CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Service Tax Appeal No. 54002 of 2018

(Arising out of Order-in-Original No. 15/COMMR/ST/BPL-II/2018 dated 30.08.2018 passed by the Commissioner, CGST & Central Excise, Bhopal)

The Principal Commissioner, CGST &
Central Excise, Bhopal **.....Appellant**
35-C, New GST Bhawan, Administrative Area,
Arera Hills, Bhopal (M.P.) Pin-462011

VERSUS

M/s. S R Traders **.....Respondent**
E-7, M-708, Arera Colony,
Bhopal (M.P.) Pin- 462016

APPEARANCE:
Mr. Harshvardhan, Authorized Representative of the Department
None for the Respondent

CORAM : HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing/Decision: 09.05.2023

FINAL ORDER NO. 50660/2023

JUSTICE DILIP GUPTA

The Department has filed this appeal to assail the order dated August 30, 2018 passed by the Commissioner, CGST & Central Excise, Bhopal[1] dropping the proceedings that had been initiated against the respondent by the show cause notice dated March 01, 2017 issued for the period from April 2016 to January 2017.

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1 the Commissioner

2. The issue involved in this appeal is regarding non-payment of service tax on the amount paid to the Government or a local authority towards periodical charges for assignment of right to use of natural resource or quarry sand from the allotted mines. The Commissioner dropped the demand for the following reason:

> "51.Also, as per the terms and condition of the relevant agreements, the amount of the thekadhan including royalty, rent etc. payable by the notice to the Govt. of M.P. were predetermined and the quantum and pattern of such payments was well defined by way of distributed installments in closed manner and their due dates. Since, the terms and condition of the relevant agreements qualify both the conditions of the Notification No. 22/2016 - Service Tax dated April 13, 2016 (entry 61), by virtue of the dates of the agreements and the pre-determined nature of the taxable amount, therefore, the impugned activity and amount of the thekadhan cannot be brought under the ambit of Service tax net, holding immunity provided by the said notification."

3. Section 66D of the Finance Act, 1994[2] which contains the list of negative services, includes services by Government and local authority excluding services mentioned in clauses (i), (ii), (iii) and (iv). It needs to be noted that prior to April 01, 2016, under clause (iv) only 'support service', other than services covered under clauses (i) to (iii) provided to business entities was mentioned, but 'support service' from April 01, 2016 was substituted by 'any service'. Thus, w.e.f. April 01, 2016, the service provided to the appellant became taxable.

4. Though the agreements were entered prior to April 01, 2016 in the present case, the contention of the Department is that since the payment under the agreements were to be made after April 01, 2016, the appellant would be liable to pay service tax.

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2. the Finance Act

5. This precise issue came up before a Bench of the Tribunal in **M/s. Madhya Pradesh State Mining, Corporation Limited** vs. **Principal Commissioner, CGST & Central Excise, Bhopal (M.P.)**[3]. In regard to short payment of service tax on dead rent paid by the appellant to the State Government, which was taxable on a reverse charge basis against the receipt of services concerning grant of mining rights, the Bench held that for the purposes of levying service tax, the taxable event is construed at the time the service is provided or agreed to be provided. Therefore, in order to determine whether levy of services tax is applicable on a particular activity, it is necessary to determine the point of time when such activity is provided or agreed to be provided and since the agreements between the appellant and the State Government regarding grant of mining right were executed prior to April 01, 2016, on which date the transaction in mining of right to use natural resources became taxable, the appellant would not be liable to pay the service tax. The relevant portions of the decision are reproduced below:

> "13. **The second category of demand pertains to the alleged short-payment of tax to the extent of dead rent surface rent paid by the appellant to the State Government, which has been held to be taxable on reverse charge basis against the receipt of service concerning grant of mining rights**.
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> 14. **The contention of the learned counsel for the appellant is that the demand is not sustainable as the service was received prior to 01.04.2016, when such services from the Government were not subject to tax**.
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> 15. The charging provision prescribing levy of tax is section 66B of the Finance Act and it is as follows:
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> > "66B. There shall be levied a tax (hereinafter referred to as the service tax at the rate of fourteen per cent on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the

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taxable territory by one person to another and collected in such manner as may be prescribed."

16. **Thus, for the purpose of levying service tax, the taxable event is construed as the time when the service is provided or agreed to be provided. Thus, in order to determine whether levy of tax is applicable on a particular activity, it is necessary to determine the point of time when such activity is provided or agreed to be provided. In the present case, the agreement between the appellant and State Government for grant of mining rights was executed on 02.01.2016 and on this date, the transactions involving) assignment of right to use natural resource was not taxable**.

17. **In this connection section 66D of the Finance Act, as it existed prior to 01.04.2016, can be referred to and it is as follows**:

> "66D The negative list shall comprise of the following services, namely:-
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> (a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere-
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> (i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;
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> (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers; or
>
> (iv) **Support services, other than services covered under clauses (i) to (i) above, provided to business entities**"

18. Thus, prior to 01.04.2016, barring a few exceptions, all services provided by the Government were covered under the negative list and accordingly, not subjected to service tax.

19. **With effect from 01.04.2016, however, section 66D (a)(iv) of the Finance Act was amended and 'all services provided by the government to a business entity were excluded from the negative list of services. Thus, services rendered by the government to a business entity became chargeable to service tax with effect from 01.04.2016.**

20. **In the present case, the appellant received services in relation to assignment of right to use natural resources from the State Government by virtue of the agreement dated 02.01.2016 and, therefore, the provisions of service tax, as were in force prior to 01.04.2016, would be applicable. Grant of natural resources was not excluded from the scope of negative list prior to 01.04.2016 and so no tax implication can be fastened on the appellant for such period**."

(emphasis supplied)

6. Shri Harshvardhan, learned authorized representative appearing for the Department, however, placed reliance upon the grounds taken in the memo of appeal, particularly to ground no. 9.6 to contend that since the payments were received after April 01, 2016, the appellant would be liable to pay service tax. The said ground is reproduced below:

> "9.6 On going through the agreements it has been observed that all the contracts/agreements (for each sand quarry) have been executed allotted prior to the relevant date i.e. 01.04.2016 (the date of Levy of Service Tax), for assignment of right to use of natural resource of such sand quarry on periodical charge (yearly basis in the name of thekadhan to be paid in four installments every year on 1st day of the quarter i.e. 01.04.2016, 01.07.2016, 01.10.2016 & 01.01.2018 for the year 2016-17 and similar/ identical manner for the remaining future periods of the contract / agreement. There are no provisions for payment of one-time payment/charges in all the contracts involved in the SCN dated 01.03.2017 / impugned order dated 30.08.2018. Hence, the assessee is not entitled for any exemption from payment of service tax on the payments (Royalty payable periodically) made on & after 01.04.2016."

7. This ground has been taken in view of rule 7 of the Point of Taxation Rules 2011, which is evident from the Circular dated April 13, 2016 issued by the CBEC. The relevant portion of the Circular is reproduced below:

9.	Whether Service Service Tax is payable on yearly installments due after 1-4-2016 in respect of spectrum assigned before 1-4-2016	Service Tax is payable on such installments in view of rule 7 of point of Taxation Rules, 2011 as amended by vide Notification No. 24/2016-S.T., dated 13-4-2016. However, the same have been after 1-4-2016 in specifically exempted vide Notification No. 25/2012-S.T., dated 20-6-2012 as amended by Notification No. 22/2016-S.T., dated 13-4-2016 [Entry 61 refers]. The exemption shall apply only to Service Tax payable on one time charge, payable in full upfront or in installments, for assignment of right to use any natural resource and not to any periodic payment required to be made by the assignee, such as Spectrum User Charges, license fee in respect of spectrum, or monthly payments with respect to the coal extracted from the coal mine or royalty payable on extracted coal which shall be taxable

8. The Point of Taxation Rules deal with the date on which payment of service tax has to be made and do not determine whether the service is taxable or not. These Rules, therefore, would not be applicable in the present case. In any view of the matter, the issue is covered by the decision of the Division Bench of the Tribunal in **Madhya Pradesh State Mining Corporation.**

9. It has, therefore, to be held that the order passed by the Commissioner does not suffer from any illegality so as to call for any interference in this appeal. The appeal is, therefore, liable to be dismissed and is dismissed.

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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