CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI

PRINCIPAL BENCH, COURT NO. 1

SERVICE TAX APPEAL NO. 50212 OF 2018

[Arising out of Order in Original No. DLI-SVTAX-003-COM-48-16-17 dated 26.12.2016 passed by the Commissioner of Service Tax, Delhi-III]

GLOBAL COAL & MINING PRIVATE LIMITED **Appellant**

2, 1st Floor, Sector-8
Market, R K Puram,
New Delhi-110022

Vs.

COMMISSIONER OF CGST & CENTRAL EXCISE-DELHI 3 **Respondent**

Office of Commissioner of CGST,
Customs and Central Excise
Block 11, 7th Floor, CGO Complex
New Delhi-110003

WITH

SERVICE TAX APPEAL NO. 50092 OF 2019

[Arising out of Order in Original No. 18/PP/COMMR/CGST/AUDIT-II/2018-19 dated 11.10.2018 passed by the Commissioner of Central Goods and Service Tax, New Delhi]

GLOBAL COAL & MINING PRIVATE LIMITED **Appellant**

154, Vasant Enclave,
Rao Tula Ram Marg, New Delhi-110057

Vs.

COMMISSIONER OF CGST & CENTRAL EXCISE-DELHI SOUTH **Respondent**

Office of Commissioner of CGST,
Customs and Central Excise
2nd and 3rd Floor, EIL Annexe Building
Plot No. 2-B, Bhikaji Cama Place, Delhi
South, New Delhi-110066

Appearance:

Shri B.L. Narasimhan, Ms. Shagun Arora and Shri Kunal Agarwal, Advocates for the Appellant

Shri Manoj Kumar, Authorised Representative for the Respondent

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

FINAL ORDER NO'S. 59419-59420 /2024

Date of Hearing : 04/10/2024
Date of Decision : 07/11/2024

P.V. SUBBA RAO:

1. M/ s Global Coal & Mining Private Limited[1] filed these two appeals to assail the orders-in-original[2] dated 26.12.2016 and 11.10.2018 passed by the Commissioner. **Service Tax Appeal No. 50212 of 2018** assails the impugned order dated 26.12.2016 while **Service Tax Appeal No. 50092 of 2019** assails the impugned order dated 11.10.2018. Under these orders demands of service tax were confirmed along with interest and penalties were imposed on the appellant under sections 76, 77 and 78 of the Finance Act, 1994.[3]

2. We have heard Shri B. L. Narasimhan, learned counsel for the appellant assisted by Ms. Shagun Arora and Shri Kunal Agarwal and Shri Manoj Kumar learned authorised representative appearing for the revenue and perused the records.

3. The appellant is a private limited company engaged in beneficiation of coal which is also known as washing of coal. Coal is used in power generation and the power plants need the coal to be washed before using and the appellant does the washing. In the process, some amount of coal gets rejected which is known as "reject coal". Therefore, of the total coal which is given to the appellant, some portion goes in to rejects and the rest is washed and returned to the power generation corporation. Washing removes the ash and dust etc.,

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1 the appellant
2 the impugned orders
3 the Finance Act

and increases the calorific value of the coal. The undisputed position is that this process is a service rendered by the appellant to the power generating companies and it is exigible to service tax. The appellant is registered with the service tax department and paid service tax.

4. The appellant had entered into agreements with Andhra Pradesh Power Generation Corporation Ltd. (APGENCO), Zuari Cements Ltd. etc., for providing the service of coal washing. As per the agreements, the appellant is entitled to retain the rejected coal and dispose it of in an environmentally friendly manner. Learned counsel for the appellant submits that they mix the rejected coal with certain other coal and sell it in the market. Though rejects are not suitable for power plants they have a market value. The value of the rejects which the appellants is entitled to retain is also mentioned in its agreements with APGENCO, Zuari, etc. and this amount is deducted from the total service charges payable to the appellant. Thus, the appellant is entitled to retain the rejects to which a cost is attributed. For instance, if it is agreed to pay Rs. 100/- as service charges, the appellant receives only, say, Rs. 97/- for its services after deducting Rs. 3/- towards the value of rejects. According to the counsel to the appellant, it paid service tax on the entire amount of service charges received by it either in cash or in kind and in the form of coal rejects. In the above example, the appellant paid service tax on the entire Rs. 100/- although only Rs. 97/- is payable in cash and Rs. 3/- is deducted in lieu of the coal rejects which the appellant could retain.

5. The appellant received its first show cause notice dated 30.03.2012 covering the period 2006-11 proposing service tax demand of Rs. 20,44,02,883/- alleging that the appellant had failed to include the amounts received in the form of sale value of coal rejects in the value of consideration for service of beneficiation of coal and thus had not paid service tax on it. It is also alleged that the appellant had wilfully suppressed these facts from the department with an intent to evade payment of tax and had not declared the same in the ST-3 returns. The second show cause notice covering the period 2011-12 was issued on 20.12.2012 while the third show cause notice covering the period 2012-13 was issued on 28.04.2012. The fourth show cause notice covering the period 2013-14 was issued on 15.05.2015. All four show cause notices are on the same premise that the appellant was required to pay service tax on the amounts which it had received from sale of coal rejects in the value of consideration for service of beneficiation of coal.

6. Learned counsel for the appellant submits that all four show cause notices proceed on the wrong premise that the appellant had not paid service tax on the entire amount of service charges which it had received and paid service tax only on the service charges which it had received in cash. He took us through several invoices to show that the appellant had paid service tax on the entire amount of service charges which it received for beneficiation of coal. For instance, invoice dated 31.03.2009 issued to M/s Zuari Cement states that the rate of beneficiation charges was Rs. 120/- per MT of raw coal and the total raw coal as Rs. 49,99,764/- MT. Therefore, the total beneficiation

charges were Rs. 5,99,71,680/- and the appellant paid service tax and education cess on this entire amount.

7. Invoice dated 31.03.2012 raised by the appellant on Superintendent Engineer shows the beneficiation charges as Rs. 178.23 per MT and the appellant paid the total amount of service tax on this amount.

8. Of the total amount payable by its client towards the beneficiation charges and service tax, an amount at the rate of Rs. 22.06 per MT was deducted towards value of coal rejects. A perusal of these invoices also shows that the appellant had paid service tax on the entire amount of beneficiation charges which it had received and had not deducted any amount which it had not received in cash in lieu of the coal rejects which it was allowed to retain. Another tax invoice dated 31.03.2012 issued in the name of executive engineer Rajeev Gandhi Thermal Power Plant, Hissar, Haryana, also shows that the service tax was paid on the entire amount of beneficiation charges which the appellant had received either in cash or in kind. The deduction from the service charges towards the reject coals which the appellant had retained is only made in the bill towards the end and the service tax was not affected by it. Learned counsel for the appellant also took us through several other invoices each of which confirms that the service tax was paid on the entire amount of beneficiation charges and not on the amount calculated after deducting the value of the coal rejects.

9. In view of the above, learned counsel for the appellant submits that the demands were confirmed by the impugned orders based on wrong assumptions and, therefore, they need to be set aside.

10. Consequently, the penalty also needs to be set aside.

11. Learned authorised representative appearing for the department supports the impugned order. He relies on the decision of this Tribunal in the case of **Bhatia Coal Washeries Limited** vs. **Commissioner** [4]

12. We have considered the submissions on both sides and perused the records.

13. The undisputed factual position is that the appellant was engaged in beneficiation of coal and was getting paid service charges for this service and had paid service tax on the charges. The only dispute is whether the appellant had paid service tax on the entire amount of service charges which it received or it had not paid service tax on the value of rejects which it had retained.

14. The agreements entered into between the appellant and its clients clearly provide for the appellant to retain the coal rejects. These agreements also attribute a value to the coal rejects in terms of rupees per MT of washed coal. This amount was deducted from the service charges paid to the appellant by its clients. In other words, the appellant received some of the consideration in cash and some in the form of coal rejects. The value attributed to the coal rejects is also

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indicated in the agreements. Therefore, there is no dispute about this value.

15. As seen from various invoices the appellant had discharged service tax on the entire amount of service charges paid to it without deducting any amount towards the value of the rejects.

16. The question which arises is what is the basis of the demand in the show cause notice. Paragraph 3.10 and 3.11 of the first SCN dated 30.03.2012 clarifies this position and is reproduced below:

> "3.10 Whereas it appears that the assessee has paid service tax on the part of the value of services which they have received from their client in the monetary form, but the assesse has failed to pay the Service Tax on the sale value of rejected coal which was realized by them on selling the same.
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> 3.11 The assessee vide their letter dated 06.01.2012 (RUD VI Supra) submitted the ledger account of the purchase and sale of coal for the period 2006-07 to 2010-11 and Balance Sheet fro the year 2008-09. As per the Balance Sheet and Ledger account the following consideration was received by the assessee during the period 2006-07 to 2010-11."

	2006-07	2007-08	2008-09	2009-10	2010-11
Hyderabad	2,45,13,585/-	4,68,97,940/-	3,83,75,940	2,14,16,763/-	NIL
Talcher Orisa	1,85,87,977/-	5,16,60,311/-	14,57,37,551/-	18,02,69,404/-	30,89,90,710/-
Belphar	57,14,359	NIL	NIL	NIL	NIL
Jharsugua	NIL	2,25,26,798/-	5,20,91,247/-	32,70,93,811/-	66,84,42,520/-
Total	4,88,15,921/-	12,10,85,049/-	23,62,04,738/-	52,87,79,978/-	97,74,33,230/-

17. What is evident from the above is that the department demanded service tax on the price at which the appellant had sold the coal rejects. This is not sustainable because service tax is not a tax on the sale of goods. If the appellant had received some coal rejects, for instance, and an amount of Rs. 100 is deducted from the service charges by the client towards these coal rejects, service tax has to be paid without this

deduction of Rs. 100/- from service charges. The appellant did so. Now, if the appellant subsequently sells this coal rejects either as such or after mixing it with some other coal and sells them for Rs. 150, this amount is the value of coal the rejects sold by the appellant on which the appellant may be required to pay VAT/ sales tax. According to the appellant it had paid appropriate VAT to the State Government. The demand of service tax on the sale price of rejects is beyond the scope of the Finance Act, 1994 because service tax can be levied only on the consideration received for the services and not on a goods sold by the appellant. Service Tax has already been discharged on the entire value of consideration this as is evident from the invoices.

18. We have also gone through the decision of the **Bhatia Coal Washeries** relied on by the Revenue. In that case, the appellant had paid service tax on the total taxable value of beneficiation charges without deducting the cost of the coal rejects on services rendered to West Bengal Power Development Corporation Limited and Durga Puja Power Projects Limited but it had paid service tax on the beneficiation charges after deducting the cost of the coal rejects retained by it on services provided to Maharashtra State Power General Company Limited (Mahagenco). The order of this Tribunal in **Bhatia Coal Washeries** is that the assessee has to pay service tax on the entire amount of beneficiation charges without deducting any amount towards coal rejects even in case of the services rendered to Mahagenco coal.

19. In this case, the appellant already paid service tax on the entire amount of beneficiation charges without deducting the value of the coal

rejects. Therefore, the entire amount of service tax having been paid, the demand of service tax again on the value of coal rejects sold by the appellant in the four show cause notices confirmed in the two impugned orders is totally misconceived. No service tax can be levied on the sale of goods as proposed in the show cause notice on them as service charges for coal beneficiation.

20. In view of above, both appeals are allowed and the impugned orders are set aside with consequential relief, to the appellants if any.

[Order pronounced on **07.11.2024**]

(JUSTICE DILIP GUPTA)
PRESIDENT

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

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