IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal No.ST/93/08

(Arising out of Order-in-Original No.CCE/BBSR-II/S.TAX/No.04-COMMISSIONER/2008 dated 25.02.2008 passed by the Commissioner of Central Excise, Customs & Service Tax, BBSR-II.)

M/s. National Enterprises

Applicant (s)/Appellant (s)

Vs.

Commissioner of Central Excise, BBSR-II

Respondent (s)

Appearance:
Shri K.Kurmi, Advocate and Shri Rajesh Sharma, Advocate for the Appellant (s)
Shri K.Chowdhury, Supdt.(AR) for the Respondent (s)

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

Date of Hearing/Decision :- 22.03.2018

ORDER NO.FO/75568/2018

Per Shri Justice (Dr.) Satish Chandra.

The present appeal is filed by the appellant against Order-in-Original No.CCE/BBSR-II/S.TAX/No.04-COMMISSIONER/2008 dated 25.02.2008.

2. The brief facts of the case are that the respondent is engaged in the activities of extraction of Iron Ores 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 blasting was done by the 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

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

4. With this background we have heard Shri K.Kurmi and Shri K.Choudhary, representatives of the parties. We have also perused materials available on record. We find that the identical issue has come up in the case of Commr. of Central Excise, JSR. v. Eastern Zone Syndicate bearing Service Tax Appeal No.201/09 dated 21.03.2008, where the Tribunal relied on the ratio laid down 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."***

5. In view of the above we find no reason to sustain the impugned order. The same is hereby set aside.

6. In the result the appeal filed by the appellant is allowed.

(Dictated and pronounced in the open court.)

Sd/	sd/
(C.J.Mathew)	**(Justice Dr. Satish Chandra)**
Member(Technical)	**President**

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