IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Excise Appeal No. 839 of 2011

[Arising out of Order-in-Original No. Commissioner /RPR/64/2010 dated 27.12.2010 passed by the Commissioner of Customs & Central Excise , Raipur]

Commissioner of Central Excise Raipur **Appellant**

Vs.

M/s. Jindal Steel & Power Ltd. **Respondent**

Appearance:
Shri Yogesh Agarwal, AR for the Appellants
Shri H V Girnikar, Advocate for the Respondent

CORAM:
Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Date of Hearing: 23.12.2016
Date of Decision: 12.01.2017

FINAL ORDER NO._50304_/2017

Per: V. Padmanabhan:

The present appeal has been filed by the Revenue against the order in original dated 27.12.2010 passed by Commissioner of Central Excise, Raipur. The dispute pertains to the cenvat credit availed by the respondent-assessee on certain input services described as 'site formation services; for the period July, 2005 to May, 2007 during which the respondent outsourced, mining activities from their captive coalmines to various private parties. The service tax paid by these contractors was availed as Cenvat credit by the respondents. The Accountant General (Audit), Raipur conducted audit of the tax accounts of the respondent and made an audit objection that the credit to the extent of Rs.2,60,01,656/- availed by the respondent was improper since the activities covered in these services are in the nature of mining of coal or minerals which has been made taxable only with effect from 01.06.07. Department issued show cause notice seeking to disallow the service tax credit on such inputs services for the period prior to 01.06.07 when mining service was not taxable. In the order in original, learned Commissioner concluded that the demand is not sustainable and accordingly, dropped the proceedings. Against the impugned order the present appeal has been filed on a very limited point. The CBEC vide Circular No. 385/18/98-CX dated 30.3.1998 has advised the field formations that whenever any audit objection is made by the AG (Audit), to safeguard revenue, a show cause notice is required to be issued immediately. The circular further issued instructions that such show cause notices should be kept pending in the call book till such time the objections are settled, if the Revenue is not in agreement with such objections. The only ground for filing the present appeal is that the learned Commissioner has passed the impugned order disregarding these instructions.

2. Heard Shri Yogesh Agarwal, learned DR as well as Shri H V Girnikar, learned Counsel for the respondent. The learned DR supported the appeal and prayed for setting aside the impugned order. Opposing this view, the learned Counsel submitted that a circular issued by the Board cannot interfere with or takeaway any quasi judicial finding of the adjudicating authority. He submitted that the impugned order is legal and proper.

3. Learned Commissioner has dropped the demand by taking a view that prior to mining service being included as a separate service for payment of Service Tax, the activities carried out by the contractors, such as excavation, drilling and removal of the overburdens, coal cutting etc. are covered under the category of site formation and clearance services. Service tax has been paid by the contractors under the category of site formation and clearance services. Since there is no dispute that such services have been used, he has concluded that service tax paid is available as cenvat credit.

4. We find ourselves in agreement with the learned Commissioner in his views. It is settled law that CBEC Circular

cannot take away the power of quasi judicial authorities. The only ground cited sought by Revenue to challenge the impugned order is that it has been passed disregarding the Boards' instruction. We are of the view that impugned order cannot be faulted on the above ground.

5. In view of the above, we uphold the impugned order and dismiss the Revenue's appeal.

(pronounced in the open Court on 12.1.17).

(Justice (Dr.) Satish Chandra)
President

(V. Padmanabhan)
Member (Technical)

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