CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Service Tax Appeal No.54988 of 2023

(Arising out of Order-in-Original No.10/PR.COMMR/ST/IND/2022 dated 15.12.2022 passed by the Commissioner,CGST & Central Excise, Manik Bagh Palace, Post Box No.10, Indore-452014)

SOUTH EASTERN COALFIELDS LTD. ... **Appellant**
Seepat Road, Sarkanda, Bilaspur,
Dist.Bilaspur, Chhattisgarh-495006

VS.

Principal Commissioner, CGST & Central Excise, **Respondent**
Manik Bagh Palace, Post Box No.10,Indore-452014

APPEARANCE:
Mr.Rajeev Kumar Agarwal, Advocate for the Appellant
Mr. Harshvardhan,Authorized Representative for the Department

CORAM :

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

Final Order No.51589/2023

Date of Hearing/Decision:02.11.2023

JUSTICE DILIP GUPTA:

South Eastern Coal Fields Limited[1] has filed this appeal to assail the order dated 15.12.2022 passed by the Principal Commissioner, CGST & Central Excise[2] confirming the demand of service tax by treating the service provided by the appellant as a declared service under section 66E (e) of the Finance Act, 1994[3] with interest and penalty.

2. The appellant is a Public Sector Undertaking and is a subsidiary of Coal India Limited. It is engaged in the business of mining and selling of coal.

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[1] the appellant
[2] the Principal Commissioner
[3] the Finance Act

3. A show cause notice dated 11.10.2021 was issued to the appellant for the period April, 2016 to June, 2017 alleging that the appellant would have to pay service tax under a reverse charge mechanism on the net present value under the Compensatory Afforestation Funds Act,2016 in view of the provisions of section 66E (e) of Finance Act. The appellant deposited the net present value under the said fund.

4. The allegations contained in the show cause notice are that:

(a) The government tolerated the act of the appellant which is diversion of forest land for non-forest purpose of mining for a consideration; and

(b) The appellant has in turn paid compensatory levies/charges to the Fund, which is a 'consideration' against toleration by the Government.

5. It is on the aforesaid allegation that the show cause notice mentions that the government is providing a declared services under section 66E (e) of Finance Act i.e. by agreeing to the obligation to refrain from an act, or tolerate an act or a situation, or to do an act. Thus, as the amount paid by the appellant under the aforesaid Fund to the Government is a consideration against the declared services, the appellant would be liable to pay service tax under the reverse charge mechanism.

6. The appellant filed a detailed reply to the show cause notice dated 11.10.2021 and denied the allegation, but the Principal Commissioner by the impugned order has upheld the demand proposed in the show cause notice with penalty and interest.

7. Shri Rajeev Kumar Agarwal, learned counsel for the appellant has submitted that the issue in this appeal has been decided in

favour of the appellant by a Division Bench of Kolkata Bench of the Tribunal in Mahanadi **Coalfields Limited (Orient Area) vs. Commissioner of CGST & Central Excise, Rourkela**[4], which decision has placed reliance on the earlier decision of the Tribunal in **MNH Shakti Limited vs. Rourkela[5].** Learned counsel also pointed out that this decision of the Tribunal has been accepted by the department.

8. Shri Harshvardhan, learned authorised representative appearing for the department has, however, submitted that the order passed by the Commissioner does not call for any interference in this appeal.

9. The submissions advanced by the learned counsel for the appellant and the learned authorised representative appearing for the department have been considered.

10. It does transpire that the issue that arises for consideration in this appeal, is whether the payment of net present value by the appellant in the Compensatory Fund would be a consideration against a declared service under section 66E (e) of Finance Act. This precise issue arose for consideration before a Division Bench of Kolkata Bench of the Tribunal in **Mahanadi Coalfields Ltd.** and after placing the reliance upon the earlier decision of the Tribunal in **MNH Shakti Ltd**., the Tribunal held as follows:-

> "8. We observe that the payment of NPV to the CAMPA Fund has been made by operation of law and the Appellant has no choice whatsoever. Thus, the amounts paid cannot be called as 'consideration' by any stretch of imagination, for the alleged 'service'. Furthermore, the Government is duty bound by the Constitutional Mandate (Article 48 of

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[4] Service Tax Appeal No.75432/2022 decided on 13.07.2023
[5] Service Tax Appeal No.75218/2020

the Constitution of India) and by the Parliament (The CAMPA Act, 2016, Forest Conservation Act 1980) to collect the charges for granting diversion of forest land for non-forest purposes like mining to preserve, conserve and regeneration of lost ecological balance.

8.1 When a patch of forest is diverted for non-forestry purposes, its implications are felt at various spatial and temporal scales on account of possible loss of natural resources of the country. While developmental activities are essential for economic growth of the country, at the same time it is necessary to ensure that this development does not come at the cost of India's invaluable natural capital, particularly the forests. Therefore, a payment in the form of Net Present Value, Compensatory Afforestation Charges and other such site specific charges are required to be paid to make good the damage caused by such user agency. In the process, application for non-forestry use of forest land is made by the user agency to Ministry of Environment & Forest, Govt. of India, and final approval for such non-forestry use of such forest land is given by Ministry of Environment & Forest, Govt. of India, on payment of specified charges as mentioned above and after receiving recommendation of the concerned State Government.

8.2 **We find that Tribunal Kolkata has decided a similar issue in the case of MNH Shakti Ltd Vs Commissioner of Central Excise and Servicetax, Rourkela**, wherein it has been held as under:

"6. The question of tolerating something and receiving a compensation for such tolerance pre-supposes that:-

(a) The person had a choice to tolerate or not;
(b) The person had a choice to tolerate or not;
(c) Such tolerance was for consideration as per an agreement (written or otherwise to tolerate);
(d) The tolerance was a taxable service.

None of the above elements are present in the present case. The appellant had no choice of tolerating cancellation or not the appellant has not chosen to tolerate the cancellation. The cancellation was in pursuance of the order of the Supreme Court and not as a result of a contract to tolerate cancellation. There was no consideration for tolerating the cancellation, only compensation provided for statutorily for the investment made in the mines by the appellant.

7. Even in cases where any amount is received under a contract as compensation or liquidated or un-liquidated damages, it cannot be termed 'Consideration'. This case is not even a case of payment under a contract. Both the cancellation of the allocation of the blocks and the receipt of compensation are by operation of law. They are like the

receipt of a compensation when one's land is acquired by the Government in public interest or the payment to a Government employee of an amount equal tothe salary for unused leave at the time of his/her retirement. It is unthinkable to say that the land-owner has tolerated the acquisition of his land as per an agreement and charge service taxon the compensation. Equally unthinkable is to say that the Government employee has tolerated the non-sanction of leave during his service as per an agreement and in consideration, received the leave encashment at the time of retirement and to charge service tax on the amount received as leave encashment. These, cannot be called taxable services of tolerating a situationby any stretch of imagination. No service tax can be levied on the amounts received by the appellant as compensation. "

9. **We observe that the facts of the present appeal are similar to that of the decision cited above. Relying on the above decision, we hold that the clearance granted by Ministry of Environment, Forest and Climate Change for usage of the forest land falling under the said project for non forest purposes, cannot be considered as a 'Declared Service' as defined under Section 66E(e) of the Finance Act, 1944 and the charges of NPV paid by the Appellant cannot be considered as 'Consideration' for the said service . Accordingly, we hold that the demand of service tax along with interest, in the impugned order is not sustainable**. We observe that the Appellant has not suppressed any information from the department. In fact the entire NPV was paid to the CAMPA Fund as per law. Hence, extended period cannot be invoked to demand Service tax. As there is no suppression established, penalty under Section 78 of the Finance Act, 1994 not imposable in this case. Accordingly we set aside the impugned order."

(emphasis supplied)

11. In view of the aforesaid decision of the Tribunal in **Mahanadi Coalfields Ltd.**, the order dated 15.12.2022 passed by the Principal Commissioner cannot be sustained and is set aside. The appeal is, accordingly, allowed.

(Dictated and pronounced in open court)

(JUSTICE DILIP GUPTA)
PRESIDENT

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

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