

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

PRINCIPAL BENCH – COURT NO. IV

SERVICE TAX APPEAL No. 55131 OF 2023 [DB]

(Arising out of Order in Appeal No. BHO-EXCUS-001-APP-216-22-23 dated 22.02.2023 passed by Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Bhopal)

M/s. Shrawan Kumar Pathak
01, Chanakyapuri Colony,
Semariya Chowk,
Satna (M.P.)

...Appellant

Versus

**Commissioner of Central Excise &
Central GST, Jabalpur**

....Respondent

APPEARANCE:

Mr. Bharat Raichandani & Ms. Chaitnya Tripathi, Advocates for the appellant
Mr. S.K. Meena, Authorized Representative for the Respondent

Coram:

**HON'BLE DR.RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MRS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)**

DATE OF HEARING/DECISION: 22.03.2024

FINAL ORDER NO.55580/2024

DR. RACHNA GUPTA

The appellant herein is engaged in activity of extraction of mineral from mines and are paying royalty to the state government. Department got an intelligence that the appellants are not registered under service tax despite that they are liable to pay service tax under reverse charge mechanism on royalty charges paid to the state government. Investigation was conducted based on the said intelligence, and it was found that Service tax amounting to Rs.1,90,42,457/- has not been paid by the appellant during the period 01.04.2016 to 30.06.2017, and by not paying the same, the

appellant has actually suppressed the fact of their liability towards the government Exchequer. With these observations, a Show Cause Notice number 144134/2021 dated 25th March 2021 was issued involving extended period of limitation and was served upon the appellant proposing the recovery of the aforesaid amount (1,90,42,457/-) of service tax along with the interest and proportionate appropriate penalties. The proposal was initially confirmed vide Order-in-Original number 11 / 2021-22 dated 17-11-2021. Appeal filed against the said order has been rejected vide Order-in-Appeal number 26/2022-23 dated 22.02.2023. Still being aggrieved, the appellant is before this Tribunal.

2. We have heard Mr. Bharat Raichandani & Ms. Chaitnya Tripathi, Advocates for the appellant and Mr. S.K. Meena, Authorized Representative for the Respondent.

3. Ld. Counsel for the appellant has mentioned that the statutory definitions of activity, consideration, service have wrongly been interpreted by the adjudicating authorities below. The decision of Hon'ble Supreme Court in the case of **All India Federation of Tax Practitioners Association vs. Union of India reported as 2007 (7) STR 625 (Supreme Court)** has been impressed upon wherein it has been held that service tax being a contract based levy has to be levied on consideration paid by the consumer for such service and there has to be an apparent service provider- service receiver relationship. It is further impressed upon that circular 192/02/2016 dated 13.04.2016 has wrongly been applied. Otherwise also the

circulars are not binding on the Courts as well as on the quasi-judicial authorities which includes the Tribunal. Decision of Hon'ble Supreme Court in the case of CCE Bhopal versus **Minwool Rock Fibres Limited reported as 2012 (278) ELT 581 (Supreme Court)** has been relied upon. Finally, it is mentioned that the issue involved in the present case has been decided by this Tribunal in the case of **M/s. Madhya Pradesh State Mining Corporation Limited versus Principal Commissioner, CGST and Central Excise, Bhopal dated 09.05.2023 in Service Tax Appeal No. 54002 of 2018.** The order under challenge is prayed to be set aside in the light of the said decision. Appeal is, accordingly, prayed to be allowed.

4. Ld. Departmental Representative on the other hand has reiterated the findings of the order under challenge specifically in Para-15 and 16 of the impugned order. Decision of **M/s. Madhya Pradesh State Mining Corporation, (supra)** is however conceded. Finally, impressing upon no infirmity in the order, appeal is prayed to be dismissed.

5. Having heard the rival contentions and perusing the record, we observe and hold as follows:

The appellant in the present case is extracting minerals from mines on the land leased by the state government to the appellant and for this they had paid royalty, DMF and NMET under the provisions of Mines and Minerals, (Development and Regulation), Act 1957 (section 9 thereof). The appellants were admittedly not registered under

service tax. It is the stand of appellant that they had the bonafide belief of no service tax liability on the amount paid by them to the government. Department on the other hand has held that the contribution made by the appellant towards royalty, DMF and NMET being a payment towards the assignment of right by the government to carry out mining activity, the same qualifies to be called as "consideration" under the Finance Act 1944. Hence, the amount is taxable and the appellant is liable to pay the same under reverse charge mechanism.

6. In the light of these facts, the issue to be adjudicated is as to whether the amount paid by the appellants is a consideration for receiving any service from the government, when the land leased by the government is used by the appellant to extract minerals. The issue has recently been settled by this Tribunal in the case of **M/s. Madhya Pradesh State Mining Corporation (supra)** wherein the demand pertaining to the alleged short/ non-payment of Royalty, DMP & NMET by the assessee to the state government on reverse charge basis against allegedly receiving service concerning grant of mining rights is held unsustainable. It has been held in the said case as follows:-

"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."

7. In the present case also the period of demand is from 1st April 2016 to 30th June 2017. This Tribunal in the **Madhya Pradesh** case itself has also said as follows:-

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:

(a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere-

(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;

(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 (1) to (iii) 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."

8. The said decision of this tribunal has been affirmed by the Hon'ble Supreme Court vide its decision dated 22-8-2023 in Civil Appeal Number 5312/2023. We also observe that earlier the High Court of Rajasthan in the case of **Udaipur Chambers of Commerce and Industry versus Union of India reported as 2018(8) GSTL 170 (Rajasthan)** had held appellants liable to pay service tax on royalty, DMF and NMET charges paid by them to the state government under reverse charge mechanism even for the period beyond April 2016. However, when this decision was challenged before Supreme Court by way of special leave to appeal No.3150-3155 of 2018, the Hon'ble Supreme Court vide order dated 05.02.2018 has granted a stay against the said order directing that until further orders payment of service tax for grant of mining lease/royalty by the petitioners shall remain stayed. The said decision has been followed by the High Court of Gujarat in the matter of **Gujmin Industry Association versus Union of India reported as 2019 (29) GSTL 11** and High Court of Goa in the case of **Goa Mining Association and Anr. versus Union of India and others in Writ Petition No. 1076 of 2016**. The circular No. 192 /02 / 2016 dated 13-4-2016 has already been held contrary to the position of law laid down by the superior Courts, as it was held by Hon'ble Apex Court in the case of **CCE v. Ratan Melting and Wire Industries reported as 2008 (231) ELT 22 (Supreme Court)**.

9. From the entire above discussion, it stands clear that the issue is no more *res integra*. Accordingly, we hold that the demand under

reverse charge mechanism on the amount of royalty, royalty, DMF and NMET charges paid by them to the state government has been confirmed in total ignorance of the afore discussed judicial precedences thereby violating the judicial protocol. Order under challenge is therefore, set aside. Consequent thereto the appeal is allowed.

[Pronounced in the open Court]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Anita