CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT NO. – I

Service Tax Appeal No. 790 of 2012

(Arising out of **Order-in-Appeal** No.100/2011 (H-II) S.Tax dated 30.12.2011 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals-II), Hyderabad)

M/s PLR Projects Pvt Ltd., .. **APPELLANT**
Plot No. 130, 13B, 3rd Floor,
Inwinex Towers, Road No. 2,
Banjara Hills, Hyderabad,
Telangana – 500 034.

VERSUS

Commissioner of Central Tax .. **RESPONDENT**
Hyderabad – II
Kendriya Shulk Bhavan,
L.B. Stadium Road,
Basheerbagh, Hyderabad,
Telangana – 500 004.

APPEARANCE:
Shri Lakshman Kumar, CA for the Appellant.
Shri Pradeep Saxena & Shri Sandeep Kumar Payal, Authorised Representatives for the Respondent.

CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30412/2024

Date of Hearing:25.11.2024
Date of Decision:25.11.2024

[ORDER PER: A.K. JYOTISHI]

M/s PLR Projects Pvt Ltd., (hereinafter referred to as appellant) are in appeal against the Order-in-Appeal No.100/2011 (H-II) S.Tax dated 30.12.2011 (impugned order) whereby the order of the Original Adjudicating Authority was upheld. The period of demand involved is from 16.06.2005 to 27.06.2005.

2. The core issue involved is whether the activities undertaken by the appellant is covered under "Mining Services" which has been introduced with effect from 01.06.2007 or under the category of "site formation and clearance, excavation and earthmoving and demolition services", which was introduced with effect from 16.06.2005. In addition, there are certain other issues regarding fastening of the liability on the appellant, when the alleged

services were provided by Proprietary concern i.e Shri P. Lakshmu Reddy during the relevant time.

3. The factual matrix of the case is that Shri P. Lakshmu Reddy was awarded a contract by the M/s Central Coalfields Ltd., for description of work "Blast hole drilling, blasting, excavation, loading, transporting, dumping, dozing etc., of various rocks/soil" in their Opencast Project, Piparwar in Piparwar Opencast Project. The scope of work as per tender dated 27.11.2004 at serial no. 2.0 describes the scope of work as OB Removal having various components like drilling, blasting, excavation, OB dumping, lift, etc. The admitted fact is that the appellants were engaged in these activities which the Department feels is rightly classifiably as site formation service, whereas, as per the appellant it is falling under the "mining service" and since the "mining service" came only with effect from 01.06.2007, therefore, during the relevant period, the demand which has been made by the Department cannot be sustained.

4. Learned CA has relied on various judgments including the judgment of Co-Ordinate Bench in the case of M/s Associated Soap Stone Distributing Co. Pvt Ltd., Vs Commissioner of Service Tax, Ahmedabad [2022 (63) GSTL 250 (Tri-Ahmd)] in support that the activities undertaken by them would be nothing but in the nature of removal of over burden in relation to mining and this activity which is in relation to mining in a mining area would appropriately fall under the mining services and not under the site formation, as alleged by the Department.

5. On the other hand, Learned AR has argued that they had taken out the registration in the year 2006 under the category of "site formation" only and moreover their activities are clearly covered within the definition of the "site formation", which came into effect from 16.06.2005. Since, the Proprietor Shri P. Lakshmu Reddy had entered into contract with the CCL and has

undertaken those activities during the relevant time from 16.06.2005 to 27.06.2005 when the appellant company was not in existence but which took over the liability of the Proprietor and hence appellants is liable to discharge service tax on the said activity.

6. We have gone through the activities undertaken by the appellant, irrespective of the fact whether it was undertaken by the appellant namely Shri P. Lakshmu Reddy in terms of the contract entered by him with CCL or by the appellant against whom the demand has been made by Department. The issue whether similar activities would be covered under the category of "site formation" or under "mining services" has been extensively dealt with in the judgments cited by the Learned CA in the case of M/s Associated Soap Stone Distributing Co. Pvt Ltd., (supra). The Tribunal examined various judgments in this regard and the factual matrix to come to the conclusion that in the given facts of the case, it was more appropriate that the services provided by the appellant was "mining service" and since the mining service came into effect only on 01.06.2007, it is not liable to service tax as demanded for period prior to that period. We find that the factual matrix in the present appeal is quite similar to the factual matrix dealt with in this judgement and therefore relying on the ratio the proper classification of the activities undertaken by the appellant would be under "mining service". The activities undertaken are admittedly within the mining area and is exclusively linked to mining/extract of coal and therefore tax specifically covered under Mining Services rather than general category of site formation. Thus, they intended to bring all mining activity within the ambit of service tax only in 2007, and therefore the same activity cannot be covered under site formation service. Since, the mining service only came into effect on 01.06.2007, whereas the demand pertains to the period from 16.06.2005 to 27.06.2005, it is not sustainable.

7. Therefore, the said activities were related to the mining activity and not liable to service tax as site formation services during the relevant period. Accordingly, the order of the Commissioner (Appeals) dated 30.12.2011 dismissing the appeal of the appellant is liable to be set aside and is accordingly set aside.

8. Appeal allowed.

(Dictated and pronounced in open court)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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