CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO.1

Service Tax Appeal No.21232 of 2014-DB

(Arising out of Order-in-Original No.BEL-EXCUS-000-COM-BHR-011(ST)-13-14 dt. 13.01.2014 passed by the Commissioner of Service Tax, Belgaum)

Mr. Gautham Khona,
Proprietor,
No.7/A, Inna Reddy Colony,
Infantry Road, Cantonment Road,
Bellary – 583 101.

Appellant(s)

Versus

Commissioner Of Central Excise,
7th Floor, Trade Centre,
Bunts Hostel Road,
Mangalore 575 003.
Karnataka.

Respondent(s)

WITH

(i) Service Tax Appeal No.21233/2014 (Latha G Khona)
(Arising out of Order-in-Original No.BEL-EXCUS-000-COM-BHR-013(ST)-13-14 dt. 14.01.2014 passed by the Commissioner of Service Tax, Belgaum)

(ii) Service Tax Appeal No.21234/2014 (Gautham Khona)
(Arising out of Order-in-Original No.BEL-EXCUS-000-COM-BHR-012(ST)-13-14 dt. 14.01.2014 passed by the Commissioner of Service Tax, Belgaum)

(iii) Service Tax Appeal No.21235/2014 (Manjula Devi Bachawat)
(Arising out of Order-in-Original No.BEL-EXCUS-000-COM-BHR-016(ST)-13-14 dt. 22.01.2014 passed by the Commissioner of Service Tax, Belgaum)

(iv) Service Tax Appeal No.21236/2014 (Ashok Kumar Bachawat)
(Arising out of Order-in-Original No.BEL-EXCUS-000-COM-BHR-017(ST)-13-14 dt. 23.01.2014 passed by the Commissioner of Service Tax, Belgaum)

Appearance:

Mr. B.G. Chidananda, Advocate for the Appellant

Mr. H. Jayathirtha, Superintendent(AR) for the Respondent

CORAM:
HON'BLE Dr. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE Mr. PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

Final Order No. 20708 to 20712 / 2023

Date of Hearing: 13/07/2023
Date of Decision: 13/07/2023

Per : DR. D.M.MISRA

These five appeals are filed against the respective Orders-in-Original passed by Commissioner of Central Excise, Customs and Service Tax, Belgaum. Since the issue involved is common in all appeals, these are taken up together for hearing and disposal.

2. The facts, common in all the appeals, are that the appellants, during the relevant period October 2007 to March 2011, rendered services to M/s. Bharat Mines and Minerals at Sandur in transporting mined ore from the top to the bottom i.e. mine head to pit head and to the Railway siding situated within the mines area. Show-cause notices were issued for recovery of service tax alleging that the services rendered by the appellants fall under the category of 'Mining of Minerals, Oil or Gas Services' brought into service tax net w.e.f. 01.06.2007. On adjudication, the demands were confirmed with interest and penalties. Hence the present appeals.

3. At the outset, the learned advocate has submitted that the issue is no longer res integra and covered by the judgment of the Hon'ble Supreme Court in the case of *CCE&ST, Raipur Vs. Singh Transporters* [2017(4) GSTL 3(SC)]. He submits that recently, same judgment of the Hon'ble Supreme Court has been followed by the Principal Bench of CESTAT at Delhi in the case of *CST-II, New Delhi Vs. NP Earth Movers Pvt. Ltd*. [Final Order No.50311/2022 dt. 01/04/2022].

4. Learned AR for the Revenue reiterates the findings of the learned Commissioner.

5. Heard both sides and perused the records. We find merit in the contention of the learned counsel for the appellants. We find that the issue of levy of service tax on providing services for transportation of ore within the mining area for the period post-01/06/2007, after the introduction of the levy viz. "Mining of Minerals, Oil or Gas" services, has been settled by the Hon'ble Supreme Court in the case of Singh Transporters (supra). Also, the said judgment has been followed by the Principal Bench of this Tribunal recently in the case of CST-II, New Delhi Vs. NP Earth Movers Pvt. Ltd. (supra). Laying down the principle, Hon'ble Supreme Court at para 6 observed as:-

> ***6.*** *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.*

The principle laid down by the Hon'ble Supreme Court is squarely applicable to the facts of the present case. Consequently, the impugned orders are set aside and the appeals are allowed with consequential relief, if any, as per law.

(Dictated and pronounced in open court)

(D.M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

Raja...