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

S.T.Appeal No.95/08

(Arising out of Order-in-Original No.02-03/S.Tax/Commr./08 dated 10.03.2008 passed by the Commissioner of Central Excise & Service Tax, Jamshedpur)

M/s Ripley & Company Ltd.

Applicant (s)/Appellant (s)

Vs.

CCEx. & S.Tax, Jamshedpur

Respondent (s)

Appearance:

Shri A. C. Tikadar, Consultant for the Appellant (s)
Shri S. Mukhopadhyay, Supdt. (AR) for the Revenue

CORAM:

HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI V. PADMANABHAN, MEMBER (TECHNICAL)

Date of Hearing : 08.10.2018
Date of Decision : 08.10.2018

ORDER NO…FO/A/76758/2018

Per Bench :

The present appeal challenges the Order-in-Original No.02-03/S.Tax/Commr./08 dated 10.03.2008. The impugned order is before us against two show-cause notices dated 24.11.2006 and 20.08.2007. In these show-cause notices, the total demand for service tax has been raised by covering the total period from 16.08.2002 to 24.03.2007.

2. The appellants had entered into three contracts with M/s Tata Steel Ltd. for rendering services relating to mining activities within the

States of Jharkhand and Orissa. The three contracts covered the works as follows :

(i) The Work Orders dated 24.09.2003 as well as 13.04.2005 were for "Iron Ore raising from Katamati iron mines by deploying own Heavy Earth Moving Machinery (HEMM) as per requirement in order to raise iron ore". The Work Contracts were for carrying out excavation, loading, transportation and unloading of ROM & Waste/Reject at designated dump yard/stock yard.

(ii) The Work Order dated 24.02.2005, was for hiring of Heavy Earth Moving Machinery for development of iron mines as per scope of the work and other terms and conditions.

3. On completion of adjudication, the demand for service tax was confirmed by the adjudicating authority vide the impugned order. The service tax liability was confirmed under the category of Business Auxiliary Service for the work carried out in terms of Works Orders dated 24.09.2003 as well as 13.04.2005. In respect of works carried out under Work Order dated 24.02.2005, the demand for service tax was confirmed under the category of Site Formation & Demolition Services. The said order is challenged in the present appeal.

4. Heard the ld.Consultant, Shri A.C.Tikadar, for the appellant and Shri S.Mukhopadhyay, ld.D.R. for the Revenue.

5. The submissions of the ld.Consultant for the appellant, are summarized below :

(i) The Adjudicating Authority has erred in confirming service tax in respect of the Works Orders dated 24.09.2003 as well as 13.04.2005 under the Business Auxiliary Service. He submitted that these activities are in the nature of mining of iron ore and services discharged ancillary to such mining. The mining was included as a separate service in the Finance Act, 1994 only w.e.f. 01.06.2007 and for the period prior to this date, demand for service tax cannot be confirmed under any other category as held by the Tribunal in the case of M. Ramakrishna Reddy Vs. Commr. of Central Excise & Cus., Tirupathi reported in 2009 (13) STR 661 (Tri.-Bang.) and in the case of Triveni Earthmovers Pvt. Ltd. Vs. Commr. of Central Excise, Salem reported in 2009 (15) S.T.R. 393 (Tri.-Chennai). The Tribunal in above cases held that Site Formation and loading and transportation of goods in the mining are are ancillary to the mining services and not liable to service tax before 01.06.2007.

(ii) With reference to the Work Order dated 24.02.2005, he submitted that the order is only for supply of heavy machinery for use in mining. Such activity can be liable to service tax only w.e.f.16.05.2008 when the separate category was introduced, which covers hiring of tangible goods.

(iii) Finally, he submits that entire demand for service tax may be set aside.

6. The Revenue's case is that in the contracts, the transportation charges and other charges are shown separately. Therefore, the appellants are providing separate services, which are chargeable to service tax. The ld.D.R. for the Revenue specifically pointed out that the Contract dated 24.02.2005 is not only for hiring of heavy machinery like, excavation, dumping, drilling etc. in the mining area. He drew our attention to the Work Order, in which, scope of work

included making mining face ready for charging the explosives for specific loading and removing the reject material upto to the mining area. As such, unloading of ROM & Waste/Reject at Designated Dump Yard/Stock Yard is required to be removed. He refers to the findings of the Adjudicating Authority in Para 18 of the impugned order and justified the demand under the category of Site Formation & Demolition Services.

7. We have heard both sides and perused the records.

8. The activities carried out in terms of Work Order dated 24.09.2003 as well as 13.04.2005 are similar and involved raising of mined ore from the mining area and loading and transporting of the same upto the Dock Yard. From the perusal of the Work Order and the description of work, it is evident that the activities are essentially for mining of iron ore and certain ancillary services in relation to the mining. Mining has been incorporated as a separate service only w.e.f. 01.06.2007 when the separate category has been created under Section 65 (105)(zzza). We have perused the case laws relied upon by the appellants in cases of M. Ramakrishna Reddy as well as Triveni Earthmovers Pvt. Ltd. (supra), wherein the Tribunal has held that Site Formation and Loading and Transportation of goods within mining area are not liable to service tax prior to 01.06.2007. The demand raised against the services are for a period prior to 01.06.2007 and hence, the demand for service tax cannot be sustained. Consequently, we set aside the demand pertaining to the above two Work Orders raised by both the show-cause notices in this case.

9. The activities covered under Work Order dated 24.02.2005 are entirely of a different type. The description of Work Order as mentioned is for hiring of Heavy Earth Moving Machinery for development of iron mines as per the scope of the work and other terms and conditions. A perusal of relevant Work Order reveals that the scope of work is not only hiring of heavy machinery. The appellant in terms of Work Order, is also required to load and to remove the reject materials. They were also required to make mining face ready for charging the explosives. The job undertaken by the appellant as per Contract is Site Formation, which included specific loading and Dumping. As such, Contract is not for mining. The issue has also been discussed at length by the adjudicating authority at Para 18 of the impugned order. We approve such findings and uphold the demand of service tax on activity covered by this work order under Site Formation Service.

10. In the line of the above discussions, we set aside the demand for service tax raised in the Work Order dated 24.09.2003 as well as 13.04.2005. However, we uphold the demand of service tax for the activities carried out under Work Order dated 24.02.2005. Penalty imposed will apply proportionately.

11. Appeal is partly allowed.

(Dictated and pronounced in the open court.)

Sd/	Sd/
(P.K.Choudhary)	**(V.Padmanabhan)**
Member (Judicial)	**Member (Technical)**

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