CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT NO. – I

Service Tax Appeal No. 20651 of 2014
(Arising out of **Order-in-Original** No.35/2013-S.Tax (DENOVO) dated 20.11.2013 passed by Commissioner of Central Excise, Customs & Service Tax, Guntur)

M/s S.S.N Constructions .. **APPELLANT**
16/15-961, 2nd Street,
Sainagar, Children Park Road,
Nellore,
Andhra Pradesh – 524 002.

VERSUS

Commissioner of Central Excise & Service Tax Guntur .. **RESPONDENT**
P.B.No.331, C.R. Building,
Kannavari Thota, Guntur,
Andhra Pradesh – 522 004.

APPEARANCE:
Shri K. Lakshman Kumar, Chartered Accountant for the Appellant.
Shri V. Srikanth Rao, Authorized Representative for the Respondent.

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

FINAL ORDER No. A/30483/2026

Date of Hearing: 11.08.2026
Date of Decision: 31.08.2026

[ORDER PER: ANGAD PRASAD]

The present appeal is directed against the impugned Order-in-Original No. 35/2013-S.Tax (Denovo) dated 20.11.2013 passed by the Commissioner of Central Excise, Guntur, whereby, the demand of service tax of Rs. 90,30,059/-, together with applicable interest and penalties under Section 77 and 78 of the Finance Act, 1994, has been confirmed upon the category of "Cargo Handling Services", while appropriating the amount already discharged by the appellant under "Mining Service".

2. The brief facts are that the appellant was engaged by M/s Madras Cements Ltd., for carrying out activities relating to excavation, loading,

transportation and unloading of lime stone from the mine face to the crusher situated within mining lease area. On introduction of the taxable service of "Mining of Mineral, Oil or Gas" with effect from 01.06.2007, the appellant obtained service tax registration and discharged service tax under the said category.

3. A Show Cause Notice dated 25.03.2010 was, however, issued proposing to classify the activities undertaken by the appellant as "Cargo Handling Service" for the period from February 2005 to December 2009 and demanding service tax, interest and penalties by invoking the extended period of limitation. The demand was initially confirmed. In the earlier round of litigation, this Tribunal, vide Final Order No. 764/2012 dated 26.12.2012, set aside the adjudication order and remanded the matter for fresh consideration, particularly to examine whether the very activities which had been accepted as "Mining Service" from 01.06.2007 could be classified as "Cargo Handling Service" for the earlier period.

4. Pursuant to the remand, the Commissioner passed the impugned order once again confirming the demand under "Cargo Handling Service. Hence, the present appeal before us.

5. Learned Counsel for the appellant submits that the contract is essentially and predominantly a mining contract. Excavation of limestone, it loading, transportation within the mine and unloading at the crusher are integral and inseperable parts of the mining operation. The appellant is neither engaged independently in handling cargo nor in limestone being handled as cargo in the commercial sense contemplated by the taxable entry. Reliance has been placed, inter alia, upon the decisions in Commissioner of Central Tax, Jabalpur Vs Bhaiya Lal Infrastructure Pvt Ltd., [2025 (26) CENTAX 432 (Tri-Del)], Commissioner of Service Tax, Kolkata Vs

EMTA Coal Ltd., [2025 (31) CENTAX 400 (CAL)], Singh Transporters Vs CCE, Raipur [2012 (27) STR 488 (Tri-Del)] maintained by the Hon'ble Supreme Court, Calcutta Industrial Supply Corporation Vs Commissioner of CGST, Kolkata [2024 (24) CENTAX 219 (Tri-Cal)], Karamjeet Singh & CO Ltd., Vs CCE, Jabalpur[2024 (21) CENTAX 69 (Tri-Cal)], Ambey Mining Pvt Ltd., Vs CST, Kolkata [2024 (23) CENTAX 430 (Tri-Cal)].

6. It is further argued that "Mining Service" itself was brought within the service tax net only with effect from 01.06.2007 and, therefore, activities which constitute mining cannot be artificially brought within an earlier taxable category so as to impose service tax for the period prior thereto. Reliance has been placed upon G.S.Atwal & Co. Engineers Pvt Ltd., Vs Commissioner of Service Tax, Kolkata [2025 (27) CENTAX 245 (Tri-Cal)], Popular Constructions Vs The Commissioner of Central Excise, Belgaum [2025 (4) TMI 770 – CESTAT, Bangalore], Schulmberger Asia Services Ltd., Vs Commissioner of Service Tax, Delhi [2024 (15) CENTAX 238 (Tri-Del)], Commissioner of Service Tax Vs Schulmberger Asia Services Ltd., [2024 (15) CENTAX 239 (SC)], Mukand Ltd., Vs Commissioner of Central Excise, Customs and Service Tax, Belgaum [2024 (22) CENTAX 182 (Tri-Bang)], as also the judgment in the case of S.B. Construction Company Vs Union of India [2006 (4) STR 545 (Raj)], subsequently affirmed by the Hon'ble Supreme Court.

7. Learned Counsel also submits that the extended period of limitation is not invokable. The appellant had voluntarily obtained registration immediately after introduction of Mining Service and paid substantial service tax under the said category. There was therefore, no suppression, fraud or wilful misstatement with intent to evade payment of tax. Alternatively, the

appellant seeks the benefit of Section 80 of the Finance Act, 1994 and cum tax benefit.

8. Learned Authorised Representative appearing for the Department reiterates the findings recorded in the impugned order and submits that the activities of loading, transportation and unloading of lime stone satisfy the ingredients of Cargo Handling Service and that the demand has therefore been correctly confirmed.

9. We have heard and considered the submissions made by both the sides and perused the records.

10. The principal issue for determination is whether the activities of excavation, loading, transportation and unloading of lime stone carried out by the appellant within the mining area are liable to service tax under the category of "Cargo Handling Service" , particularly for the period prior to introduction of "Mining of Mineral, Oil or Gas service" with effect from 01.06.2007.

11. It is not in dispute that the appellant was performing an integrated set of operations commencing from excavation of limestone and extending to its loading, transportation from the mines face and unloading at the crusher located within the mining area. The activities of loading and transportation were thus not undertaken as independent services disconnected from mining. They were incidental and integral to the principal activity of extraction and movement of mineral within the mine.

12. "Cargo handling service" contemplates handling of cargo as cargo. Mere loading, unloading or movement of goods whenever performed in the course of execution of another principal service, does not ipso facto bring the entire composite activity within the taxable category of Cargo Handling

Services. The real nature and dominant character of the contract are required to be examined. The clarification issued by the Board while introducing Cargo Handling Service also indicates that the levy was essentially intended to cover Cargo Handling Agencies and operations undertaken in relation to cargo for transportation. In the present case, the appellant was not independently engaged for packing, unpacking or handling limestone for transportation as cargo. The handling and movement of the limestone took place within the mining area as a necessary part of the mining operation. This view finds support from a consistent line of decisions relied upon by the appellant, including Singh Transporters, supra, wherein, activities involving transportation and coal within the mining ore were considered in the context of Cargo Handling Service. The subsequent decisions cited before us have also taken the view that integrated mining operations cannot be vivisected so as to classify incidental loading and transportation separately as Cargo Handling Service.

13. We also find considerable force in the appellant's submission arising from the introduction of the specific taxable entry "Mining of Mineral, Oil or Gas Service" with effect from 01.06.2007. The Revenue itself accepted the appellant's very same activities as mining service after 01.06.2007 and service tax was discharged accordingly. No material change in the nature of the activity before and after 01.06.2007 has been demonstrated before us. Once the essential character of the activity is found to be mining the mere fact that excavation necessarily involves loading and movement of the extracted mineral cannot convert it into Cargo Handling Service for the earlier period. The classification of a composite activity cannot be determined merely by isolating one or two incidental elements from the complete contractual obligation. The introduction of a specific taxable entry with effect from a particular date is also relevant circumstance while

examining the legislative scheme. In the case of Indian National Shipowner's Association Vs Union of India [2009 (14) STR 289 (Bom)], the Hon'ble Bombay High Court recognised the principle that where a distinct service is specifically brought to tax from a specific date, the same cannot ordinarily be subjected to tax under any-other general entry for the earlier period in the absence of clear legislative mandate. We, therefore, find that the demand under "CHS" for the mining activities undertaken by the appellant cannot be sustained.

14. There is an additional aspect. The earlier remand by this Tribunal specifically required examination as to whether the activities which were accepted as Mining Service with effect from 01.06.2007 could legitimately be classified as "CHS" for the preceding period. In our view, the impugned order has not satisfactorily reconciled this fundamental inconsistency. If the nature and scope of the contract remained unchanged, the activities could not acquire a completely different character merely because the specific taxable entry of Mining Service had not yet been introduced.

15. We further observe that the Show Cause Notice proposed the demand specifically under "CHS". Therefore, the demand cannot now be sustained under a different taxable category on the premise that the activities may otherwise fall within Mining Service. It is settled law that adjudication cannot travel beyond the allegations and classification proposed in the Show Cause Notice.

16. Even otherwise, we find substance in the appellant's plea on limitation. The statement of the appellant was recorded as early on 02.08.2007, whereas the Show Cause Notice was issued only on 25.03.2010. The appellant had obtained registration under Mining Service after it's introduction and had paid service tax under that category. These facts do not

support the allegation of deliberate suppression with intent to evade payment of service tax.

17. The dispute is essentially one of classification of a composite mining activity. The larger number of judicial decisions on the issue itself shows that the matter was capable of more than one interpretation. In these circumstances, invocation of the extended period on the ground of suppression cannot be sustained in the absence of a positive act demonstrating intention to evade tax. The principle laid down by the Hon'ble Supreme Court in the case of Padmini Products Vs Collector of Central Excise [1989 (43) ELT 195 (SC)] supports the appellant in this regard.

18. Since principal demand itself is not sustainable, the consequential demand of interest under Section 75 and penalties under Section 77 and 78 of the Finance Act, 1994 also cannot survive.

19. In view of the foregoing discussion, we hold that the activities of excavation, loading, transportation and unloading of limestone undertaken by the appellant as an integral part of mining operations cannot be classified as "Cargo Handling Service".

20. Consequently, the demand of service tax, interest and penalties confirmed in the impugned order is not sustainable.

21. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief, if any, in accordance with law.

(Pronounced in the open court on 31.08.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

Jaya