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

Service Tax Appeal No. ST/58109/2013-[DB]
[Arising out of Order-In-Appeal No. Commissioner/RPR/ST/02/2013 dated 31.01.2013 passed by Commr. (Raipur)]
Service Tax Appeal No. ST/58289/2013-[DB]
[Arising out of Order-In-Appeal No. Commissioner/RPR/CEX/35/2013 dated 28.02.2013 passed by Commr. (Raipur)]
Service Tax Appeal No. ST/58678/2013-[DB]
[Arising out of Order-In-Appeal No. Commissioner/RPR/ST/18/2013 dated 31.01.2013 passed by Commr. (Raipur)]
Service Tax Appeal No. ST/59010-59011/2013-[DB]
[Arising out of Order-In-Appeal No. Commissioner/RPR/ST/15/2013 dated 31.01.2013 passed by Commr. (Raipur)]

M/s. Shivam Coal Carriers Pvt. Ltd. ...Appellant
Sumati Transport Pvt. Ltd.
Gevra Coal Transport Pvt. Ltd.
Nishant Coal Carriers Pvt. Ltd.
Sawhney Coal Transport Pvt. Ltd.

Vs.

C.C.E. & S.T. Raipur …Respondent

Appearance:
Ms. Vibha Narang (Advocate) for the Appellant
Mr. Sanjay Jain, DR for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon’ble Mr. Ashok K. Arya, Member (Technical)

Date of Hearing:11.07.2017
Date of Decision:17.07.2017

Final Order No. 55135-55139 /2017

Per S.K. Mohanty:

The issue involved in all these appeals are identical. Accordingly, the same are taken up for hearing together and a common order is being passed.

2. Brief facts of the case are that the appellants are engaged in rendering services of loading and transportation / movement of coal in the mining area of M/s South Eastern Coal Fields Ltd. (SECL) and received loading and transporting charges for providing such service. For providing the services to M/s SECL, the appellants have entered into separate agreements, for loading of coal from coal face (i.e. the area where coal is formed in its natural stage) into tipper/ trucks and the other is for movement of the coal from the coal face to railway siding/ dumps/ stockyard etc., within the mining area. During the disputed period, the appellants had neither collected nor paid the service tax on the transportation charges received from M/s SECL, for the reason that the said service receiver was liable to discharge the service tax as recipient of service under reverse charge mechanism. For non-payment of service tax by the appellants, the department initiated proceedings on the ground that the movement of coal within the mines from pitheads to the dispatch point i.e. railway siding through trucks is covered under the taxable category of 'mining services'. The show cause notices issued by the department were adjudicated vide different order-in-originals, wherein the proposed demands made therein were confirmed against the appellants.

3. The Ld. Advocate appearing for the appellants submitted that for the activities undertaken by the appellants within the mining area of M/s SECL, the service tax liability was discharges by such recipient under the taxable category of 'transport of goods by road services' under reverse charge mechanism. Thus, she submitted that on discharge of the service tax liability by the service receiver,

the same cannot be confirmed against the appellants under different category of service. She has relied on the decision of this Tribunal in the case of Arjuna Carriers Pvt. Ltd. vs. CST Raipur-2016 (41) STR 632 (Tri. Del) to state that movement of coal from queries, mines surface etc. to railway siding, dumps, stockyards is covered under the GTA Service.

4. On the other hand, the Ld. AR appearing for the Revenue reiterated the findings recorded in the impugned orders.

5. Heard both the sides and perused the case records.

6. The fact is not under dispute that in respect of the services provided by the appellant, the service receiver M/s SECL had discharged the service tax liability under reverse charge mechanism in respect of the taxable service, namely 'transport of goods by road services' received by them. With regard to proper classification of service, as to whether the services provided by the appellants should fall under the mining service or GTA service, we find that the issue is no more res integra, in view of the decision of this Tribunal in the case of Arjuna Carriers Pvt. Ltd. (supra), wherein this Tribunal has held that the transportation and handling of coal within the mining area would not be classifiable under Mining Service. Further, we also find that the said decision of the Tribunal has also been affirmed by the Hon'ble Chattisgarh High Court vide order dated 28.08.2015, reported in 2016 (41) STR 602. The decision of the Tribunal referred above has also been relied upon by this Tribunal in the case of Sarvamangla Construction Co. – 2016 (9) TMI 1023-CESTAT New Delhi and also V N Transport – 2016-TIOL-1510-CESTAT-DEL., in endorsing the views expressed therein.

7. In view of above, we do not find any merits in the impugned orders passed by the adjudicating authority. Accordingly, after setting aside the same, we allow the appeals in favour of the appellants.

(Pronounced in the open court on 17.07.2017)

(Ashok K. Arya)
Member(Technical)

(S. K. Mohanty)
Member (Judicial)

Neha