settled position of law.

22. It has not been pleaded or shown on behalf of Revenue that any of the aforesaid decisions have been stayed, reversed, or set aside by any higher judicial forum in any appeal preferred by the department. In the absence of any such intimation, these decisions constitute binding precedents of coordinate Benches

which we respectfully follow, in consonance with the doctrine of judicial discipline and the principle of consistency.

INVOCATION OF EXTENDED PERIOD AND PENALTY :-

23. The invocation of the extended period of limitation u/s. 73(1) *ibid* is also wholly unjustified. The NPV payments were made by the Appellant in full compliance with the legal mandate under the Forest (Conservation) Act, 1980 and the Compensatory Afforestation Fund Act. These are statutory deposits are on record, and are in conformity with law. Those have been disclosed in the books of account of the appellant. The Appellant has not suppressed any information or made any misrepresentation to the Department. Revenue has produced no evidence of *mala fide* intent, wilful concealment, or fraud. In these circumstances, the invocation of the extended period was impermissible, and consequently the levy of penalty under Section 78, which requires a finding of suppression, misstatement, or fraud, also cannot be sustained.

CONCLUSION :-

24. In view of the foregoing reasons, the present appeal is allowed with consequential relief, if any, and the impugned Order dated 23.12.2022 is set aside. The conclusion is as follows:

- (i) The mandatory Net Present Value (NPV) charges deposited by the Appellant in the Compensatory Afforestation Fund (CAMPA) as a statutory condition for obtaining forest clearance cannot be termed as '*consideration*' within the meaning of Section 65B(44) of the Finance Act, 1994. They are compulsory levies

imposed by operation of public law and are not paid in exchange for any service rendered by the Government.

(ii) The act of the Ministry of Environment, Forest and Climate Change in granting forest clearance is a sovereign regulatory act performed in discharge of statutory duties. It does not constitute an '*agreeing to tolerate*' any act or situation within the meaning of Section 66E(e) of the Act, and consequently does not constitute a 'declared service' exigible to Service Tax.

(iii) The demand of Service Tax under Reverse Charge Mechanism on the NPV deposits, as confirmed by the impugned Order, is not legally sustainable and is hereby set aside both on merits as well as on the ground of limitation.

(iv) The levy of interest u/s. 75 ibid and the penalties u/Ss. 77 & 78 ibid, as confirmed by the impugned Order, cannot survive.

(Pronounced in open Court on 25.05.2026)

(Ajay Sharma)
Member (Judicial)

(P V Subba Rao)
Member (Technical)