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

Appeal Nos. ST/196 & 207/10

(Arising out of Order-in-Appeal Nos. 28-29/RAN/2010 dated 26.02.2010 both passed by the Commissioner (Appeals) of Central Excise and Service Tax, Ranchi.

M/s. Commissioner of Central Excise & Service Tax-Ranchi
Appellant (s)

Vs.

M/s. Hindustan Steel Works Construction Ltd.

Respondent (S)

Appearance:
Shri K. Choudhari, Suptd. (A. R.) for the Revenue
Shri Ravi Raghavan & Shri Rishi Raju, Advocates for the Respondent (s)

CORAM:
HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI BIJAY KUMAR, MEMBER (TECHNICAL)

Date of Hearing: -13.06.18
Order No. FO/76611-76612/2018

PER SHRI P.K.CHOUDHARY

The present appeals have been filed by the Revenue against the impugned Order-in-Appeal Nos. 28-29/RAN/2010 dated 26.02.2010 and 28-29/RAN/2010 dated 26/02/2010, both passed by the Commissioner (Appeals) of Central Excise and Service Tax, Ranchi.

2. Briefly stated the facts of the case are that the Respondent-Assessee, M/s. Hindustan Steel Works Construction Limited, Bokaro Steel City, Bokaro are engaged in providing "Cleaning Services" for removal of Ash deposited in the Pond of Power plant of M/s. Bokaro Steel plant, unit of Steel Authority of India Limited and M/s. Bokaro

Power Supply Company Limited, Bokaro. The active power of Steel was sold to one Bokaro Power Supply Company Limited, Bokaro for generation of power and steel. In the course of generation of electricity, ash is generated which is dumped in Ash Pond. A Show Cause Notice dated 16/04/2008 was issued directing the Respondent-Assessee to pay Service Tax under the category of "Cleaning Services", under Section 65 of Chapter V of the Finance Act, 1994 with effect from 16/06/2005 for the period from October 2006 to February 2007. Subsequently, another Show Cause Notice, dated 21/04/2008 was issued for the period from 1/03/2007 to 31/03/2007. The Adjudicating Authority vide OIO dated 13/04/2009 confirmed the demand of Service tax under the category of cleaning service amounting to Rs.47,66,086/- along with interest and also imposed penalty under Section 76, 77 & 78 of the Finance Act, 1994. For the subsequent Show Cause Notice, the Adjudicating Authority vide OIO dated 23/06/2009, confirmed the demand of Service tax amounting to Rs.11,98,965/- along with interest and also imposed penalty under Section 76, 77 & 78 of the Finance Act, 1994.

3. The assessee preferred Appeals before the Ld. Commissioner (Appeals).

4. The Ld. Commissioner (Appeals) vide common Order-in-Appeal i.e the impugned order allowed the appeals both on merit and limitation.

5. The Revenue is in appeal before the Tribunal.

6. The Ld. DR for the Revenue, reiterates the grounds of appeal and submits that the Assessee has rendered the services to clean Ash Pond

Nos. 3 & 4 by removing and excavating the deposited ash from those Ponds. Accordingly, the services rendered by the Respondent-Assessee is definitely coming under the category of "Cleaning Services" as defined under Section 65 (24b) of the Finance Act, 1994.

7. The Ld. Advocate appearing on behalf of the Respondent-Assessee, filed written submissions and a compilation of statutory provisions, Board's Circular, and relied upon decisions and contended that as per the definition of "Cleaning Activity" under Section 65 (24b) of the Finance Act, "cleaning" would include Specialized cleaning such as disinfecting, exterminating or sterilizing of objects or premise or tanks or reservoirs of such Commercial or industrial building. He further submits that the term "Cleaning" has not been defined anywhere in the Finance Act, and therefore, in order to define the term, he referred to 'Merriam-Webster' Dictionary which defines cleaning as 'free from dirt or pollution' or 'free from contamination'. Additionally, Concise Oxford Dictionary defines it as 'free from dirt', marks or pollutants. The cleaning activity defined under Section 65 (35b) extends to normal sweeping, dusting and mopping of buildings, factory premise, plant or machinery, tank or reservoir and restricts specialized cleaning services only to three activities i.e. disinfecting, exterminating or sterilizing of object or premise.

The Ld. Advocate argued that in the present case, the activity of excavation and transportation of fly ash from the pond, for channeling the slurry water-flow cannot be termed as a cleaning activity in terms of 65 (24b) of the Finance Act. The Respondent-Assessee is not removing the fly ash with the objective of cleaning the pond or free the pond from contamination. Fly ash is being excavated and transported to the specified areas as per the contract and the same cannot be termed as a cleaning activity.

8. The Ld. Advocate, also contended that the fly ash is a saleable good, which is used in the manufacture of ceramic tiles, mineral wool, etc. and is not a waste since, it is capable of being sold in the market. It is his submission that the removal of fly ash from the pond cannot be termed as cleaning activity under Section 65 (24b) of the Finance Act, and accordingly, no Service Tax would be attracted in this case.

He relied upon the decisions of the Tribunal in the case of Aakriti Construction (P) Ltd. v. CCE, 2017 (7) G.S.T.L. 478 (Tri.-Del.), and Calcutta Industrial Supply Corporation v. Commissioner of Service Tax, 2017 (11) TMI 158 (Tri.-Kol.).

9. Heard both sides and perused the appeal records.

10. We find that the cleaning activity has been defined under Section 65(24b) of the Finance Act.

> *"Cleaning activity" means cleaning, including specialized cleaning services such as disinfecting, exterminating or sterilizing of objects or premises, of-*
>
> *(I) commercial or industrial buildings and premises thereof: or*
>
> *(ii) factory, plant or machinery, tank or reservoir of such commercial or industrial buildings and premises thereof,*
>
> *But does not include such services in relation to agriculture, horticulture, animal husbandary or dairying;]*

We find that cleaning service has been also defined in the Board's Notification F. No. B1/6/2005-TRU dated 27/07/2005.

11. We also find that in the present case, the activity of excavation and transportation of fly ash from the pond, for channeling the slurry water-flow cannot be termed as "cleaning activity" in terms of Section 65 (24B) of the Finance Act. The Respondent is not clearing the fly ash with the objective of cleaning the pond or free the pond from contamination. Fly ash is being excavated and transported to the specified areas as per the contract.

12. We observe that fly ash is a saleable good, which is further used in manufacture of bricks etc. and hence it is not waste, which is being removed from the pond. It has specific utility and capable of being sold in the market.

13. We find that the issue in the present case is covered by the decision of this Bench in the case of M/s. Calcutta Industrial Supply Corporation Vs. Commissioner of Service Tax, Kolkata. The relevant para is reproduced below:-

> ***8. Cleaning Service:***
> ***8.1 The Ld. Counsel submitted that the appellant is merely loading/lifting Ash from the Ash ponds, transporting it upto a distance of 25 Kms. and unloading the same at the abandoned mines of ECL. It is further submitted that the contract is essentially for transportation of Ash and not for rendering any cleaning activity. The Ld. Counsel fairly submitted that they are not contesting the amount of Rs.2,03,476/- on CHP maintenance work against cleaning service, which they have already paid.***
>
> ***8.2. The adjudicating authority observed that the appellant was allocated work by Damodar Valley Corporation (DVC) for removal of technological waste from CHP area, DTPS and it would come under cleaning service. It is further observed that the appellant entered into contract for cleaning of premises of an industry and would come under the cleaning service as defined under section 65(24b) w.e.f. 16.06.2005.***

8.3. The definition of cleaning service under section 65(24b) is reproduced below:-

[(24b) cleaning activity means cleaning including specialized cleaning services such as disinfecting, exterminating or sterilizing of objects or premises, of
(i) Commercial or industrial buildings and remises thereof; or
(ii) factory, plant or machinery, tank or reservoir of such commercial or industrial buildings and remises thereof,
But does not include such services in relation to agriculture, horticulture, animal husbandry or dairying:]

From the above definition, it is clear that the cleaning activity would cover cleaning of commercial or industrial building or premises thereof or factory, plant or machinery, tank or Reservoir of such commercial or industrial buildings or premises.

8.4. It is seen from the letter dated 03.02.2004 of DVC that the appellant was awarded tender for excavation of Ash from different field of Ash Ponds of DTPS, DVC, Waria, Nuisance free transportation and disposal of Ash in abandoned mines of ECL. It appears that the purpose of the tender is for disposal of Ash in the abandoned mines of ECL. The appellant is engaged for transportation and disposal of Ash in the abandoned mines. The letter does not show that the appellant was engaged for cleaning of the premises. Therefore, the demand of Service Tax under the category of cleaning service is not justified.

14. In view of the above discussion, we do not find any infirmity in the impugned order and accordingly, the same is sustained. The appeal filed by the appellant Revenue is dismissed.

(Operative part of the order was pronounced in the open court.)

Sd/-	**Sd/-**
(BIJAY KUMAR)	**(P.K. Choudhary)**
Member (Technical)	**Member (Judicial)**

Pooja