CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 01.03.2018

Appeal No. ST/55570, 55571, 55573, 55574/2014- [DB]
[Arising out of the Order-in-Original No. 88, 76, 87, 78-ST-RPR-I-2014 Dated 23/06/2014 passed by the Commissioner of Service Tax-RAIPUR (Appeal)]

Mine Construction and Development Enterprises
Bhikh Lal Naik
Jai Gurudev Constrution
Kripa Ram Sidar … Appellant

Vs.

C.C.E. & S.T.-Raipur …Respondent

Appearance:
Present Ms Vibha Narang, Advocate & Shri A.K. Batra, CA for the appellant
Present Shri Ranjan Khanna, AR for the respondent

Coram: Hon'ble Justice Dr. Satish Chandra, President
Hon'ble Mr. B. Ravichandran, Member (Technical)

FINAL ORDER No. 51017-51020/2018

Per B.Ravichandran

1. These four appeals though by different appellants against different impugned orders are involving identical dispute with reference to only correct computation of tax liability.

2. The brief facts of the case are that the appellants are subjected to Service Tax liability for "mining of mineral of oil and gas services". The Ld. Counsel for the appellants, at the outset, submitted that the Service Tax liability is not being contested on merit. In fact, the said liabilities have already been substantially discharged along with interest before the adjudication is completed. The only prayer of the Ld. Counsel is that the computation of quantum of tax liability is affected by various calculation errors and non-application of certain benefits which are otherwise available to them. She further mentioned

that in identical set of facts the Tribunal has remanded the matter with the direction for requantification of tax liability.

3. We have heard both sides and perused the appeal records. Since the tax liability is not contested on merit and the prayer is only for recalculation of quantum of liability on the following aspects:-

A. Income to be taxed on receipt basis not on mercantile basis
B. Benefit of Notification No. 06/2005 to be extended (Small Service provider Exemption)
C. Receipts for the period 01.04.2007 to 31.05.2007, Service being non taxable as the mining services were introduced since 01.06.2007
D. Amount of cheque Cancelled by Service recipient, hence no consideration was received for the services.
E. Receipts for the period 23.09.2009 to 31.03.2009, Charged @ 12.36% instead of 10.30%
F. Tax is wrongly demanded on the amount recovered as Service Tax from Client considering the same as value of services. Service tax collected is already paid to department hence, there shall be double taxation of the amount.
G. Cum Duty Benefit for the receipts of FY. 2011-12.

we deem it fit and proper to set aside the impugned order and remand the case to the Original Authority for a fresh recomputation.

4. In this connection we refer to Final Order No. 55818/2017 dated 08/08/2017 of this Tribunal in the case of ***Sawmik Enterprises***. In the said case the Tribunal on similar set of facts remanded the matter to the Original Authority for a fresh decision. Liberty was also granted for submission of additional evidence as per law. At this juncture the

Ld. Counsel also prayed for consideration of setting aside the penalties imposed on them. The same was opposed by the Ld. AR stating the conduct of the appellant at the time of proceedings does not call for such concession. Since the matter is remanded back for requantification we note Original Authority will examine this aspect regarding penalty also.

5. In view of the above analysis the impugned order is set aside and the case is remanded to the Original Authority for limited purposes as mentioned above.

6. Appeals are allowed by way of remand.

[Order dictated and pronounced in the open court]

(Justice Dr. Satish Chandra) **President**	**(B. Ravichandran)** **Member (Technical)**

Rekha