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

<u>COURT –II</u>

Date of hearing/decision: 20.06.2018

Appeal No. ST/56566/2013-DB
[Arising out of Order-in-Appeal No. 64-ST-RPR-I-2012 dated 26/11/2012 passed by the Commissioner of Central Excise, CUSTOMS (Adjudication)-RAIPUR(Appeal)]

Hanumant Construction Pvt. Ltd. Appellant

Vs.

C.C.E. & S.T.-Raipur Respondent

Appearance:
Ms Rinki Arora, Advocate for the appellant
Shri V. Pandey, DR for the Respondent

Coram:
Hon'ble Mr. V. Padmanabhan, Member (Technical)
Hon'ble Ms. Rachna Gupta, Member (Judicial)

<u>Final Order No. 52288/2018</u>

Per: <u>V. Padmanabhan</u>:

1. The present appeal is directed against Order-in-Appeal No. 64-ST/2012 dated 26/11/2012. The period under dispute is January, 2006 to January, 2007. The appellant executed certain contracts for M/s Lafarge India Pvt. Ltd, Gopalnagar, Bilaspur. M/s Lafarge has a cement factory and the contract executed was for removal of over burden in the mine attached to the cement factory. The Department was of the view that the activity carried out by the appellant was liable for payment of Service Tax under the category of 'Site Formation and Clearance, Excavation, Earth moving and Demolition Services" which is covered under Section 65 (97a) of the Finance Act, 1994. Accordingly, show cause notice was issued and both the Authorities below ordered payment of Service Tax amounting to Rs.

9,68,857/- along with interest and penalties. Aggrieved by the order for payment of Service Tax, present appeal has been filed.

2. In this connection, we heard Ms Rinki Arora, Ld. Counsel for the Appellant and Shri V. Pandey, Ld. DR for the Revenue.

3. The Ld. Advocate summarized the grounds of appeal made by the appellant as follow:-

i. The demand for Service Tax has been raised under the category of 'Site Formation and Clearance' but the activity carried out by the appellant was in the mines attached to the cement plant of M/s Lafarge. She drew our attention to the relevant contract executed by the appellant with M/s Lafarge and pointed out that the appellant was required to deploy various equipments such as HEMS, suitable excavator, tipper and dozer for top soil removal in the mine. Hence, she submitted that the activity is to be considered as relating to mining and since the mining service was made liable for payment of Service Tax only w.e.f 01/06/2007, she pleaded that the demand for Service Tax for the period prior to the date is not sustainable.

ii. She also relied on the following case laws:-

a. Hazaribagh Mining & Engineering P. Ltd. V/s CCE, C & ST, BBSR-I 2017 (49) STR 289 (Tri.-Kolkata)

b. M. Ramakrishna Reddy V/s Commissioner of C.EX & CUS., Tirupathi 2009 (13) STR 661 (Tri.-Bang.)

iii. She also argued that the demand is hit by limitation since for the period January, 2006-07 the show cause notice was issued on 15/04/2011.

iv. She also submitted that the Commissioner (Appeals) in the impugned order has recorded his opinion that the activity will be covered within mining service w.e.f 01/06/2007.

4. The Ld. DR justified the impugned order.

5. He submitted that the activity, even though carried out in the mine, was limited only to removal of over burden. Such activity is to be carried out prior to the actual mining activity. He brought to our notice CBEC Circular 232/2006–CX.4 dated 12/11/2007 in which various activities were explained in relation to levy of Service Tax on mining. He submitted that the activity of removal of over burden is liable for Service Tax under Site Formation Service and other activities such as coal cutting and mineral excavation will be liable to Service Tax under Mining Services after 01/06/2007. Finally he submitted that the present contract is only for removal of over burden and not for mining and hence Service Tax is liable to be paid under the category of 'Site Formation'.

6. We have heard both sides and perused the record.

7. The nature of the activity carried out by the appellant for M/s Lafarge is evident from perusal of the relevant contract. The contract is dated 11/05/2006 and the activities are :-

"-DEPLOYMENT OF HEMS (SUITABLE EXCAVATOR, TIPPER AND DOZER) FOR TOPSOIL REMOVAL AT ARASMETA CEMENT PLANT.

- EXCAVATION, TRANSPORTATION, DUMPING & DOZING
APPROX AREA TO BE DEVELOPED:…………. 37,000 SQ. MTR.
AVERAGE DEPTH OF TOPSOIL- 2 TO 3.5 MTR.
APPROX VOLUME-1,18,500 CUM MTR.
LEAD FOR TRANSPORTATION WILL BE APPROX-1.5 KM (ONE SIDE)

RATE APPLICABLE RS 52/- (RS FIFTY TWO ONLY) PER CUBIC MTR.

-*SCOPE OF WORK*

-*Deployed HEMs should be in Tiptop condition and should be roadworthy.*
-All required safety gadgets to be fitted on the HEM equipments.
-Maintenance of HEMs equipments will be under your scope & cost
-You should deploy competent & sufficient crew alongwith safety supervisor for timely and safe completion of the job.
-Your crew deployed for operating the HEMs should have valid license at per norms.
-You will arrange required fuel & lubricants at your own cost for deployed HEMs
-Work should be carried out in two shifts & generally to be carried out during day light hours.
-You will not engage any female workers for the job.
-Before commencement of work joint measurement/ levels to be taken for deriving volumetric basis."

8. From the terms of the contract it is evident that the activity carried out by the appellant was limited to removal of over burden only. Even though such activity has been carried out in the mine area, the contract does not cover any other activity relating to mining. Hence, it is to be considered as a service contract simplicitor for the activity of removal of over burden. This activity is very much covered within the definition of 'Site Formation and Clearance Services' which was included in the statute w.e.f. 16/06/2005. Consequently, we are of the view that during the period under dispute the appellant will be liable to payment of Service Tax under the category of Site Formation.

9. We have perused the various case laws cited in support of the appeal. We note that all these case laws are dealing with composite contracts which include not only the removal of over burden and similar activities, but also the mining activities such as removal of ore and segregation thereof. No doubt the Tribunal has held in those cases that such composite contracts will be liable to Service Tax only under the category of mining w. e. f. 01/06/2007. But in the case before us it is a case of contract simplicitor only for removal of over burden and hence we are of the view that the ratio of such case laws will not be applicable to present case.

10. The appellant has also raised the argument of time bar. But it is seen from the record that the appellant has failed to discharge their responsibility in terms of self assessment of the tax and filing statutory returns. Hence, we are of view that the revenue is justified in invoking the extended period in raising the present demand.

11. In view of above, impugned order is upheld and the appeal is rejected.

(Dictated and pronounced in the open Court)

(Rachna Gupta)
Member (Judicial)

(V. Padmanabhan)
Member (Technical)

Rekha