IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV

DATE OF HEARING : 16/08/2017.
DATE OF DECISION : 16/08/2017.

Service Tax Appeals No. 59594-59595 of 2013

[Arising out of the Order-in-Original No. Commissioner/RPR/ST/ 66-67/2013 dated 30/05/2013 and No. Commissioner/RPR/ST/ 64-65/2013 dated 29/05/2013 both passed by The Commissioner of Customs, Central Excise and Service Tax, Raipur.]

M/s Karamjeet Singh and Co. Ltd. Appellant

Versus

CCE & ST, Raipur Respondent

Appearance

S/Shri Manish Gaur and Rachit Jain, Advocates – for the appellant.

Shri Amresh Jain, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 55997-55998/2017 Dated : 16/08/2017

Per. B. Ravichandran :-

These two appeals are having inter-connected issues and are accordingly taken up together. In appeal No. ST/59594/2013, the appellants were put to service tax liability for the period 01/03/2008 to 31/03/2012 under two issues. The first one is relating to the liability of the appellant to pay service tax under the category of mining services for activity of transporting coal from pit-head to dump yard within the mining area. The second issue is relating to addition of value of diesel in the taxable value for GTA services. In appeal No. ST/59595/2013, the issue involved is only addition value of diesel in the mining service. The period involved in the second appeal is also 01/03/2008 to 31/03/2012.

2. The learned Counsel appearing for the appellants submitted that their activity of transporting and shifting excavated coal to a dump yard within the mining area cannot be subjected to tax under mining service. He relied on the decision of Hon'ble Supreme Court in **CCE & ST, Raipur vs. Singh Transporters – 2017 – TIOL – 249 – SC – ST**. Regarding inclusion of free of cost diesel received by them from the client with reference to transportation or mining, the learned Counsel submitted that the provision of Section 67 cannot attract the cost of such material which is not incurred by the appellant as a service provider. He relied on the decision in their own case – **2013 (32) S.T.R. 740 (Tri. – Del.)** and various similarly placed decisions.

3. The learned AR reiterated the findings of the lower authorities.

4. We have heard both the sides and perused the appeal records. On the first issue regarding the liability of the appellant for service tax under the category of mining service with reference to activities carried out by them in transporting/

shifting the excavated coal from pit-head to dump yard, we note that the Hon'ble Supreme Court in **Singh Transporters** (supra) categorically held that such services rendered within the mining area cannot be taxed under the category of mining services. The Hon'ble Apex court referred to the decision of the Tribunal in **V.N. Transport vs. CCE, Raipur – 2016 – TIOL – 1510 – CESTAT – DEL.** A reference was also made to the term "mines" under Section 2 (j) of the Mines Act, 1952. It was concluded that the tax liability for the activity of transport can be more appropriately held under transport of goods by road rather than mining service.

5. Following the ratio laid down by the Hon'ble Supreme Court in **Singh Transporters** (supra), we find no merit in the impugned order confirming the liability of service tax on the appellant under the category of mining services.

6. On the second issue regarding inclusion of value of diesel, supplied free of cost by the client to the appellant in the course of providing service, we note that the said value cannot be become part of service rendered (transport service or mining service). This issue came up in appellant's own case decided by Tribunal (supra). The Tribunal examined the provisions of Section 67 and also the decision of Hon'ble Delhi High Court in **Intercontinental Consultants & Technocrafts Pvt. Ltd. vs. Union of India – 2013 (29) S.T.R. 9 (Del.)**. It was held that Section 67 does not

cover the situation where free of cost material are supplied by the recipient of service.

7. In view of the above discussion and analysis, we find the impugned orders are not legally sustainable and are accordingly set aside. The appeals are allowed.

(Order dictated and pronounced in open court.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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