

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH-COURT NO.1

Service Tax Appeal No. 52006 of 2016

(Arising out of Order-in-Appeal No. BHO-EXCUS-002-APP-241-15-16 dated 19.11.2015
passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Raipur)

Mirza Hasam

...Appellant

Versus

**Commissioner (Appeal) Custom, Central Excise &
Service Tax, Raipur**

...Respondent

APPEARANCE:

None for the Appellant

Dr. Radhe Tallo, Authorized Representative of the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 50477/2022

Date of Hearing: 30.05.2022

JUSTICE DILIP GUPTA

This appeal has been filed to assail the order dated 19.11.2015 passed by the Commissioner (Appeals) Raipur¹, by which the order dated 12.02.2014 passed by the Joint Commissioner has been upheld except to the extent that penalty that was imposed by the Joint Commissioner under section 78 of the Finance Act, 1994² has been reduced from Rs. 16,17,017/- to Rs. 6,95,412/-.

2. A show cause notice dated 03.09.2012 for the period April 2007 to March 2012 was issued to the appellant mentioning:-

1. the Commissioner (Appeals)

2. the Finance Act

"7. From the nature of services provided to M/s WCL, it can be seen that the Noticee have been given the work of loading, unloading and transportation of a particular quantity of coal from coalface to railway siding within the specified time frame. This work does not involve transport of a particular consignment handed over to the transporter for transportation and therefore does not necessitate issuance of consignment notes. Since the Noticee undertake the services of loading, unloading and transportation of coal by deployment of own pay-loader / tipper together with its operation within the mines premises therefore, these activities appear to be covered under the purview of the definition of 'Cargo Handling Service', which is liable to service tax and the same has to be paid by the Noticee, which has not been so far paid."

3. The appellant was , therefore, called upon to show cause as to why;

"

- (i) Service Tax amounting to 6,95,412/- (Service Tax 6,75,675/- + Education Cess 13,514/- + Secondary & Higher Education Cess 6,223/-) not paid by them for providing taxable service covered under the category of "Cargo Handling Service" should not be demanded and recovered from them under section 73 of the Finance Act, 1994 by invoking extended period of five years under the provisio to Section 73(1) of the Act.
- (ii) Interest should not be charged and recovered from them on delayed payment of Service Tax at appropriate rate under section 75 of the Finance Act, 1994.
- (iii) Penalty should not be imposed upon them under section 77 of the Finance Act, 1994.
- (iv) Penalty should not be imposed upon them under section 76 and/or section 78 of the Finance Act, 1994 for having evaded Service Tax by deliberately suppressing the facts from the department. "

4. The appellant filed a reply to the aforesaid, show cause notice and denied the allegations made therein.

5. Another show cause notice dated 17.10.2013 was issued to the appellant for the subsequent period from April 2012 to March 2013. The appellant also filed a reply to this show cause notice.

6. The Joint Commissioner, however, by order dated 12.02.2014 adjudicated the aforesaid two show cause notices holding:-

" 30. Thus, I find that activities of loading of coal into tippers by pay loaders, transportation of coal by tippers to the railway siding and unloading

of coal, are chargeable to service tax under the cargo handling service as defined under section 65(23) of the Act for the period prior to 01.06.2007. However, from 01.06.2007, such activities performed by the contractor is chargeable to service tax under the category of 'mining service' as defined under section 65(105)(zzzy) of the Finance Act, 1994 as such activities are provided 'in relation to' the mining of mineral i.e. 'Coal in present case.

31. In view of the above, I hold that the services of loading of coal into tippers by pay loaders, transportation of coal by tippers to the railway siding and unloading of coal, provided by the notice to M/s WCL Kanha Area are chargeable to service tax under "Cargo Handling Service" as provided under section 65(23) read with section 65(105)(zr) of the Finance Act, 1994 (for the period 01.04.2007 to 30.05.2007) and under 'Mining Service' as defined under section 65(105)(zzzy) of the Finance Act, 1994 (for the period 01.06.2007 onwards) and the notice is liable to pay service tax under the aforesaid taxable services during the relevant time. Accordingly, the notice is liable to pay service tax on the services provided to M/s WCL Kanha Area and the same is liable to be recovered under section 73 of the Finance Act, 1994 alongwith interest under section 75, *ibid.*"

7. Feeling aggrieved by the aforesaid order, the appellant filed an appeal which, as noticed above, was dismissed except that the penalty was reduced to Rs. 6,95,412/-.

8. The present appeal has been filed to assail the aforesaid order dated 19.11.2015 by the Commissioner (Appeals).

9. The records indicate that no one had been appearing on behalf of the appellant and today also no one has appeared on behalf of the appellant. The appeal is, accordingly, being decided on merits after hearing Dr. Radhe Tallo, learned authorized representative appearing for the Department.

10. The issue involved in this appeal is as to whether the appellant had provided 'cargo handling service' for the period 01.04.2007 to 30.05.2007 and 'mining service' for the period 01.06.2007.

11. The taxable service of 'mining' defined under section 65 (105) (zzzy) of the Finance 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.

12. This issue was examined by the Supreme Court in **Singh Transporters vs. Commissioner of Central Excise, Raipur**³. 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 Finance Act. The Supreme Court held that the activity would appropriately be classified under the head “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 Finance 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.

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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

3. 2012 (27) STR 488 (Tril-Del.)

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.”

13. It would be seen that the Supreme Court categorically held that the activity undertaken by the appellant would fall under the head ‘transportation of goods by road service’. The Commissioner (Appeals) was, therefore, not justified in holding that the appellant had undertaken the activity of mining service w.e.f. 01.06.2007.

14. It would also not possible to sustain the order passed by the Commissioner holding that these activities undertaken by the appellant prior to 01.06.2007 would fall under the category of ‘cargo handling service’. This is for the reason that the Supreme Court categorically held that the activity undertaken by the appellant would fall under the heading ‘transport of goods by road service’. The appellant had, therefore, not provided ‘cargo handling service’ prior to 01.06.2007 under section 65(23) of the Finance Act.

15. The impugned order dated 19.11.2015 passed by the Commissioner (Appeals), therefore, cannot be sustained and is set aside. The Appeal is accordingly allowed.

(Order dictated and pronounced in the open Court)

(JUSTICE DILIP GUPTA)
PRESIDENT

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