CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EAST REGIONAL BENCH : KOLKATA

Service Tax Appeal No.201/09, C.O.-111/09

(Arising out of the Order-in-Appeal No.40/JSR/2009 dated-27/04/2009 passed by the Commissioner of Central Excise (Appeals) & Service Tax, Ranchi)

Commr. of Central Excise- JSR

...APPELLANT(S)

VERSUS

Eastern Zone Sundicate

...RESPONDENT(S)

APPEARANCE

Shri S. Mukhopadhyay, Supdt. (A.R.)

FOR APPELLANT(S)

Sri Kartik Kurmi, Advocate &
Shri Rajesh Sharma, Advocate

FOR THE RESPONDENT(S)

CORAM:
JUSTICE DR. SATISH CHANDRA, HON'BLE PRESIDENT
SHRI C.J. MATHEW, HON'BLE TECHNICAL MEMBER

DATE OF HEARING & DECISION: 21/03/2018

FINAL ORDER NO. : 75465/2018

Per DR. SATISH CHANDRA :

The present appeal is filed by the Department against Order-in-Appeal No.40/JSR/2009 dated-27/04/2009 passed by the Commissioner of Central Excise (Appeals) & Service Tax, Ranchi. The period of dispute is 10/09/2004 to 28/02/2006.

2. The brief facts of the case are that the respondent is engaged in the activities of extraction of Iron Ores at Ghatkuri Iron Mines owned by M/s. Rungta Mines Ltd., Chaibasa (RML) in the state of Jharkhand. The Iron Ore reserves are found in form of Hills which usually contains Iron Ore of

different grades , laterites, earth and other gangue materials. For mining of Iron Ore, RML carries out the drilling, blasting of Iron Ore hills. The drilling, blasting by mines owner. As a result of blasting, big boulders alongwith other materials like laterite, earth etc. are generated which is called Run of Mines (ROM) consisting of prime quality Iron Ores, Off grade Iron Ores, laterites, earth and other gangue materials. The Department considered the same activity under the Business Auxiliary Service and demanded the service tax but the Commissioner (Appeals) has allowed the claim of the respondent.

3. Being aggrieved the Department has filed the present appeal.

4. We heard Shri S. Mukhopadhyay and Sri Kartik Kurmi parties and perused the appeal record. We find that identical issue has come in the case of Calcutta Industrial Supply Corpn. Vs. Commr. of Service Tax, Kolkata [2017] 87 taxmann.com 279(Kolkata-CESTAT) where it was observed that :

> ***"...6.4 We find that the processing of the coal in a mine is in a wide range. The activities of removal of the shale, stone, extraneous materials and breaking up of the coal are after the excavation of coal from the mines. Apparently the processes undertaken by the appellants are for marketability of the coal and part of the mining activities. Hence, the demand of Service Tax under the category of Business Auxiliary Service cannot be sustained."***

In view of the above, we find no reason to interfere with the impugned order and the same is upheld.

5. In the result, the appeal filed by the Department is dismissed.

(Dictated and Pronounced in the open Court)

Sd/- Sd/-

(C.J. MATHEW)
TECHNICAL MEMBER

(DR. SATISH CHANDRA)
PRESIDENT

k.b/-