CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.
PRINCIPAL BENCH - COURT NO.III

Service Tax Appeal No. 51688 of 2017

[Arising out of Order-in-Original No.43/COMMR/ST/JBP/2017 dated 26.07.2017 passed by the Commissioner, Central Excise & Service Tax, Jabalpur (Madhya Pradesh)]

Anish Ahmed Khan, **Appellant**
Opp. Khalsa Petrol Pump,
Main Road-Parasia,
Distt.-Chhindwara (M.P.)-480 441.

VERSUS

Commissioner of Central GST, Customs and Central Excise, **Respondent**
C.R.Building, Mission Chowk,
Napier Town, Jabalpur,
Madhya Pradesh-482 001.

APPEARANCE:

Shri Ankur Upadhyay, Advocate for the appellant.
Ms. Jaya Kumari, Authorised Representative for the respondent.

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO.59729/2024

DATE OF HEARING:12.11.2024
DATE OF DECISION:27.11.2024

BINU TAMTA:

1. Challenge in the present appeal is to the order-in-original no.43/COMMR/ST/JBP/2017 dated 26.07.2017, whereby the demand of service tax was confirmed under "Cargo Handling Service" along with interest and penalty.

2. The appellant is engaged in providing services of "Goods Transport Agency" to M/s. Western Coalfields Ltd.[1] within the mining area. Show cause notice was issued as the work order awarded to the appellant by WCL is for the activity of hiring of pay loader & tippers for loading of coal from the bunkers of Naheriya UGM & its transportation after weighment at Naheriya Weighbridge to EDC siding Weighbridge and unloading thereby falling under the category of "Cargo handling Service" as per Section 65(23) of the Finance Act, 1994[2] and, therefore, leviable to service tax. On adjudication vide order-in-original dated 15.12.2010, the demand of service tax was confirmed. The appeal filed by the appellant before the CESTAT was allowed by way of remand vide Final Order dated 04.11.2016. The Tribunal having examined the terms and conditions of the contract found that the same is for transportation of the coal within the mining area itself and, therefore, the issue is covered by the decision of the Tribunal in the case of **Sainik Mining & Allied Services Ltd. Vs. Commissioner of Central Excise, Customs & Service Tax-BBSR [3].** Taking note of the submissions of the appellant, the Tribunal remanded the matter for verification of work orders. On remand, the Adjudicating Authority once again confirmed the

[1] WCL
[2] The Act
[3] 2008(9) SR 531 (Tri.-Kolkata)

demand of service tax by the impugned order. Hence, the present appeal has been filed before this Tribunal.

3. Heard Shri Ankur Upadhyay, learned counsel for the appellant and Ms. Jaya Kumari, learned Authorised Representative for the respondent and perused the records.

4. In nutshell, the submissions of the learned counsel for the appellant is that they are engaged in providing service of transportation of coal, where the essential character of service is transportation and loading and unloading is only incidental to transportation. The service, therefore, merits classification under "Goods Transport Agency Service". According to him, the coal moved from one place to another within the mines cannot be termed as 'cargo'. Learned counsel further submitted that WCL being the receiver of the service was registered under "GTA" and was paying service tax on the impugned services received by them from the appellant.

5. The issue whether the services provided by the appellant to WCL are taxable under the category of "Cargo Handling Service"

or "Transportation of Goods by road service" is no longer-*res integra* and has been settled in catena of decisions.

6. Ms. Jaya Kumar, learned Authorised Representative for the Revenue has very fairly conceded that the issue is covered by the various decisions of this Tribunal and also placed on record a recent decision by this Tribunal in the case of **Mirza Hasam Vs. Commissioner (Appeals), Customs, Central Excise & Service Tax, Raipur**[4], where the Tribunal relying on the decision in the case of **Singh Transporters Vs. Commissioner**[5] concluded that the activity would appropriately be classified under the head "transportation of goods by road service". We also take note of the fact that the Tribunal while remanding the matter vide order dated 14.11.2016 had also noticed that the issue is covered by the earlier decision of the Tribunal in the case of **Sainik Mining & Allied Services Ltd. (supra).** The relevant para of the said decision is quoted below:-

> "**8.** We find that the activity undertaken by both the appellants for mechanical transfer of coal from the coal face to tippers and subsequent transportation of the coal within the mining area, does not come under the purview of cargo handing service. The dominant activities undertaken by the appellants under the contract in question are primarily the movement of coal within mining area and transfer of coal from the coal face to the

[4] 2022 (67) GSTL 469 (Tri.-Del)
[5] 2012(27)STR 488 (Tribunal)

> tippers, if at all, includes loading and unloading which are merely incidental. Cargo in commercial parlance has a definite connotation which is carried as freight in a ship, plane, rail or truck and the activities undertaken by the appellants in terms of the contracts on behalf of M/s. MCL to move coal within mining area do not fall in the category of cargo handling service. Moreover, the activities undertaken are principally the transportation of coal within mining area and hence, the gross amounts received for the same cannot be taxed under the category of cargo handling service. We have, therefore, no hesitation in our mind to hold that the definition of cargo handling service under the Finance Act, 1994, does not include the kind of activities undertaken by the appellants and hence the same are not chargeable to service tax. We also find that there was no suppression or mis-statement by the appellants regarding the nature of activities undertaken by the appellants and hence the imposition of penalty on them is not at all justified. Accordingly, we set aside the impugned order and allow both the appeals with consequential benefit to the appellants."

7. We agree with the learned counsel for the appellant that the primary nature of work awarded to the appellant was transportation as is evident from the valuation of the work, which is attributable mainly to the transportation activities and the very limited portion is towards mechanical loading of coal. The work orders of WCL shows the combined rate for loading and transportation of coal as well as work orders for only loading coal in the wagons. It has been pointed out that the element of loading in combined contract is merely 5% and the remaining 95% of valuation is attributable towards transportation activities. Therefore, logically the primary and the dominant nature of work is transportation within the mining area and would, therefore, not fall under "Cargo Handing Service"

8. In the circumstances, we are of the view that the Commissioner was not justified in holding that the appellant had undertaken the activity of "Cargo Handling Service". In fact, the Commissioner while passing the impugned order had not adjudicated the issue within the four corners of the remand order passed by the Tribunal. In view of the issue having been settled as referred above, the impugned order is unsustainable and is hereby set aside. The appeal is accordingly allowed.

[order pronounced on 27th November, 2024]

(Binu Tamta)
Member (Judicial)

(Rajeev Tandon)
Member (Technical)

Ckp.