

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 3**

Service Tax Appeal No. 55087 of 2023

[Arising out of the Order-in-Appeal No. 66-72 (AK) ST/JDR/2023 dated 22.03.2023 passed by the Commissioner (Appeals), CGST & Central Excise, Jodhpur]

M/s R.D. Clay Mines Private Limited

Appellant

100, Industrial Area, Rani Bazar, Bikaner-334001

Vs.

**Commissioner (Appeals) Of Central Excise &
CGST-Jodhpur**

Respondent

G-105, New Industrial Area,
Opp. Diesel Shed, Basni, Jodhpur

Appearance:

Present for the Appellant : Ms. Shradha Sareen, Advocate

Present for the Respondent: Shri Rajeev Kapoor and Shri Shashank Yadav,
Authorised Representatives

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing/Decision: **11/12/2025**

Final Order No. 51908/2025

BINU TAMTA:

By the impugned order¹, the demand along with interest and penalty has been confirmed against the appellant. The allegations against the appellant is that he has not paid the service tax under the Reverse Charge Mechanism on Royalty paid to the Government. The plea taken by the appellant is that they had entered into the Mining Lease Agreement prior to 01.04.2016 and therefore, they are entitled to

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the benefit as provided in the provisions of section 66D of the Finance Act, 1994. However, we find that the Mining Lease Agreements were neither placed before the adjudicating authority nor before the first appellate authority and in that view the matter needs to be remanded back to consider the lease agreements and decide the issue in conformity with the decisions as referred to by Ms. Shradha Sareen, learned counsel for the appellant, the details whereof are as under:

- "a) M/s Tirupati Build-Con Private Limited V/s Commissioner, Central Goods Service Tax & Central Excise, Customs, Jabalpur (Service Tax Appeal No. 51052 Of 2020)
- b) Principal Commissioner, CGST & Central Excise V/s S.R. Traders (2023) 10 Centax 253 (Tri.-Del) [24-04-2023]
- c) M/s Shrawan Kumar Pathak Vs. Commissioner of Central Excise & Central GST, Jabalpur, Service Tax Appeal No. 55131 of 2023 d)
- d) Madhya Pradesh State Mining, Corporation Ltd. Versus Principal Commissioner of CGST & Central Excise, Bhopal (2023) 10 Centax 253 (Tri.-Del) [24-04-2023]
- e) CESC Ltd. V/s The Commissioner of Central Tax, CGST & Central Excise, Kolkata (ServiceTax Appeal No. 75260 of 2023)
- f) M/s. National Aluminium Company Limited Versus Commissioner of CGST & CX, Bhubaneswar 2024(5) TMI 621 - CESTAT Kolkata."

2. The Principal Bench in the Final Order No.50660 of 2023 dated 09.05.2023, titled as **The Principal Commissioner, CGST & Central Excise, Bhopal vs. M/s. S. R. Traders**, relied on the decision of the Tribunal in **M.P. State Mining**, which we may refer herein 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.

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.

15. The charging provision prescribing levy of tax is section 66B of the Finance Act and it is as follows:

"66B. There shall be levied a tax (hereinafter referred to as the service tax at the rate of fourteen percent on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the 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:-

(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 post, life insurance 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 (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 came into effect. 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."

3. The impugned order is, therefore, set aside and the matter is remanded to the adjudicating authority to decide in terms of the directions made above and strictly following the law laid down by the Tribunal. The appeal is allowed by way of remand.

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Archana