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

Date of hearing/decision: 04.09.2018

S. T. Appeal Nos. 52494, 52496 & 52499 of 2015
(Arising out of Order-in-Original No. Commissioner/RPR/ST/43/2014, Commissioner/BIL/CE/55/2014 and Commissioner/RPR/ST/42/2014 dated 30.09.2014, 31.10.2014 & 30.09.2014 passed by Commissioner of Central Excise and Customs, Raipur).

M/s Kanwal Coal Carriers Pvt. Ltd. Appellant
M/s Gevra Coal Transport Pvt. Ltd.
M/s Shri Ganraj Coal Transport Pvt. Ltd.

Vs.

CCE, Raipur Respondent

Appearance:

Sh. A. K. Batra & Ms. Vibha Narang, C.A. for the appellant
Sh.Amresh Jain, AR for the Respondent

Coram:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order Nos. 52921 – 52923/2018

Per: **V. Padmanabhan**:

We are taking all the above-mentioned three appeals together as the facts in all the three appeals are similar. In all the three appeals the period of demands pertains to financial year 2012-2013. The brief facts of the matter are that the appellants are undertaking work of loading and transportation of coal in the mining area of M/s South Eastern Coal Fields Ltd. and they have entered into the agreement with M/s SECL under two agreements : (I) Loading Agreement : it pertains to loading of coal from coal face (i.e. the area where coal is found in its natural state) into tipper trucks and (II) Transportation Agreement : For movement of the coal from the coal face to Railway siding/dumps/stock yards etc. within the mining area.

2. The above appellants have been including the value of loading agreement into the value of mining agreement and have been paying service tax at the applicable prevailing service tax rates on the charges recovered by the appellants under the transportation agreement, the service recipient namely M/s South Eastern Coal Fields Ltd. have been discharging service tax on reverse charge basis as per the provisions of Finance Act, 1994 under the category of goods transport agency service. The Revenue has been of the view that the appellants are not paying service tax properly as the service value of both loading agreements and transportation agreement need to be included into the mining services value and accordingly the appellants should have discharge service tax on the amount received under above-mentioned both these agreements.

3. Accordingly, the impugned show cause notices have been issued by the Revenue and in all the above-mentioned three cases these show cause notices have been confirmed by the learned Commissioner, Raipur. The learned Consultant appearing on behalf of above-mentioned appellants have contended that two periods are involved in the above-mentioned

appeals for the purpose of levy of service tax viz. : (I) that prior to negative list regime pertaining to period 01/04/2012 to 30/06/2012 and thereafter in the post negative regime from 01/07/2012 to 31/03/2013. It has been mentioned by the learned Consultant that for both the above-mentioned periods the issue is settled by the judgment of Hon'ble Supreme Court in the case of **CCE & ST, Raipur vs. Singh Transports – 2017 (4) GSTL 3 (S.C.)** wherein the service akin to the one provided by the appellants to M/s South Eastern Coal Fields Ltd. have been found by Hon'ble Supreme Court to be rightly classifiable under transport of goods by road service. The relevant extract is reproduced below :-

> "6. *Be that as it may, even if the relied upon judgment in the case of Arjuna Carriers (supra) is of no consequence to the present case, we are of the view that the activity undertaken by the respondent i.e. transportation of coal from the pit-heads to the railway sidings within the mining areas is more appropriately classifiable under Section 65(105)(zzp) of the Act, namely, under the head "transport of goods by road service" and does not involve any service in relation to "mining of mineral, oil or gas" as provided by Section 65(105)(zzzy) of the Act.*
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> *7. The reliance placed on the definition of the term "mines" under Section 2(j) of the Mines Act, 1952 does not assist the Revenue inasmuch as what would be indicated by the said definition is that a mine is not to be understood necessarily in respect of pit-heads of the mining area or the excavation or drilling underground, as may be, but also to the peripheral area on the surface. The said*

> *definition has no apparent nexus with the activity undertaken and the service rendered*".

Similarly, so far as the post negative regime demand is concerned, this Tribunal in its latest decision in case of **H.N. Coal Transport Pvt. Ltd. and others vs. CCE & ST, Raipur** has decided in its final order No. 52632-52633/2018 dated 23/07/2018 wherein this Tribunal has found that since the service provided by the appellants within mining area has already been classified by Hon'ble Supreme Court in **Singh Transporters** case (supra) even in the post negative regime w.e.f. 01/07/2012 the appellants are entitled for abatement on the value of services provided by them and since the service tax has already been paid by the service recipient after availment of the abatement and, therefore, no service tax liability remains with the appellant. The relevant extract of the order is reproduced below :-

> "13. *W.e.f. 01/07/2012, the definition of individual services has been done away with. But the benefit of abatements granted to goods transport agencies have been continued even for the period subsequent to 01/07/2012. The Notification No. 26/2012-ST and 30/2012-ST dated 20/06/2012 issued w.e.f. 20/06/2012 are para-materia to provisions of law prior to amendment. It is further not disputed that the service tax on the transportation activity has been paid by the recipient i.e. SECL even for the subsequent period. Even though the activities of transportation of coal has taken place within*

the mining area, the Apex court in the ***Singh Transporters*** *(supra) case has taken the view that such activity will be classifiable only under GTA and not under mining. In these circumstances, we are of the view that taking a different view for the period w.e.f. 01/07/2012 is not warranted. Consequently, we hold that even for the period w.e.f. 01/07/2012, the activity of transportation of coal from the coal face to the railway siding will continue to enjoy the benefit available to goods transport agency and cannot be bundled into a single service under Section 66F alongwith lifting of coal at the coal face into the activity of mining. In the result, we set aside the demand of service tax in the impugned orders and allow both the appeals*".

The decision in the case of ***H.N. Coal Transport Pvt. Limited*** (supra) was followed by the Tribunal in the case of ***Joginder Coal Transport Pvt. Ltd. & Others vs. CCE&ST, Raipur*** (F. O. No. 52790 – 52793/2018 dt. 06.08.2018).

4. In view of above, the learned Consultant has pleaded that the impugned orders-in-original is legally not sustainable and therefore deserved to be set aside.

5. We have also heard the learned DR who has reiterated the findings of the order-in-original.

6. We have considered the views of both the sides as well as the records of the appeal and we find that the matter is no-longer *res-integra* in view of the decision of Hon'ble Supreme Court in **Singh Transporters**

(supra) for the demand period between 01/04/2012 to 31/06/2012. So far as the demand from 01/07/2012 to 31/03/2013 is concerned, same has also been decided by this Tribunal in its final decision in the case of **M/s H.N. Coal Transport Pvt. Ltd. and others vs. CCE & ST, Raipur** (supra) in the similar cases.

7. We are of view that since the matter in all the three appeals are similar to the one decided by Hon'ble Supreme Court in **Singh Transporters** (supra) and this Tribunal in the case of **M/s H.N. Coal Transport Pvt. Ltd. and others vs. CCE & ST, Raipur** (supra) and following these decisions, we set aside the order-in-originals and allow the appeals.

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

(V. Padmanabhan)
Member (Technical)

(Anil Choudhary)
Member (Judicial)

Pant