

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.75826 of 2015

(Arising out of Order-in-Appeal No.02/Commr/ST-I/Kol/2014-15 dated 23.03.2015
passed by Commissioner, Service Tax-I, Kolkata.)

Commissioner of Service Tax-I, Kolkata

(Kendriya Utpad Shulk Bhawan, (3rd Floor), 180, Shantipally, Rajdanga Main Road,
Kolkata-700107.)

...Appellant

VERSUS

M/s. Tycoon Industries Private Limited

.....Respondent

(11, British Indian Street, 1st Floor, Kolkata-700069.)

APPEARANCE

Shri S.S.Chattopadhyay, Authorized Representative for the Appellant (s)
Shri Ankit Kanodia, Advocate for the Respondent (s)

**CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI P.ANJANI KUMAR, MEMBER(TECHNICAL)**

FINAL ORDER NO. 75434/2022

DATE OF HEARING : 14 June 2022
DATE OF DECISION : 04 August 2022

P.K.CHOUDHARY :

The brief facts of the case are that M/s. Tycoons Industries Private Limited, (hereinafter referred to as the Respondent), are working inside the mining area as per an agreement entered into with M/s. Tata Steel Limited (TSL) covering the period 2009-10 to 2011-12. The work performed by the appellants involved :

- a. Deployment of loaders, excavators, dozers for removal of overburden, waste ash, spillage, etc. and also loading of raw coal, clean coal, secondary coal, rejects and ash, etc.

- b. Deployment of tippers and coal dumpers for transportation of coal, secondary coal, rejects, tailings and ash etc;
- c. Transportation of raw coal from colliery pit head to power plant and crusher plant and there from to the washeries; railway sidings, stock yard and such other destinations as specified by TSL;
- d. Evacuation, loading and transportation of dolomite, within the respective areas under West Bokaro Mines, Chhattisgarh and Gomardih Dolomite Mines

2. The Department is in appeal against the impugned Order-in-Original No. 02-COMMR-ST-1-KOL-2014-15 dated 23.03.2015 passed by the Commissioner of Service Tax-1, Kolkata wherein inter alia he dropped the demand of service tax amounting to Rs. 7,18,33,115/- on Mining services during the period 2009-10 to 2011-12 under section 73(1) of the Finance Act, 1994 by holding that the activity of transportation within the mines as per the work orders submitted by the Respondents herein cannot be classified as mining services. The Department is in appeal on the ground that the Respondents have provided mining services in terms of Section 65(23) read with Section 65(105)(zzp) of Finance Act, 1994 to M/s. TSL and hence have demanded service tax on the gross amount received by the Respondent on the above activities. It is the contention of the Department that the work of Transportation of raw coal from colliery pit head to power plant and crusher plant and there from to the washeries; railway sidings, stock yard and such other destinations as specified by TSL, transportation of dolomite, within the respective areas under West Bokaro Mines, Chhattisgarh and Gomardih Dolomite Mines shall also be classified as mining of mineral, oil or gas services and that the same cannot be taxed under transport of goods by road service. On the contrary, It is the contention of the Respondent that the work undertaken does not come under the purview of mining services as has been held by the Ld. Adjudicating authority and thus the Department has erred in computation of the demand of service tax

under mining services by including the above activity of transportation within the ambit of the mining services.

3. The Ld. Authorized Representative, appearing for the Department, says that the activity of the Respondent is a composite activity and the activity of transport cannot be taxed separately and thus, it calls for taxation under the mining services. In such situation, the original authority was incorrect in holding the Respondent to tax liability under GTA services for some portion of the work orders. Further, he reiterated the order in original for confirmation of demand under site formation services and maintenance and repair services.

4. The Ld. Advocate, appearing for the Respondent extensively referred to the contents of the agreement and also rate schedules of payment for various activities agreed upon, as per the said agreement. He stated that the Ld. Adjudicating authority has after due consideration and settled legal position held that the activities of transportation within the mining area cannot be classified as Mining services. He also relied upon the judgment of the Hon'ble Supreme Court in the case of Commissioner of Central Excise and Service Tax, Raipur Vs. Singh Transporters [MANU/SC/1177/2017/ 2017[4] G.S.T.L. 3] wherein the Hon'ble Supreme Court had dismissed the departmental appeal on the same issue and held that transportation of coal from the pit-heads to the railway sidings within the mining areas is more appropriately classifiable Under Section 65(105)(zzp) of the Act, namely, under the head "transport of goods by road service" and does not involve any service in relation to "mining of mineral, oil or gas" as provided by Section 65(105)(zzzy) of the Act.

5. He also submitted that in the instant case the Department had raised the demand based on the figures disclosed by the Respondent in its ST 3 return under Mining Services head vis-à-vis the amount shown in the profit and loss account for the years 2009-10 to 2011-12 under the heads Income from Sales and Contract and Equipment

Handling Income without considering the reconciliations provided by the Respondent during the audit of the records by the Service Tax department. It is also his contention that for the same activity during the period 2008-09 and 2009-10 (which is a part of the current appeal also), the Respondent had been issued with a show cause notice No. V(15)11/ST-Adj/Commr/11/22196 dated 18.10.2011 based on the CERA audit classifying the activities as Mining service. The Respondent had replied to the above show cause notice and by an Order-in-Original No. 68/commr/ST/Kol/2011-12 dated 31.01.2012 passed by the Ld. Commissioner of Service Tax, Kolkata the same had been adjudicated wherein the entire demand was dropped. A copy of the said Order-in-Original dated 31.01.2012 are at Page 80 of the Reply to the Appeal filed by the Respondent.

6. Further, he also pointed that Ld. Adjudicating authority has correctly allowed the deduction from total taxable service value amount comprising of notional income from interdivisional transfers and contra items after discussing at length the meaning of contra items and also its impact on tax.

7. Heard both sides and perused the appeal records.

8. We find that the short issue to be decided in the current case relates to whether the activity of the Respondent merits classification under GTA services or under mining services.

9. From the Show Cause Notice and the Order-in-Original, we find that it is not in dispute that the transport services have been provided within the mining area of TSL by the Respondent and the same relates to Transportation of raw coal from colliery pit head to power plant and crusher plant and there from to the washeries; railway sidings, stock yard and such other destinations as specified by TSL and transportation of dolomite, within the respective areas under West Bokaro Mines, Chhattisgarh and Gomardih Dolomite Mines. We find

when it has not been disputed by the Appellant Revenue that the transport activities have been performed within the mining area of TSL, then confirmation of demand on such activity by treating the same as mining service cannot be sustained in view of the settled jurisprudence in this regard vide the judgment of the Hon'ble Supreme Court in the case of Singh Transporters (*supra*). The Hon'ble Supreme Court has held as below-

"4 . *Though the learned Customs, Excise & Service Tax Appellate Tribunal, New Delhi ("Tribunal" for short) in answering the issue in favour of the Respondent leading to the present proceedings has relied upon its earlier judgment in the case of M/s. V.N. Transport v. CCE, Raipur [2016-TIOL-1510-CESTAT-DEL], Arjuna Carriers Pvt. Ltd. v. Commissioner of Service Tax [MANU/CE/0859/2014 : 2016 (41) S.T.R. 632 (Tri.-Del.)] it is argued that the said decisions may not be relevant to the present case inasmuch as the same pertains to a period prior to 1st June, 2007 and the present case pertains to the post 1st June, 2007 period. The difference in time is relevant in view of the insertion of Section 65(105)(zzzy), extracted above, effective from 1st June, 2007.*

5 . *Be that as it may, even if the relied upon judgment in the case of Arjuna Carriers (*supra*) is of no consequence to the present case, we are of the view that the activity undertaken by the Respondent i.e. transportation of coal from the pit-heads to the railway sidings within the mining areas is more appropriately classifiable Under Section 65(105)(zzp) of the Act, namely, under the head "transport of goods by road service" and does not involve any service in relation to "mining of mineral, oil or gas" as provided by Section 65(105)(zzzy) of the Act.*

6 . *The reliance placed on the definition of the term "mines" Under Section 2(j) of the Mines Act, 1952 does not assist the Revenue inasmuch as what would be indicated by the said definition is that a mine is not to be understood necessarily in respect of pitheads of the mining area or the excavation or drilling underground, as may be, but also to the peripheral area on the surface. The said definition has no*

apparent nexus with the activity undertaken and the service rendered. For the aforesaid reasons, we find no merit in this appeal(s). The appeals) is accordingly dismissed. "

10. We thus find that the issue herein is squarely covered by the judgment of the Hon'ble Supreme Court above and by respectfully following the same, we are of the considered view that the transport charges cannot be included in the valuation for mining services and thus the order of the Ld. Adjudicating authority is correct in the eyes of law.

11. Since we have decided on the issue of classification of service in favour of the Respondent assessee, the order of the Ld. Adjudicating authority thus survives, and the departmental appeal is dismissed in entirety.

(Order pronounced in the open court on 04 August 2022.)

Sd/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

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