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

Service Tax Appeal No. ST/56559/2013-[DB]
[Arising out of Order-In-Appeal No. 213(RDN)/ST/JPR-II/2012 dated 27.12.2012 passed by Commissioner(Appeals) Jaipur]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. V. Padmanabhan, Member (Technical)

M/s. S. R.Chauhan ...Appellant

Vs.

C.C.E. Jaipur-II …Respondent

Appearance:
Ms. Amita Sharma, (Advocate) for the Appellant
Mr. Ranjan Khanna (DR) for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Date of Hearing/ Decision.16.05.2017

Final Order No. 53582 /2017

Per S. K. Mohanty:

This appeal is directed against the impugned order dated 27.12.2012 passed by the Commissioner of Central Excise (Appeals) Jaipur-II.

2. Brief facts of the case are that during the relevant period, the appellant undertook mining activities of raising of lime stone and overburdened removal in mines for M/s J. K. White Cement Works. The activities undertaken by the appellant was considered by the department as categorized as taxable service under 'Site Formation and clearance, excavation and earth removing and demolition services'. Accordingly, the service tax demand of Rs. 15,75,965/- was confirmed in the adjudication order. On appeal,

the Ld. Commissioner (Appeals) vide the impugned order has upheld the adjudged demand.

3. The Ld. Advocate appearing for the appellant submits that pursuant to the work order issued by M/s JK White Cement Works, the appellant undertook the activities of raising of lime stone in mines, survey and exploration of minerals, overburdened removal of mines and manpower supply. She further submits that since the appellant is a mining contractor and was engaged in providing the mining activities, the services provided during the disputed period between July 2005 to March 2007 will not liable to service tax inasmuch as the mining service was brought into the taxing net only w.e.f. 01.06.2007. To support such stand, the Ld. Advocate has relied on the decision of this Tribunal in the case of Kanak Khaniz Udyog (Final Order No. 50698/2017).

4. On the other hand, the Ld. DR appearing for the Revenue reiterates the findings recorded in the impugned order.

5. Heard both the sides and perused the records.

6. We find that in an identical set of facts, this Tribunal in the case of Kanak Khaniz Udyog (supra) has held that services relating to mining provided prior to 01.06.2007 shall not be liable to service tax under the category of mineral service defined under Section 65(105)(zzzy) of the Finance Act, 1994. The relevant paragraphs in the said decision are extracted herein below.

> "6. We note the proceedings against the appellant were in respect of services rendered, the scope of which has already mentioned. A plain reading of the services will indicate that these are relating to mining as defined under Section 65(105)(zzzy). Further, we

also note that different categories of services were mentioned by the lower authorities to confirm the tax liability against the appellant. No segregation as to the quantum of tax liability under each categories of taxable service has been given. We also note that the scope of service rendered by the appellant has been applied to tax under various tax entries. The combined scope of services under a single contract was treated for tax liability under different headings without due legal justification. We note that the Tribunal in Triveni Earth Movers vs. CCE, Salem – 2009 (15) STR 393 (Tri. Chen.) observed that movement of limestone and rejects in the mining is covered by the entry mining of mineral oil gas and cannot be taxed under 'cargo handling service' prior to 01.06.2007. It was also recorded that when an activity was brought under the service tax net w.e.f. a particular date the same activity cannot be subjected to tax under a pre-existing tax entry, unless the scope of pre-existing categories of services is simultaneously modified. In CCE, Hyderabad vs. Vijay Leading Company – 2011 (22) STR 553 (Tri. Bang.) it was held that activity of site formation etc. is incidental to mining of ore undertaken and the same cannot be taxed prior to 01.06.2007. Reference can also be made to the decision of the Tribunal vide final order No. 50662 /2014 dated 21.02.2014 in the case of National Construction Company v. CCE, Jaipur wherein the Tribunal held that when the activity of the appellant is accepted as mining service by the department w.e.f. 01.06.2007, for the period prior to that date the same activity cannot be classified as site formation and clearance, excavation and earth moving or cargo handling service. We are informed by the ld. Counsel for the appellant that after the introduction of tax entry for 'mining service' the appellant were registered with the department and were discharging service tax applicable.

7. Having examined the scope of work undertaken by the appellant as mentioned in the show cause notice, we find that the same is covered under the tax entry under Section 65(105)(zzzy) of the Finance Act, 1994. The clarification dated 28.02.2007 issued by CBEC states that mining service covers cite formation and clearance, excavation and earth moving and various outsourced activities provided for mining.

8. In view of the factual and legal position as discussed above and referring to various decided cases, we find that the impugned order is not legally sustainable. The same is set-aside. The appeal is allowed."

7. In view of above settled position of law, we do not find any merits in the impugned order. Accordingly, after setting aside the same, we allow the appeal in favour of the appellant.

(Dictated and pronounced in the open court)

(V. Padmanabhan) Member(Technical)	(S. K. Mohanty) Member (Judicial)

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