IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 40013 of 2022

(Arising out of Order-in-Original No. 19/2021-ST (Commr.) dated 20.09.2021 passed by the Commissioner of G.S.T. and Central Excise, No. 1, Foulk's Compound, Anai Road, Salem – 636 001)

M/s. JSW Steel Limited **: Appellant**
Pottenari, Mecheri,
Mettur Taluk,
Salem – 636 453

VERSUS

Commissioner of G.S.T. and Central Excise **: Respondent**
Salem Commissionerate,
No. 1, Foulk's Compound, Anai Road,
Salem – 636 001

APPEARANCE:

Shri M.S. Nagaraja, Advocate for the Appellant

Smt. Anandalakshmi Ganeshram, Asst. Commissioner for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 40065 / 2024

DATE OF HEARING: 25.09.2023

DATE OF DECISION: 22.01.2024

Order : [Per Hon'ble Mr. P. Dinesha]

[Period of dispute: April 2016 to June 2017]

The assessee is engaged in the manufacture of iron and steel products falling under Chapter 72 of the First Schedule to the Central Excise Tariff Act, 1985. The Revenue, during its audit of the records of the

assessee, appears to have observed that the assessee had paid the auction price of iron ore along with Royalty, Forest Development Tax, Sales Tax, Cess and other taxes and charges as specified in the acceptance letters and tax invoices issued by the Monitoring Committee. The audit party appears to have assumed that the Royalty and Forest Development Tax paid to the Monitoring Committee for auction purchases of iron ore was a consideration paid for the services of assignment of right to use natural resources by the Government of Karnataka and that the assessee was liable to pay service tax under reverse charge mechanism.

2. Having noticed that the assessee had not discharged any such taxes on Royalty and Forest Development Tax, the same Commissionerate appears to have issued a Show Cause Notice Sl. No. 10/2019 (Commr.) dated 16.04.2019 by extending the larger period of limitation under Section 73(1) of the Finance Act, 1994, thereby also proposing to impose penalties.

3.1 It appears from the record that the assessee had contested the proposals in the Show Cause Notice by filing a detailed reply, but however, the original authority per impugned Order-in-Original No.

19/2021-ST (Commr.) dated 20.09.2021 has confirmed the proposals made in the Show Cause Notice. The original authority has held that the Monitoring Committee issued a tax invoice to the successful bidder, which contained details of auction number, rate, which included material value, Royalty, Forest Development Tax, CST and EMD with location of mines from where the iron ore was to be lifted within the scheduled time period. The payment therefore included Royalty and Forest Development Tax which was to be collected by the Monitoring Committee and payable to the Government of Karnataka. It is therefore held that in respect of the payments effected, the assessee was liable to pay Service Tax under reverse charge mechanism in terms of Section 68(2) of the Finance Act, 1994, read with Rule 2(1)(d)(i)(E) and Rule 6 of the Service Tax Rules, 1994 and Notification No. 30/2012-ST dated 20.06.2012, as amended.

3.2 It is further held that the consideration so paid to the Monitoring Committee towards Royalty and Forest Development Tax payable to the Government of Karnataka was for "service" as per section 65B(44) of the Finance Act, 1994, which was squarely covered under any service used in the said definition; that the assignment of right to use natural resources by the

Government of Karnataka to the mine lease holders for mining of iron ore is not covered under the Negative List of services under Section 66D of the Finance Act, 1994.

3.3 Thus, the demands proposed in the Show Cause Notice came to be confirmed thereby demanding Service Tax of Rs.5,00,33,713/- for the period from April 2016 to June 2017, along with applicable interest and an equal amount of penalty under Section 78 of the Finance Act, 1994.

4. It is against this order and the demands therein that the present appeal has been filed before this forum.

5.1 Heard Shri M.S. Nagaraja, Ld. Advocate for the appellant. It is his preliminary submission that in view of the imposition of ban on mining activities of iron ore in the three districts of Karnataka, namely, Bellary, Chitradurga and Tumkur, the Hon'ble Supreme Court appointed Central Empowered Committee (CEC) to study the mining related issues and to make recommendations, constitution of Monitoring Committee for regulating mining activities and sale of iron ore belonging to the holders of the mining leases through auction and procedures to be

adopted by the said Monitoring Committee for sale of iron ore through auction.

5.2 His further submissions are summarized as below: -

(i) The assessee is a manufacturer of steel and procures iron ores or lumps and fines, which are the principal raw materials, from the mine owners in different States.

(ii) They have purchased iron ore by participating in the auction sale of iron ore in the State of Karnataka conducted by the Monitoring Committee appointed by the Hon'ble Supreme Court.

(iii) The price paid for the purchase of iron ore comprised of bid price i.e., material value, Royalty at 15% of the said price, Forest Development Tax at 12%, CST of 2%, as per the acceptance letters issued by the Monitoring Committee and subsequent tax invoices.

(iv) A perusal of the Acceptance Letter No. EA-59/45160/581 issued by the Monitoring Committee shows auction sale of 16,000 metric tonnes of iron ore lumps to the appellant; the iron ore lumps under Lot No. N/FP/037L/16

belonged to M/s. Sesa Sterlite Ltd. with Mining Lease (ML) No. 2677 (erstwhile ML No. 2236) in the State of Karnataka.

(v) The instructions to M/s. JSW Steel Ltd, Salem in the said acceptance letter was to deposit 89.655% after deducting MSTC Commission @ 0.3% plus taxes at applicable rates, which aggregated to 0.345%, of the material value in respect of Lot No. N/FP/037L/16, Rs.2,85,17,462/- to M/s. Sesa Sterlite Ltd., Sesa Iron Ore, in their account No. 001551000003 with ICICI Bank Ltd., Sindur Business Centre, S.V. Road, Panaji, Goa; the balance amount of Rs.1,34,86,621/- was payable in the account No. 31944819186, which was in the name of the Monitoring Committee with the State Bank of India, by way of RTGS, in respect of the above Lot. The acceptance letter also revealed that the tax invoice would be issued upon the receipt of the payments as mentioned above. The Monitoring Committee had issued a Tax Invoice No. 59/967 dated 07.10.2016 for the above amounts.

(vi) Similar acceptance letters and tax invoices, reflecting the mining lease holder’s

name and mining lease number, quantity of iron ore, material value plus Royalty plus FDF were placed on record for illustration of the fact that the assessee was a buyer of iron ore in the auction conducted by the Monitoring Committee.

(vii) The State Government granting lease of mine and right to use of natural resources by way of extraction of mineral in the mine is the service provider and the Holders of mining lease or Grantee of Rights to use of natural resources in the leased mine is the service receiver.

(viii) The mining lease holders are liable to pay Royalty as consideration towards lease of mine and the Royalty amount would vary with the quantity of minerals extracted or removed accordingly in terms of Section 9 of the Mines and Minerals (Development and Regulation) [MMDR] Act, 1957. The mining lease holder is liable to pay Royalty or Dead Rent, whichever is higher, to the State Government, for the lease of mine in proportion to the mineral extracted and removed.

(ix) The appellant, M/s. JSW Steel Ltd., Salem, was not at all granted any mining lease

by the State Government of Karnataka and hence, can never be treated as a service recipient and consequently, the appellant is not liable to pay Royalty or Service Tax on the Royalty.

(x) The Monitoring Committee has not provided any service to the appellant attracting the levy of Service Tax under reverse charge mechanism.

(xi) The Monitoring Committee is a committee appointed by the Hon'ble Supreme Court to regulate sale of iron ore and thus, not "the Central Government, a State Government and its Departments and a Union Territory and its Departments" or an entity maintaining its accounts in accordance with Article 150 of the Constitution of India as per the definition of "Government" under Section 65B (26A) of the Finance Act, 1994,

(xii) Royalty and Forest Development Tax are taxes by themselves and hence, there is no question of further liability in the case of Service Tax.

5.3 The Ld. Advocate took us through the directions of the Hon'ble Supreme Court in its Order in W.P. (Civil) No. 562 of 2009 dated 23.09.2011 in the case of *Samaj Parivartana Samudaya & Ors. v. State of Karnataka & ors.* wherein it is stated it is for the Monitoring Committee to conduct sale of iron ore through auction, collection of the sale price, Royalty and other taxes and applicable charges from the buyer and remittance of the taxes with the Governments, which is as per paragraphs 2(viii) and 2(xii)(c) of the said Order.

5.4 Further reference was made to the Order of the Hon'ble Supreme Court in W.P. (Civil) No. 562 of 2009 dated 18.04.2013 wherein specific directions were given with respect to payment of 90% of the sale price (excluding the Royalty and the applicable taxes) by the buyers to the respective mining lease holders and the balance 10% to be deposited with the Monitoring Committee along with Royalty, FDT and other applicable taxes/charges.

5.5 He would also submit that in terms of the Hon'ble Apex Court's directions, the Monitoring Committee collected part of the price along with Royalty, Forest Development Tax, CST and other applicable taxes/charges, which was duly remitted to

the Government. Further the Monitoring Committee has remitted the same under the name and Service Tax Registration of the respective mining lease holders. He would thus invite our attention to a print-out of the copy of e-mail dated 08.11.2016 issued by the Monitoring Committee and a list of mining lease holders in whose names Service Tax and Royalty was remitted by the Monitoring Committee for the period 2016–17, which are placed on record.

5.6 He would further contend that the sale of iron ore by the mining lease holders to the buyers by way of e-auction by the Monitoring Committee was a transaction of sale and not a service. The appellant has paid the price for the iron ore, which comprised of bid value i.e., material value, Royalty, Forest Development Tax/Fee, VAT/CST and other charges as specified by the Monitoring Committee in the acceptance letters and tax invoices under the directions and orders of the Hon'ble Apex Court, which is binding in terms of Article 141 of the Constitution. He would also rely on a decision of the Hon'ble Apex Court in the case of *M/s. Bharat Sanchar Nigam Ltd. v. Union of India [2006 (2) S.T.R. 161 (S.C.)]* in respect of the principle of mutual exclusivity between transactions of sale and service.

5.7 He would also refer to Notification No. 30/2012-ST dated 20.06.2012 to emphasize that the Monitoring Committee formed by the CEC can never be considered as a department of the Central Government or State Government or of a Union Territory within the meaning of "government", or even a "local authority" as per Section 65B (31) of the Finance Act, 1994 and that the Monitoring Committee is also not shown to be maintaining its accounts in accordance with Article 150 of the Constitution and therefore, liability to pay Service Tax under reverse charge mechanism in terms of Sl. No. 6 of the above Notification is not at all applicable.

5.8 With regard to Forest Development Tax (FDT) paid to the Monitoring Committee, he would submit that the State Government was collecting FDT at 8% of the Royalty amount paid by the mining lease holders by treating the same as forest disposal within the meaning of Section 98A of the Karnataka Forest Act, 1963; the same being a levy on the mining lease holders, cannot be levied on the buyer of iron ore; further, that the Monitoring Committee has collected 50% of the FDT, by referring to the Interim Order of the Hon'ble Apex Court dated 13.02.2017 in SLPs filed against the judgement of the Hon'ble High Court of Karnataka striking down the impugned provisions as

ultra vires the Constitution of India, which are pending before the Hon'ble Apex Court.

6.1 On the other hand, Smt. Anandalakshmi Ganeshram, Ld. Assistant Commissioner, defended the order of the lower authority.

6.2 She would place reliance on orders of the Authority for Advance Ruling, wherein it was held that G.S.T. was payable on Royalty. She would also rely on a decision of the Hon'ble High Court of Rajasthan in the case of *Sudershan Lal Gupta, Contractor v. Union of India [2022 (6) G.S.T.L. 4 (Raj.)]* wherein the Hon'ble High Court has confirmed the levy of G.S.T. on the Royalty amount payable on lease of mines for extraction of ores, in terms of the Central Goods and Services Tax (CGST) Act, 2017.

7. We have considered the rival contentions, we have carefully gone through the documents placed on record. We have also gone through the decisions/orders referred to during the course of arguments. After hearing both sides, we find that the only issue to be decided by us is: whether the appellant has received any taxable service of lease of mine and assignment of right to use of natural resources from the State Government of Karnataka for mining of iron ore, on which the Royalty and Forest

Development Tax/Fee are payable under reverse charge mechanism?

8.1 The appellant is a manufacturer of iron and steel and are purchasing iron ore from various mines. It had participated in the auction conducted by the Monitoring Committee for sale of iron ore by holders of mining leases in the State of Karnataka. The levy of Royalty in respect of the lease of mines is on the holder of the mining lease in terms of Section 9 of the Mines and Minerals (Development and Regulation) Act, 1957. For the sake of convenience, Section 9 is reproduced hereinbelow:

> *"Royalties in respect of mining leases.*
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> *9. (1) The holder of a mining lease granted before the commencement of this Act shall, notwithstanding anything contained in the instrument of lease or in any law in force at such commencement, pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area after such commencement, at the rate for the time being specified in the Second Schedule in respect of that mineral.*
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> *(2) The holder of a mining lease granted on or after the commencement of this Act shall pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral.*
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> *(2A) The holder of a mining lease, whether granted before or after the commencement of the Mines and Minerals (Regulation and Development) Amendment Act, 1972, shall not be liable to pay any royalty in respect of any coal consumed by a workman engaged in a colliery provided that such*

> *consumption by the workman does not exceed one-third of a tonne per month.*
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> *(3) The Central Government may, by notification in the Official Gazette, amend the Second Schedule so as to enhance or reduce the rate at which royalty shall be payable in respect of any mineral with effect from such date as may be specified in the notification:*
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> *Provided that the Central Government shall not enhance the rate of royalty in respect of any mineral more than once during any period of three years."*

8.2 In terms of the above, therefore, the holder of the mining lease is fastened with the liability to pay Royalty on the price of mineral extracted or consumed by the said lease holder at the rates specified, or, the dead rent as per Section 9A of the said Act, whichever is higher. It is not the case of the Department that the appellant is the holder of a mining lease nor has the appellant claimed to be a mining lease holder. We also do not find anywhere as to the any commitment by the appellant-company to having undertaken mining of the iron ore for which they were held to be liable for payment of Royalty and FDT.

9.1 Further, the whole transaction of the sale of iron ore mined by the holders of mining leases in the State of Karnataka was clearly regulated by the Monitoring Committee under the orders of the Hon'ble Apex Court, as evident from the various interim orders passed in W.P. (Civil) No. 562 of 2009 (*supra*). The

Hon'ble Apex Court vide Order dated 23.09.2011 had in fact approved the constitution of the Monitoring Committee and empowered it to receive the auction sale price, Royalty, taxation of applicable charges, in bank accounts maintained for that purpose. Paragraphs 2(viii), 2(xii)(c) and 4, which are relevant, are reproduced below for convenience: -

> *"2. The following modalities for the sale of the existing stock of iron ore, keeping the account of the sale proceeds and related issues are submitted for the consideration of this Hon'ble Court:*
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> *viii) the successful bidder will, in addition to the sale price of the iron ore, be required to pay the applicable royalty (at 10% of the market price), Forest Development Tax, sales tax, cess and other applicable charges;*
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> *xii) the Monitoring Committee will have the powers and responsibilities for/to:*
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> *…*
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> *(c) the receipt of sale price, royalty, taxation of applicable charges in bank account(s) maintained in the nationalized bank(s), investment in the fixed deposits in the nationalized bank(s), payment of royalty, taxes and applicable charges, payment of service charges for e-auction, investment of the balance amount in the fixed deposits with the nationalized bank(s) and its disbursal as per the directions of this Hon'ble Court;*
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4. It is also recommended that the Monitoring Committee may not be allowed to utilize any part of the sale proceeds or interest thereon except for depositing the royalty, taxes and other applicable charges, payment of the service charges towards the e-auction service and payment to the lessees as per para 2 (x) above. The CEC may for the present be permitted to release funds to the Monitoring Committee for meeting the expenditure towards monitoring, online linking of weigh bridges with e-permit system and related activities. The amount paid by the CEC may be reimbursed to it in due course of time and as per directions of this Hon'ble Court."

9.2 It is equally relevant and important herein to refer to the Interim Order dated 18.04.2013 of the Hon'ble Apex Court, the relevant portion of which is reproduced for convenience: -

"5. We may now proceed to notice the relevant part of the two Reports of the CEC dated 3.2.2012 and 13.3.2012, as referred to hereinabove.

…

RECOMMENDATIONS (as modified by CEC by its Report dated 13.3.2012. Items 1 to IV of the Report dated 3.2.2012 stood replaced by Items A to I of the Report dated 13.3.2012 which are reproduced below along with Items V to XIV of the initial Report dated 3.2.2012).

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E) the sale of the iron ore should continue to be through e-auction and the same should be conducted by the Monitoring Committee constituted by this Hon'ble Court. However, the quantity to be put up for e-auction, its grade, lot size, its base/floor price and the period of delivery will be decided/provided by the respective lease holders. The Monitoring Committee may permit the lease holders to put up for e-auction the quantities of the iron ore planned to be produced in subsequent months. The system of sale through the Monitoring Committee may be reviewed after say two year;

F) 90% of the sale price (excluding the royalty and the applicable taxes) received during the e-auction may be paid by the buyer directly to the respective lease holders and the balance 10% may be deposited with the Monitoring Committee alongwith the royalty, FDT and other applicable taxes/charges;"

10. It is thus clear from the above that the Monitoring Committee is conducting e-auction and sale of iron ores mined by the holders of mining leases in the three districts of Karnataka and the amount paid by the buyer of iron ores, as per the acceptance letters and tax invoices issued by the Monitoring Committee, is the price of the minerals. The Hon'ble Apex Court had clearly directed that the buyer of iron ores shall pay 90% of the sale price, excluding Royalty and applicable taxes, to the holders of mining lease directly and the balance of 10% is to be deposited with the Monitoring Committee along with Royalty, FDT and other applicable taxes/charges.

11.1 It is clear from Section 9 of the Mines and Minerals (Development and Regulation) Act, 1957 that the Royalty is to be paid by the holder of the mining lease. Therefore, the liability in respect of the payment of Royalty is fastened by law on the lease-holder and not on the buyers like the appellant. Sub-paragraph (F) below paragraph 5 of the Order of the Hon'ble Supreme Court dated 18.04.2013 in the case of *Samaj Parivartana Samudaya* merely lays down the manner in which the payment of these Royalties will be made. Sub-paragraph (F) stipulates that the buyer will make the payment of the Royalty, the liability of which lies primarily on the shoulders of the lease-holder. Merely because the payment is made by the buyer, it cannot automatically be said that the primary liability is on him, that any relatable services were received by him, or indeed that the leaseholder is absolved of liability. To construe sub-paragraph (F) in any other manner would be to construe the Hon'ble Supreme Court as having passed an order directly in contradiction to Section 9 of the Act, which cannot be countenanced. Accordingly, the payment of the Royalty being the primary obligation of the lease-holder, it cannot be said that the services, if any, relatable thereto, could have been rendered to the buyer (the Appellant) as the recipient of service.

11.2 This view is fortified when we look at the question from another angle: under the MMDR Act and the law as it stands, Royalty is undoubtedly payable to the Government, and this is undoubtedly either consideration or a levy relatable to the right to mine and to exploit the land. There is also no question that such right vests in the lease-holder. This being the position, we cannot hold that a service (if any at all) was received by the buyer (Appellant) in this respect which enjoyed no such right.

12. At the hearing of this appeal, references were also made to the decisions of the Hon'ble Supreme Court in the cases of *Mineral Area Development Authority v. M/s. Steel Authority of India & ors. [Civil Appeal Nos. 4056 to 4064 of 1999 & ors. dated 30.03.2011]* and *India Cement Ltd. and ors. v. State of Tamil Nadu & ors. [(1990) 1 SCC 12 / 1990 AIR 85 (S.C.)].* We have reached our conclusions above without touching upon these aspects as they are not germane to the questions before us. Any view we reach on the effect of these judgements will not alter our conclusions above. It is thus not for us to consider it necessary to adjudicate upon these arguments, particularly considering that the questions are still pending before the Hon'ble Supreme Court.

13. It is clear from this that it was as per the directions of Hon'ble Apex Court that the Monitoring Committee was required to collect the Royalty, taxes and other applicable charges from the auction buyers of iron ores and deposit the same with the Government. This is clearly evidenced by the samples of invoices/e-mails that were filed along with the appeal papers. The said tax has been deposited by the Monitoring Committee **under the name and service tax registration of the holders of the mining leases** in the State of Karnataka.

14. Therefore, the payment of Royalty, FDT and other applicable taxes/charges by the buyers of the iron ores to the Monitoring Committee, as per the price of iron ore purchased in auction, would not be held to be liable to Service Tax and hence, the buyer i.e., the appellant herein, could not be held to be the service recipient from the State Government for the purposes of liability to Service Tax. Hence, there is no question of any liability to pay Service Tax on the lease of mines and right to use of natural resources under reverse charge mechanism. The said findings in the impugned order are therefore unsustainable in the eye of law.

15. In the cited decision of the Hon'ble High Court of Rajasthan in the case of *Sudershan Lal Gupta (supra),* the same is in the context of levy of G.S.T. on Royalty, which cannot be said to be identical.

16. In view of above discussions, we are of the clear view that the demand of Service Tax as sustained in the impugned order is not sustainable, for which reason we set aside the same.

17. Resultantly, the appeal is allowed with consequential benefits, if any, as per law.

(Order pronounced in the open court on **22.01.2024**)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

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

Sdd