

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

REGIONAL BENCH – COURT NO. III

Service Tax Appeal No. 00703 of 2010

(Arising out of Order-in-Original No. 16/2010 dated 17.06.2010 passed by the Commissioner of Central Excise, Chennai-II Commissionerate, 692, M.H.U. Complex, Nandanam, Chennai – 600 035)

M/s. AP Enterprises

No. 10, Gopalakrishna Iyer Street,
T. Nagar,
Chennai – 600 017

: Appellant

VERSUS

The Commissioner of Central Excise & Service Tax

: Respondent

Chennai-II Commissionerate,
692, M.H.U. Complex, Nandanam, Chennai – 600 035

APPEARANCE:

Shri M.N. Bharathi, Advocate for the Appellant

Shri Vikas Jhajharia, Authorized Representative for the Respondent

CORAM:

HON'BLE MRS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 40212 / 2022

DATE OF HEARING: 07.06.2022

DATE OF DECISION: **09.06.2022**

Order : Per Hon'ble Ms. Sulekha Beevi C.S.

Brief facts are that the appellants were issued Show Cause Notice No. 195/2009 dated 21.04.2009 alleging that they have rendered services falling within the definition of 'Survey and Exploration of Mineral' service as given under Section 65(105)(zzv) of the Finance Act, 1994.

2. After due process of law, the Original Authority vide order impugned herein confirmed the demand along with interest and imposed penalty. Aggrieved by such order, the appellant is now before the Tribunal.

3.1 On behalf of the appellant, Learned Counsel Shri M.N. Bharathi submitted that the activities rendered by the appellant do not fall within the definition of 'Survey and Exploration of Mineral' Service. The appellants provided the activity of camp mobilisation and demobilisation in the nature of camp establishment and maintenance, cable laying, shooting and shot hole drilling, centring around oil and gas areas. The activities include construction of sheds, bathrooms, toilets, bunkhouse jacking up, electrical wiring and fitting, erection of water tank and preparation of internal roads and paths. He adverted to the definition of 'Survey and Exploration of Mineral' service and submitted that such activities rendered by the appellant do not fall within the said definition.

3.2 The Learned Counsel further submitted that in the case of the appellant's sister concern, viz. *M/s. Mohabir Enterprises*, the Tribunal vide order reported in 2019 (27) G.S.T.L. 532 (*Tribunal - Chennai*) had considered the very same issue and held that the activities would not fall within the definition of the service as alleged in the Show Cause Notice. In the appellant's own case for the period from 2005 to 2007, the Commissioner (Appeals) vide Order-in-Appeal No 12/2009 (M-ST) dated 30.04.2009 has held the issue in favour of the appellant.

3.3 He prayed that the appeal may be allowed.

4. Shri Vikas Jhajharia, Learned Authorized Representative, appeared for the respondent.

5. The issue to be decided is whether the activities rendered by the appellant in the nature of camp mobilisation and demobilisation, camp establishment and

maintenance, etc., such as (i) preparation of camp ground (ii) construction of sheds, bathrooms, toilets, bunk houses jacking up (iii) electrical wiring and fitting, etc., fall within the definition of 'Survey and Exploration of Mineral' services or not.

6. The Tribunal in the case of *M/s. Mohabir Enterprises (supra)*, which is a sister concern of the appellant herein, for the period from January 2008 to December 2008, has analysed the issue and held that the activities do not fall under the said category of service. The relevant part of the order is reproduced as under:

"5. The dispute is as to whether the activity undertaken by the appellant would fall under the category of Survey & Exploration of Mineral Service. In the reply to the Show Cause Notice as well as in the grounds of appeal, the appellants have contended that the activities carried out by them does not fall under the said category of services.

5.1 For better appreciation, the definition of Survey & Exploration of Mineral Services is reproduced as under :-

Section 65(105)(zzv) :

"Taxable service means any service provided or to be provided to any person by any other person in relation to survey and exploration of minerals"

Section 65(104a) defines as follows :-

"Survey and Exploration of Mineral' means geological, geophysical or other prospecting, surface or subsurface surveying or map making service, in relation to location or exploration of deposits of mineral, oil or gas".

5.2 As per the grounds of appeal, it is stated that their activities are camp mobilization and demobilization such as (i) camp establishment (ii) preparation of camp ground (iii) construction of sheds, baths, toilets etc. (iv) bunkhouses jacking up (v) electrical wiring and fitting (vi) erection of water tank and (vii) preparation of internal roads and paths. So also the job undertaken camp maintenance is in the nature of daily housekeeping of all living and office bunk houses, sheds etc., round the clock assistance in camp offices, assistance of maintenance of equipment, generators, air conditioning unit, vehicles etc. loading and unloading of materials, equipments etc. daily supply of drinking and

potable water etc. regular upkeep of camp ground, maintenance of sanitation and hygiene. They provide loading of survey equipment at camp site and transportation of the same to different lines and station to station after completion of the day's work bringing them back to the camp site properly without any damage. They undertake cutting, clearing of undergrowth along the line and making approach road/foot track, painting the ranging rods. They engage labourers to drill the land upto a depth stipulated by the officials of the said ONGC. This activity is known in the commercial parlance as shot hole drilling which is manually done by the unskilled labourers and is nothing to do with shot hole drilling which is undertaken in exploration of mineral activities.

5.3 From the activities explained by the appellant it can be seen that these activities have nothing to do with Survey & Exploration of Mineral Service. Appellants have undertaken mainly the preparation of camps mobilization and also upkeep and maintenance of these camps. The Commissioner (Appeals) for the period from 25-4-2006 to 20-12-2007 has analyzed the very same issue in detail and held that the activities does not fall under Survey & Exploration of Mineral Service. It was held that activity of the appellant are not in the nature of seismic services and collection/processing, interpretation of data and drilling or testing in relation to survey and exploration. The CBEC vide its Circular No. 80/10/2004-ST, dated 10-9-2004 has clarified that the service tax under this category would be limited to the services rendered in relation to Survey and Exploration only and not on the activity of actual extraction after the survey and exploration is complete. The transport, refining, processing or production of the extracted products would also be out of the ambit of service tax.

5.4 On these lines of clarification issued by Board, we can safely conclude that the activity undertaken by the appellant is in the nature of mobilization of camps, upkeep and maintenance of camps and such other services that would not fall under the definition of Survey & Exploration of Mineral Services. While arriving at such conclusion, we also take note of the fact that the Tribunal in the appellant's own case cited supra, had remanded the matter to the adjudicating authority to relook into the question whether the activity falls within the category of Survey & Exploration of Mineral Services. For an earlier period, the Commissioner (Appeals) has held that the activities undertaken by the appellant would not fall under the category of Survey & Exploration of Mineral services and the department has not filed any appeal against that order. The Ld. Counsel for the appellant has relied upon the decision in the case of Marsons Fan Industries v. Commissioner of Central

Excise, Calcutta - 2008 (225) E.L.T. 334 (S.C.) to argue that when the department has accepted the order passed by them on a particular issue they cannot challenge for a subsequent period on the very same issue. In the present case, when the matter came up for hearing on 22-2-2019, the department had sought time for verifying whether any appeal was filed against the Order-in-Appeal No. 13/2009 (M-ST) dated 30-4-2009. Today, the Ld. AR has not been able to confirm whether any appeal has been preferred by the department or not. Taking note of this aspect and also relying upon the decision in Marsons Fan Industries (supra), we are of the opinion that the issue has been decided in favour of the assessee for the previous period. The department cannot then agitate the matter. Thus, after appreciating the facts and following the decisions cited above, we are of the view that the demand cannot sustain. The impugned order is set aside. The appeal is allowed with consequential relief, if any."

7. In the appellant's own case, the Commissioner (Appeals) vide Order-in-Appeal No. 12/2009 (M-ST) dated 30.04.2009 has held as under:

"....From the submissions of the appellant, it can be seen that their activities range from camp mobilization, demobilization, construction of huts and toilets, electrical fitting and wiring, daily supply of potable water, house keeping, laying phones, drilling the holes manually, to transportation of labor, etc. There appears to be no technically qualified, informed assistance or expertise provided that would place the services rendered by them in the same class or clan – as seismic survey, collection / processing / interpretation of data. Any way, the service rendered by the appellant would not amount to Survey and Exploration of Mineral, Oil or Gas – as alleged in the Show Cause Notice and as decided in the Impugned Order in Original."

8. The above decisions squarely apply to the facts of the case. From the discussions made above, we find that the demand cannot sustain.

9. The impugned order is set aside.
10. The appeal is allowed with consequential reliefs, if any, as per law.

(Order pronounced in the open court on **09.06.2022**)

Sd/-
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

Sd/-
(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Sdd