

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi

PRINCIPAL BENCH – COURT NO.3

Service Tax Appeal No. 50014 Of 2020

[Arising out of Order-in-Appeal No. 444(CRN)ST/JDR/2019 dated 08.05.2019 passed by the Commissioner (Appeals) of Central Excise & Central Goods and Service Tax, Jodhpur]

**Rajasthan State Road Development
& Construction Corporation Limited**

17E, 810-811, Unit-I, Chopasni Housing
Board, Jodhpur

: Appellant

Vs

**Commissioner of Central Goods and
Service Tax, Customs and Central
Excise, Jodhpur-I**

G-105, New Industrial Area, Opposite
Diesel Shed, Basni, Jodhpur (Raj.)

: Respondent

APPEARANCE:

Mr. Tushar Sharma and Ms. Surbhi Vyas, Advocates for the Appellant

Shri Mayank Gupta, Authorized Representative for the Respondent

CORAM :

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER No. 51607/2026

Date of Hearing:05.10.2026

Date of Decision:13.10.2026

HEMAMBIKA R. PRIYA

The present appeal has been filed by M/s Rajasthan State Road Development & Construction Corporation Limited¹ to assail the impugned Order-in-Appeal No. 444(CRN)ST/JDR/2019 dated 08.05.2019 wherein the Commissioner (Appeals) confirmed the service tax demand of Rs. 72,071/- along with interest and equal penalty.

1 The appellant

2. The brief facts of the case are that the appellant were registered under service tax for Works Contract Service, Rent-a-Cab scheme operator service, GTA and legal consultancy services. The appellant had collected storage charges & tender cost/fee from their customers. During the course of Audit of the records of the appellant, it was observed that the appellant had collected an amount of Rs. 13,45,248/- on account of storage charges & tender cost/fee from their customers but had not paid service tax of Rs. 1,72,521/- during the period April, 2012 to March, 2016. Therefore, a Show Cause Notice² dated 17.08.2017 was issued by the Assistant Commissioner, Jodhpur, demanding the service tax of Rs. 1,72,521/- along with penalties and interest. The Order-in-Original dated 12.03.2018 confirmed the service tax demand of Rs. 72,071/- on the tender fees received during the disputed period along with interest and penalty & dropped the demand of service tax of Rs. 1,00,450/- on the storage charges. The Commissioner (Appeals) upheld the demand vide the impugned order dated 08.05.2019. Aggrieved by the said order, the appellant has filed the present appeal.

3. Learned counsel for the appellant submitted that the Commissioner had made grave error by demanding the Service tax of Rs 72,071/- on the Tender Fees/application fees amounting to Rs 5,63,200/- considering it as fees being Others Income from work Contract Services. He submitted that the Commissioner had not considered the fact that the Tender Fees was actually recovery towards SALE OF TENDER DOCUMENTS, meaning sale of the

application form for filing of the Tender. He submitted that the tender documents were printed material or a booklet which contained documents describing the Details of Work, G- Schedule, Formats of Agreements, Terms and Conditions of the Contract, Date and time of opening and closing of Bid's and other very essential details conditions which are necessary and pertinent for anybody who wishes to participate in the bidding. Therefore, the Sale of Document/application form amounts to trading of goods and is not a Service. Learned counsel submitted that the activity of trading itself was not subject to Service Tax. As trading of goods has been included in the negative list of services, it implies that Cenvat Credit of tax paid on input services used in trading of goods shall not be available. In support of his submissions, learned counsel relied upon the following decisions:-

(i) Ace Caldery's Ltd. versus Commissioner of Central Excise, Bhopal³

(ii) Maliva Enterprises versus Commissioner of Central Excise⁴

(iii) Graphic Procede versus French Ministry of the Budget, Public Accounts and the Civil Service⁵

(iv) Sparekassernes Datacentre (SDC) versus Skatteministeriet⁶

3.1 Learned counsel further contended that the appellant had not collected any service tax on the Sale of Tender Document/application form as the Appellant has not provided any service. There was no element of service that is rendered to the bidders/participants. The title to the documents after sale of tender documents vests with the

3 2012 (5) TMI 62 - CESTAT, NEW DELHI

4 2012 (5) TMI 601 - CESTAT NEW DELHI

5 (2012) 37 STT 719 (ECJ)

6 (2013) 39 STT 110 (ECJ)

buyer or prospective participants and it is not mandatory that the prospective participant participates in the bid or not. He prayed that the appeal may be allowed.

4. Learned Authorized Representative for the Department reiterated the findings of the impugned order and submitted that the appellant had contended that tender fee was actually recovery towards sale of tender documents, tender documents are printed material or a booklet which contains documents describing the details of work, G-Schedule, formats of agreement, T&C of the contract, and was merely sale of document. Learned AR stated that as per para 5.1 of the impugned order, the Commissioner (Appeals) had observed that tender cost/fees collected by the appellant was not in relation to any sale, but part of service, and had held that the activity was very much covered under Section 658(44) of the Finance act, 1994. The impugned order had also observed that the appellant had suppressed the material facts. from the department about rendering of services & receipt of amount on account of tender fees.

5. We have heard the learned counsel for the appellant and the learned AR for the Department and perused the records. The only issue for our consideration is whether the tender fee collected by the appellant is exigible to service tax.

5.1 Under the Finance Act, 1994, service tax is required to be paid for a taxable service and for the provision of that service by one person to another, and there is a consideration for that service. In the instant case, we note that the amount collected was only the prescribed cost of tender documents, hence, the said transaction can

be viewed as sale/supply of documents, rather than provision of taxable service. A tender is ordinarily only an invitation to offer and does not itself create a contractual service arrangement in every bidder. There is no identifiable service between the tendering authority and the bidder. We draw support from the decision of the Tribunal in **M/s Rajcomp Info Services Limited** versus **Principal Commissioner of CGST & Central Excise, Jaipur vide Final Order No. 50209 of 2026 dated 03.02.2026**. The relevant para is reproduced hereinafter:-

"6. With respect to the tender fee collected from the bidders, it has been the appellant's stand since beginning, that the said amount was received to give tender documents to the appellants. Thus, the activity was understood to be an act of sale of documents. The appellant was under bona fide belief of not being liable to pay any service tax amount. The said submission of the appellant has not been considered. Otherwise also, for any activity to be liable to service tax, it has to fulfill the condition of Section 65B(44) of the Finance Act. However, there is no contractual arrangement between the appellant and the bidder viz-a-viz the payment of tender fee. The department has absolutely failed to establish the same. On the contrary, it is apparent that since the tender is merely an invitation to the bidder, the fee collected towards providing the said tender document cannot have any element of service. In this case also, there is no 'quid pro quo' while receiving the said amount. The appellant is Government local authority. In view of the Department Circular No. 192/02/2016-ST dated 13.04.2016, the services provided in lieu of the being charged by the Government or local authority shall be taxable if and only if the payment is made for getting a service in return. As already observed above against receiving the tender fee no service has been rendered by the appellant except providing the tender documents to the bidders which is as good as sale of documents. Otherwise also the tender is merely an offer and

*not an agreement (as already observed above). Hence, it is held that the tender cost/fee is wrongly held to be an amount received towards provision of service. The order confirming the demand of service tax on this amount is therefore liable to be set aside, we draw our support from the decision of this Tribunal in the case of **M/s Ajmer Vidyut Vitaran Nigam Ltd. Vs. Principal Commissioner of CGST & Central Excise, Jaipur 2024 (11) TMI 1445-CESTAT New Delhi.***

6. In view of the above, we set-aside the impugned order and allow the appeal.

(Pronounced on 13.10.2026)

(AJAY SHARMA)
MEMBER (TECHNICAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

G.Y.