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 : 22/02/2018.
DATE OF DECISION : 22/02/2018.

Service Tax Appeal No. 54276 of 2014

[Arising out of the Order-in-Original No. COMMISSIONER/RPR/ST/30/2014 dated 15/05/2014 passed by The Commissioner, Central Excise, & Service Tax, Raipur.]

M/s South Eastern Coalfields Ltd. Appellant

Versus

CCE & ST, Raipur Respondent

Appearance

S/Shri B.L. Narsimhan, Advocate and Rajiv Agarwal, C.A. – for the appellant.

Shri Sanjay 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. 50878/2018 Dated : 22/02/2018

Per. S.K. Mohanty :-

In this case, the appellant is engaged in production of coal from its various mines and sells the same on payment of Sales Tax/ VAT. As per the requirement of the customers, the appellant also provides the activities of bringing down the sizes of the mined coal into certain specific sizes. For providing such activities, the appellant receives the consideration, in the name of "sizing charges". The Department interpreted that such activities provided by the appellant should fall under the taxable category of 'Business Auxiliary Service'. Accordingly, after adjudication of the matter, the adjudged demands were confirmed on the appellant.

2. Both sides agree that the issue arising in the present appeal is quarely covered by the decision of this Tribunal in the case of **Commr. Of Central Excise & Service Tax, BBSR-I Vs. Mahanadi Coal Fields Ltd. vide Final Order No. 76585/2017 dated 21.08.2017.** On perusal of the said order, we find that in the similar set of facts, the Tribunal has allowed the appeal holding as under :-

> *2. Brief facts of the case are that during the period under consideration, the appellant was engaged in the crushing/sizing of the coal in its own mines. While receiving the consideration from the buyer, in addition to the base price, the department is of the view that the crushing/sizing of the coal by the respondents for sale attracts the service tax under the business auxiliary service as per Section 65 (19) of the Finance Act, 1994. But by the impugned order, the Commissioner dropped the demand. Being aggrieved, the Department has filed the present appeal.*
>
> *3. With this background, we heard Shri K. Chowdhury and Shri Rajiv Agarwal , Ld. Counsels for the parties.*
>
> *4. After hearing both the parties it appears that the appellants had paid the sales tax/vat and total amount of sale includes crushing charges as well as other charges e.g. silo loading charges and the same was shown in the profit and loss account. The Hon ble Supreme Court in the case of Bharat Sanchar Nigam Ltd. Vs. UOI reported in 2006 (2)*

STR 161 (SC) observed that sales tax and service tax cannot be made applicable on the same transaction as the same is includible to each other.

2. In view of above, we do not find any merits in the impugned order. Accordingly, the same is set aside and the appeal is allowed in favour of the appellant.

(Order dictated and pronounced in the open court.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

PK