

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

SERVICE TAX APPEAL NO. 52239 OF 2016

(Arising out of Order-in-Original No. DLISVTAX001COM0221516 dated February 09, 2016 passed by the Commissioner of Service Tax (Audit-1), New Delhi)

Commissioner of Service Tax-II

5th Floor, 14-15 Farm Bhawan, Nehru Place
New Delhi – 110 019

....Appellant

VERSUS

M/s N.P. Earth Movers Pvt. Ltd.

M-19B, Jangpura Extension
New Delhi – 110 014

...Respondent

APPEARANCE:

Dr. Harshwardan, Authorized Representatives of the Appellant
NONE for the Respondent

CORAM: HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 50311/2022

DATE OF HEARING / DECISION: 01.04.2022

JUSTICE DILIP GUPTA :

The Department has filed this appeal for setting aside the order dated February 09, 2016 passed by the Commissioner of Service Tax (Audit-1), New Delhi¹ by which the proceeding that had been initiated by issuance of the show cause notice dated March 28, 2014 against the respondent has been dropped.

1. _____
the Commissioner

2. The order sheets reveal that the learned counsel for the respondent had not been appearing on earlier occasions and even today also learned counsel for the respondent has not appeared. The present appeal is, accordingly, being decided on merits in the absence of the respondent.

3. The records indicate that M/s Western Coalfield Ltd.² had awarded a contract to the respondent for loading and transfer of coal from one place to another in the licensed area of its mines situated at Wani and Majri and it was noticed by the department that the respondent did not pay service tax under the category of 'mining services' contemplated under section 65(105)(zzzy) of the Finance Act, 1994³. This service was made taxable from June 01, 2007.

4. A show cause notice dated March 28, 2014 was issued to the respondent and the relevant portion of the show cause notice is reproduced below:

"3. On going through the documents submitted by the Noticee, it was noticed that though M/s WCL had awarded contracts to the Noticee for loading and transportation of goods in Wani and Mazri mines areas and the Service Tax was paid by M/s WCL for the said activities under the category of 'Goods Transport Agency Services', the Noticee had to pay Service Tax under 'Mining Services' for loading, unloading and transportation of coal within the mines by hiring pay loaders for the mechanical transfer of coal into tippers and transfer of coal from one place to other within the mines area through tippers, e.g., from Pit Head to feeder crusher or to stock yard etc.

12.7 From the plain reading of the work contracts, it is clear that outsourced services of loading and transportation of coal is in relation of mining activities as the same were performed

2. the WCL

3. the Finance Act

within Mines area. The stock of coal were transported from one place to other, i.e., Coal Handling Plant or Crusher, within the Mines Area for further processing and also upto the place of loading or the point of sale which is also within Mines Area. The terms and conditions laid down in the work order reveal that the Noticee and their employed staff have to follow provisions of the Mines Act, 1952 and Coal Mines Regulations (C.M.R.) 1957 and Rules made thereunder while providing services to M/s WC. The terms and conditions also cast certain responsibilities upon M/s WCL as principal employer of the workmen deployed by the Noticee as M/s WCL was ultimately responsible for fulfilling the obligations for their wages, pension and provident fund. Therefore, M/s WCL cannot be considered as a transport agency as they had their legal status of a Miner Company.

16. In view of the above, it appears that the loading of coal by Pay Loaders, in Tippers within the mines area and movement of coal (extracted in mines) within the mines premises for further processing such as washing, sizing and grinding and storage at appropriate place and further transferring and loading of coal into wagons in Railway Siding are activities in relation to Mining Service and accordingly, fall under the category of "Mining Service" under sub-clause (zzzy) of clause (105) of the Finance Act, 1994 and Service Tax is accordingly payable thereon. It, therefore, appears that with effect from 01.06.2007, such services of loading/unloading and transportation of coal in the mines (including transportation to the point of dispatch, i.e., railway siding) are classifiable under the Mining Service'.

22. Now, therefore, M/s N.P. Earth Movers Pvt. Ltd. having registered office at M-198, Jangpura Extension, New Delhi are hereby called upon to show cause to the Commissioner of Service Tax, New Delhi having office at 17-B, I.A.E.A House, Mahatma Gandhi Marg, I.P. Estate, New Delhi, within 30 days of receipt of this notice, as to why :

- i) Service Tax amounting to Rs.3,82,35,611.00 (Rupees three crore eighty two lakh thirty five thousand six hundred eleven only), as detailed in this show Cause Notice, which was not paid/short-paid by them during

the period October, 2009 till 31st March, 2012 should not be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994;

ii) Interest should not be demanded and recovered from them for non-payment of the Service Tax under Section 75 of the Finance Act, 1994;

iii) Penalty should not be imposed on them under Section 76 of the Finance Act, 1994 for failure to pay proper Service Tax within the prescribed time limit;

iv) Penalty should not be imposed on them under Section 77 of the Finance Act, 1994 for failure to take registration in accordance with service tax laws and to correctly assess the value of taxable service and furnish the same in their S.T.3 Returns as required under Section 70 of the Act *ibid*; and

v) Penalty should not be imposed on them under Section 78 of the Finance Act, 1994 for suppressing the material facts with an intent to evade payment of Service Tax.”

(emphasis supplied)

5. The respondent filed a detailed reply to the show cause notice denying the allegations made against it and stated that the respondent was not providing ‘mining services’. The Commissioner accepted the contention of the respondent that the services provided by the respondent would not merit classification under ‘mining services’ and, therefore, dropped the proceedings.

6. The Department in the Memorandum of Appeal, has emphasized that the activity carried out by the respondent is ancillary to or in relation to mining activity and, therefore, would merit classification under ‘mining services’. The said ground is reproduced below:

“5.5 The Adjudicating Authority has erred by ignoring the fact that the activities of handling and transportation of coal had been undertaken within mines area. A perusal of work order No.WCL/WA/CGA/MINING/W.O.EX-Ser/08-6215 dt. 13.05.2008 would make it amply clear that the stock of coal was transported through pay loaders and tippers from ground stock to the hopper and feeder of crushers for making the stock of

coal marketable. This activity is ancillary to or in relation to mining activity covered under the mining services defined under Section 65(105)(zzzy) of the Finance Act, 1994, as “any service provided or to be provided, to any person, by any other person in relation to mining service in any manner”. It is abundantly clear that transportation of coal for crushing from one place to another to make the stock of coal marketable is in relation to mining service in any manner and therefore, merits classification under the category of mining service w.e.f. 01.06.2007.”

7. Dr. Harshwardhan, learned authorized representative appearing for the department, supported the grounds contained in the Memorandum of Appeal.

8. The submissions advanced by learned authorized representative appearing for the department have been considered.

9. The taxable service of ‘mining’ defined under section 65 (105) (zzzy) of the Act means any service provided or to be provided to any person by any other person, in relation to mining of mineral, oil or gas. The Commissioner has placed reliance upon the definition of “mines” under the Mines Act, 1952 and has observed that all processing including handling and movement of coal from one point of mines to dispatch point of mines are activities carried out in relation to mining of minerals.

10. This issue was examined by the Supreme Court in **Singh Transporters vs. Commissioner of Central Excise, Raipur**⁴. The issue involved was whether coal transported from pitheads of the mines to the railway sidings would fall within the taxable service defined under section 65 (105) (zzzy) of the Act. The Supreme Court held that the activity would appropriately be classified under the head

4. 2012 (27) STR 488 (Tril-Del.)

“transport of goods by road service” and the activity does not involve any service in relation to “mining of mineral” as contemplated under section 65(105) (zzzy) of the Act. The Supreme Court also held that the definition of “mines” has no apparent nexus with the activity undertaken under the service rendered. The relevant paragraphs of the judgment are reproduced as under:

“3. The issue involved in the present appeal is whether the goods i.e. coal transported by the respondent – Singh Transporters from the pit-heads to the railway sidings would fall within taxable service as defined under Section 65(105) (zzzy) of the Service Tax Act of 1994 (for short “the Act”) or as defined under Section 65(105)(zzp) of the Act.

xxxxxx

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.**

7. **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 pit-heads 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.”

(emphasis supplied)

11. The findings recorded by the Commissioner are in conformity with the judgment of the Supreme Court in the case of **Singh Transporters.**

12. There is, therefore, no merit in this appeal. It is, accordingly, dismissed.

(Dictated & pronounced in open Court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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