IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI

Principal Bench, COURT NO. IV

Service Tax Appeal No. 50488 of 2016

[Arising out of the Order-in-Appeal No. BHO-EXCUS-002-APP-283-15-16 dated 23/12/2015 passed by The Commissioner (Appeals), Customs, Central Excise & Service Tax, Raipur (Chhattisgarh).]

M/s Anil Kumar Agrawal **Appellant**
Near Murliya Bag,
Burhar, Shahdol,
Madhya Pradesh – 484 110.

Versus

Commissioner (Appeals) **Respondent**
Customs, Central Excise & Service Tax
Central Excise Building, Dhamtari Road, Tikrapara,
Raipur – 492 001 (Chhattisgarh).

<u>Appearance</u>

Shri A.K. Batra, C.A. – for the appellant.

Shri G.R. Singh, Authorized Representative (DR) – for the Respondent.

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

Final Order No. 50789/2019 Dated : 04/01/2019

DATE OF HEARING/DECISION : 04/01/2019.

<u>C.L. MAHAR :-</u>

The brief facts of the matter are that the appellant are engaged in the activity of transportation of coal within mining area from the mining pitheads to railway siding and the associated activity like loading of coal from the pitheads to the tippers/trucks and unloading of same at railway siding including the loading of the coal into the railway wagons. The entire activity of the appellant are primarily for providing the service of transportation of coal from mines area to railway station of South Eastern Coal Fields Ltd.'s mines at Johadpur, Sohagpur and Johilla area. The facts of the matter is that on the entire contracts, which has been entered into by the appellant with M/s South Eastern Coal Fields Ltd. (SECL). M/s SECL had been paying service tax on reverse charge basis under the service tax category of Goods Transport Agency Service as the service provider being a proprietor concern. The department has entertained a view that the appellant have been providing a cargo handling service and mining service to the service recipient namely M/s SECL and, therefore, they are not entitled for the abatement which M/s SECL has claimed while discharging the service tax liability under the reverse charge basis under the category of Goods Transport Agency Service. As a consequence two show cause notices came to be issued to the appellant. The details of which are given here below :-

Sl. No.	Show cause Notice No. & Date	Period involved	Description	Estimated cost/ amount (in Rs.)
1.	V (ST) 15-125/Adj./JBP/2012 dated 19/10/2012	From 2007-2008 to 2011-2012	For providing Cargo handling service Mining Service Under Section 73 (1) excludes lime provision Section 75, 77, 76 and 78	7,85,336/-
2.	V (ST) 15-82/ADJ/ JBP/2013 dated 17/10/2013	April 2012 to March 2013	For cargo handling service rather than GTA. Service under GTA is already paid by M/s SECL demanded service under Section 76, 76 and 77	8,10,151/-

2. It can be seen from the above table that a first show cause notice dated 19/10/2012 was issued by invoking the extended time proviso under Section 73 (1) of the Finance Act, 1994 and second show cause notice dated 17/10/2013 is for the normal period of demand covering the period of April 2012 to March 2013. It will be appropriate to mention here that a demand under the show cause notice mentioned at '(i)' in the table above, the demand for the period 01/04/2007 to 30/05/2007 under first show cause notice is being demanded under cargo handling service and for the balance period that is 01/06/2007 to March

2012 it is being demanded under the mining service. While under the show cause notice dated 17/10/2013 mentioned at '(ii)' in the table, the demand for entire period of April 2012 to March 2013 has been demanded under 'cargo handling service'. The above show cause notices were adjudicated vide order-in-original No. 505-506/JC/ST/JBT/2014 dated 12 February 2014 whereunder the entire demand of service tax amounting to Rs. 15,95,487/- has been confirmed under the provisions of Section 73 of the Finance Act, 1994 under the two categories namely for period 01/04/2007 to 30/05/2007 it has been confirmed under cargo handling service and after 1 June 2007 upto March 2013 same has been confirmed under mining service. Penalties under Section 77, 76 and 78 have also been imposed and interest as per Section 75 of the Finance Act, 1994 have also been confirmed. The appellant have approached Commissioner (Appeals) who vide his order No. BHO-EXCUS-002-APP-283-15-16 dated 23 December 2015, has endorsed the findings of the order-in-original without giving any relief to the appellant. The appellant are before us against the above-mentioned impugned order-in-appeal dated 23 December 2015.

3. The learned Advocate appearing on behalf of the appellant has submitted that appellant is engaged in rendering services of loading of the coal from the pitheads of mines and transportation of coal by tippers/ dumper (motor vehicles) within mining area upto Railway siding and unloading of same. For this activity he has got various work orders from M/s South Eastern Coal Fields Ltd. It has again been impressed that on the charges of service paid by M/s SECL, the service recipient have been discharging service tax liability under reverse charge mechanism under the taxable category of Transport of Goods by Road Service. The learned Advocate has taken us through the certificate which have been given by M/s SECL to the effect that the service tax has been paid by them on reverse charge mechanism basis under the category of GTA service. The learned Advocate has submitted

that for period between 01/04/2007 to 30/06/2012, the activity of movement of coal within the mining area from pitheads to the dispatch point that is railway siding by trucks or other motor vehicles is classifiable under the goods transport agency service. The learned Advocate while assailing the order-in-appeal has relied upon the Hon'ble Apex Court decision in the case of **Commissioner of Central Excise and Service Tax, Raipur vs. Singh Transporters** cited under **2017 – TIOL – 249 – SC – ST**, wherein it has been held that the transportation of coal from pitheads to railway sidings within the mining area is more appropriately classifiable under transport of goods by road service and does not involves any service in relation to mining of mineral, oil or gas. The learned Advocate has also cited various other decisions of this Tribunal, whereunder same views has been held by this Tribunal. The learned Advocate has supported his submissions also with following case laws of this Tribunal :-

(i) **CCE & ST, Raipur vs. Shree Gangraj Coal Transport Pvt. Ltd.**, **2017 (7) TMI 1222 – SC** and **Shree Gangraj Coal Transport Pvt. Ltd. vs. CCE & ST, 2017 (1) TMI 1599 – CESTAT New Delhi**

(ii) **M/s Kawaljeet Singh Khanduja vs. CCE & ST, Jabalpur, 2018 (11) TMI 571 – CESTAT New Delhi**

(iii) **Shri Narayan Prasad Gour vs. CGST, CE & ST, Bhopal, 2018 (11) TMI 33 – CESTAT New Delhi**

4. For the period from 01/07/2012 also the learned Advocate has argued that though the individual definition of services has been done away with still their activity is rightly classifiable under the GTA service as they are entitled for the abatement from the total amount received by them from the service recipient. The following case laws has been relied upon by learned Advocate with regard to this issue :-

(i) **M/s H.N. Coal Transport Pvt. Ltd., M/s V.N. Transport Pvt. Ltd. vs. CCE & ST, Raipur, 2018 (8) TMI 173 – CESTAT New Delhi ;**

(ii) **M/s Kanwal Coal Carriers Pvt. Ltd., M/s Gevra Coal Transport Pvt. Ltd. and M/s Shri Ganraj Coal Transport Pvt. Ltd. vs. CCE, Raipur**

(iii) **M/s Joginder Coal Transport Pvt. Ltd., M/s Saksham Coal Carriers Pvt. Ltd., M/s Anupama Coal Carrier Pvt. Ltd. and M/s Nishant Coal Carrier Pvt. Ltd. vs. CCE & ST, Raipur, 2018 (8) TMI 1106 – CESTAT New Delhi**

5. The learned Advocate has also impressed that the order-in-original as well as order-in-appeal not legally sustainable as the show cause notice dated 17/10/2013 has demanded the service tax under the category of cargo handling service and the original Adjudicating Authority as well as the Commissioner (Appeals) has travelled beyond the show cause notice and has confirmed the same under the category of mining service, thus as impugned order-in-appeal has travelled beyond the show cause notice and therefore legally not sustainable, and therefore no service tax liability arises on the appellant.

6. We have heard learned Departmental Representative who has defended the findings as given in the order-in-appeal.

7. We have heard both the sides and have also perused the record of the appeal. It will be appropriate to have a look at the relevant work orders before proceeding further while deciding the matter. The following work orders with their brief description are involved so far as show cause notice mentioned at Sl. No. (i) is concerned.

Sl. No.	Work Order No. & Date	Description	Estimated cost/ amount (in Rs.)
1.	SECL/SO(M) SGP/NIT-216/7A/ 06/556 dated 15/11/2006	For the work of loading of coal into Tippers by Pay Loaders & Transportation of coal by Tippers from stockyard of Vishnupuri – I UGM to EDC Siding via bye-pass road including unloading	17,76,400/-
2.	SECL/SO (M) SGP/NIT-297 7A/08 dated 03/01/2008	Work order for hiring of Tipper for Mechanical transfer of coal from Dhanpuri U.G. Mines to Burhar Siding	35,42,500/-
3.	SECL/SO (M) SGP/N/7A/09/ 1020 dated 31/07/2008	Work Order for Hiring of Tipper for Mechanical transfer of Coal from Dhanpuri U.G. Mines to Burhar Siding	24,935/-
4.	SECL/SO (M) SGP/N/7A/09/ 1408 dated 02/02/2009	Work order for Hiring of Tipper for Mechanical transfer of Coal from Dhanpuri U.G. Mines Qty. 4000 Tes. A 6.25 per tone (inclusive service tax)	25,000/-
5.	SECL/DY GM/JOH/09/W-3/ 150 dated 29/07/2009	Work order for Hiring of pay Loader for Mechanical transfer of Coal into tippers at stock yard to Kanchan OCP and transportation to Nowrozabad OCP Wharf well siding	9,74,950/-
6.	SECL/DY GM/JOH/09/W-3/ 151 dated 30/07/2009	Work order for transportation of coal from Birsingpur Collery to Wharf well siding to Nowrozabad Collery OCP Wharf well siding	9,65,000/-

7.	SECL/ SO (M) SGP/N/7A/09/ 1584 dated 30/05/2009	Work order for Hiring of Tipper for Mechanical transfer of Coal from Dhanpuri U.G. Mines (inclusive service tax)	25,000/-
8.	SECL/ SO (M) SGP/NIT-474/7A/09/1894 dated 30/11/2009	Work order for Hiring of Tipper for Mechanical transfer of Coal from Dhanpuri U.G. Mines (inclusive service tax)	1,84,375/-
9.	SECL/ SO(M) SGP/NIT-511/ 7A/10/25 dated 15/01/2010	Work order for Hiring of pay Loader & Tipper for Mechanical transfer of Coal from Dhanpuri OCM to Sagma Siding and transportation to Nowrozabad OCP Wharf well siding	8,83,500/-
10.	SECL/ SO(M) SGP/NIT-527/ 7A/10/80 dated 10/02/2010	Work order for Hiring of pay Loader & Tipper for Mechanical transfer of Coal from Dhanpuri OCM to Sagma Siding and transportation to Nowrozabad OCP Wharf well siding	8,83,500/-
11.	SECL/ SO(M) SGP/7A/10/505 dated 05/10/2010	Work order for Hiring of pay Loader & Tipper for Mechanical transfer of Coal from Dhanpuri UG Mines	47,600/-
12.	SECL/ SO(M) SGP/7A/11/608 dated 15/11/2011	Work order for Hiring of pay Loader & Tipper for Mechanical transfer of Coal from Dhanpuri UG Mines	14,000/-
13.	SECL/ SO(M) SGP/NIT-640/ 7A/11/55 dated 29/01/2011	Work order for Hiring of pay Loader & Tipper for Mechanical transfer of Coal from Dhanpuri UG Mines	1,75,000/-
14.	SECL/ SO(M) SGP/NIT-610/ 7A/11/22 dated 13/01/2011	Work order for Hiring of Tipper for Mechanical transfer of Coal from Dhanpuri UG Mines to Burhar Siding	20,59,200/-
15.	SECL/ SO(M) SGP/NIT-808/ 7A/12/61 dated 08/02/2012	Work order for Hiring of Tipper for Mechanical transfer of Coal from Dhanpuri UG Mines to Burhar Siding	1,65,000/-

For the show cause notice mentioned at (ii) in the preceding para.

Sl. No.	Name of Work	Work Order No.	Payment received
1.	Loading & Transportation of coal from Dhanpuri U/G mine to Burhar siding	SECI/SO (M)/SGP/NIT-610/7A/11/12 dated 13/01/2011 & SECI/SO (M)/SGP/ NIT-809/7A/12/61 dated 08/02/2012	8,50,774/-
2.	Loading & Transportation of coal from Amlai OCM to Burhar siding	SECI/SO (M)/SGP/NIT-809/7A/12/138 dated 23/03/2012	57,03,845/-
	Total Amount		65,54,619/-

8. It can be seen from the work orders that primary nature of the work is loading and transportation of the coal from mining area to railway siding. From the plain reading of the work orders, we infer that the primary nature of the activity undertaken by the appellant for M/s SECL is for the transportation of the coal from the pit heads to the railway siding or within the mining area itself with related ancillary activity of loading and unloading of coal into dippers. The work relating to the loading and unloading is ancillary to the transportation work which has also been clarified by the CBEC vide its Circular dated 6 August 2008 wherein it has been mentioned that the composite service may include various

intermediate and ancillary service provided in relation to the principle service of the road transport of goods. Such intermediate and ancillary service may include loading/ unloading, packing/unpacking, trans-shipment or temporary warehousing etc. These services are not provided as independent activities but are for the purpose of successful completion of the service of transportation of goods by road and, therefore, same is to be classifiable under GTA service. We, therefore, hold that the primary activity of the appellant provided in the above-mentioned work orders is that of Transportation of Goods by Road and not of the cargo handling or of mining service either.

9. The Hon'ble Apex court deciding the similar issue in the case of **Commissioner of Central Excise & Service Tax, Raipur vs. Singh Transporters** (supra) has held as under :-

> "5. Though the learned Customs, Excise & Service Tax Appellate Tribunal, New Delhi ("Tribunal" for short) in answering the issue in favour of the respondent leading to the present proceedings has relied upon its earlier judgment in the case of *M/s. V.N. Transport* v. *CCE, Raipur* [2016-TIOL-1510-CESTAT-DEL], *Arjuna Carriers Pvt. Ltd.* v. *Commissioner of Service Tax* [2016 (41) S.T.R. 632 (Tri.-Del.)] it is argued that the said decisions may not be relevant to the present case inasmuch as the same pertains to a period prior to 1st June, 2007 and the present case pertains to the post 1st June, 2007 period. The difference in time is relevant in view of the insertion of Section 65(105)(zzzy), extracted above, effective from 1st June, 2007.
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> 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".

10. In view of above, we hold that the for period upto 30 June 2012 the services provided by the appellant does not fall either under the category of cargo handling services or under the mining service and same has properly been classified under the Transport of Goods by Road service and on which M/s South

Eastern Coal Fields Limited have already deposited the proper service tax under reverse charge mechanism.

11. So far as demand post negative era that is 1 July 2012 to March 2013 is concerned, we find that the matter is also no longer res-integra and it has already been decided in number of decisions of this Tribunal that the activity as undertaken by the appellant is classifiable under transportation of goods service and shall be entitled for abatement of value as provided in the relevant notification. The following decisions in this regard are worthy to be mentioned here :-

(i) **M/s H.N. Coal Transport Pvt. Ltd., M/s V.N. Transport Pvt. Ltd. vs. CCE & ST, Raipur, 2018 (8) TMI 173 – CESTAT New Delhi ;**

(ii) **M/s Kanwal Coal Carriers Pvt. Ltd., M/s Gevra Coal Transport Pvt. Ltd. and M/s Shri Ganraj Coal Transport Pvt. Ltd. vs. CCE, Raipur**

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12. The issue has been discussed in detail in the case of **M/s H.C. Coal Transport Pvt. Ltd., M/s V.N. Transport Pvt. Ltd. vs. CCE & ST, Raipur**. In this Tribunal's final order No. 52632-52633 of 2018 dated 23 July 2018. The relevant extract of the same is reproduced here below :-

> "12. It is noted that the appellants have entered into two different agreements with SECL. SECL is a Public Sector Company and it is nobody's case that they have consciously and irregularly vivisected the activity and entered into two different contracts for loading as well as transportation. The appellants have carried out the activity in terms of each contract under its own terms. On a perusal of the contracts, we are unable to conclude that SECL has contracted the appellants for lifting of coal at the coal face and transportation of this lifted coal upto railway siding. The two contracts have been executed irrespective of each other. These contracts indicate the rates separately for the respective activities. The machinery used for the two activities are independent and unconnected with each other. Further it is seen that the total quantum of coal loaded at the coal face has no co-relation with the total quantum of coal transported from the coal face to the railway siding. Simply because both the activities are to be performed within the mining area, is no reason to bundle the two together and to take the view that provision of one service is combined with an element of provision of

the other service. The difference in the quantity of coal loaded and the quantity being transported clearly show that the appellant is not doing transportation the loaded coal is a continuous activity. Perusal of the terms of the contract clearly indicate that the two are independent contracts. It may very well be that SECL has contracted the two activities to two different contractors.

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 pari-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".

13. In view of above, we hold that the activity undertaken by the appellant has rightly been classified under the category of Transport of Goods by Road service and the appropriate service tax has already been paid by M/s SECL under the reverse charge mechanism basis. In view of these facts and as discussed in the preceding paras, we hold that impugned order-in-appeal is without any merits and we set aside the same. Accordingly, appeal is allowed.

(Operative part of order pronounced in open court.)

(C.L. Mahar)
Member (Technical)

(Rachna Gupta)
Member (Judicial)

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