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 : 31/08/2018.
DATE OF DECISION: 31/08/2018.

Service Tax Appeals No. 52895-52896, 53115-53116, 53130, 53186, 53190 of 2015 with 50268, 50420 and 50434 of 2017

Case No	Impugned Order Detail's	Date of Impugned Order	Passed By	Appellant	Respondent
ST/52895/2015-DB	OIO-10-COMMR-ST-ADJ-STN-2015	27/04/2015	Commissioner of Central Excise and Service Tax-BHOPAL	Northern Coalfields Ltd	CGST C.C & C.E-Jabalpur
ST/52896/2015-DB	OIO-11-COMMR-ST-ADJ-STN-2015	27/04/2015	Commissioner of Central Excise and Service Tax-BHOPAL	Northern Coalfields Ltd	CGST C.C & C.E-Jabalpur
ST/53115/2015-DB	OIO-13-COMMR-ST-ADJ-STN-2015	15/05/2015	Commissioner of Central Excise and Service Tax-BHOPAL(Appeal)	Northern Coalfields Ltd	CGST C.C & C.E-Jabalpur
ST/53116/2015-DB	OIO-12-COMMR-ST-ADJ-STN-2015	15/05/2015	Commissioner of Central Excise and Service Tax-BHOPAL(Appeal)	Northern Coalfields Ltd	CGST C.C & C.E-Jabalpur
ST/53130/2015-DB	OIO-14-COMMR-ST-ADJ-STN-2015	15/05/2015	Commissioner of Central Excise and Service Tax-BHOPAL	Northern Coalfields Ltd	CGST C.C & C.E-Jabalpur
ST/53186/2015-DB	OIO-19-20-COMMR-ST-ADJ-JBP-2015	28/05/2015	Commissioner of Central	South Eastern Coalfields	CGST C.C & C.E-Jabalpur

			Excise and Service Tax-BHOPAL	Ltd	
ST/53190/2015-DB	OIO-17-18-COMMR-ST-ADJ-JBP-2015	28/05/2015	Commissioner of Central Excise and Service Tax-BHOPAL	South Eastern Coalfields Ltd	CGST C.C & C.E-Jabalpur
ST/50268/2017-DB	OIO-02/COMMR/JBP/ST/2016	18/11/2016	Commissioner of Central Excise and Service Tax-BHOPAL	NORTHERN COALFIELDS LTD	CGST C.C & C.E-JABALPUR
ST/50420/2017-DB	OIO-01-COMMR-JBP-ST-2016	18/11/2016	Commissioner of Central Excise and Service Tax-BHOPAL	NORTHERN COALFIELDS LTD	CGST C.C & C.E-JABALPUR
ST/50434/2017-DB	OIO-07-COMMR-JBP-ST-2016	16/12/2016	Commissioner of Central Excise and Service Tax-BHOPAL	NORTHERN COALFIELDS LIMITED	CGST C.C & C.E-JABALPUR

Appearance

S/Shri Rajeev Kumar Agarwal and Hemant Sindhwani, C.A. – for the appellants.

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

CORAM: **Hon'ble Shri C.L. Mahar, Member (Technical)**
Hon'ble Ms. Rachna Gupta, Member (Judicial)

Final Order No. 52911-52920/2018 Dated : 31/08/2018

Per. C.L. Mahar :-

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. We have heard both sides and perused the record of appeal.

3. We feel that there is no service involved in the facts of the matter. Considering the facts of matter we feel that the appellant offering the cut to size coal to its customer, is like offering his coal in various forms and sizes to its customers hence if cutting the coal to various sizes is a service then we feel it is a service to himself and not to the buyer because buyer is being charged on per tonnage basis as per coals forms and sizes. We also feel that the present appeals are squarely 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 Honble 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.

4. In view of above, we do not find any merits in the impugned orders. Accordingly, the same are set aside and the appeals are allowed in favour of the appellants.

(Operative part of the order pronounced in the open court.)

(Rachna Gupta)
Member (Judicial)

(C.L. Mahar)
Member (Technical)

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