IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

EASTERN ZONAL BENCH: KOLKATA

Appeal No. ST/187/2008

(Arising out of Order-in-Original No. 107/ST/Commr/08 dated 19/08/2008 passed by Commissioner of Central Excise Ranchi.)

M/s. Chindit Carriers Pvt. Ltd. — Appellant (s)
Vs.
CCE & ST-Ranchi — Respondent (s)

Appearance
Shri A. C. Tikadar, Consultant for the Appellant
Shri D. Haldar, A. C. (A. R.) for the Revenue

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

Date of Hearing-26.02.2019

ORDER NO. FO/75292/2019
PER CORAM

The present appeal is directed against the Order-in-Original No. 107/ST/Commr/08 dt. 19/08/2008.

2. The appellant entered into two agreements with M/s. Central Coalfield Ltd (CCL). The agreement dt. 01/06/2004 stipulated that the appellant will carry out the work of loading and transportation of raw/waste coal from Piparwar to Bachra Siding. The appellant also entered into another agreement dt. 13/01/2005 as per which, they were required to carry out the job of extraction and transfer of Coal/Coal Measure Strata including parting thickness less than one meter, by deploying "Surface Miners".

3. After examining the agreements, the department was of the opinion that the appellant will be liable for payment of Service Tax for the

agreement dt. 01/06/2004, under the category of "Cargo Handling Service" classifiable under Section 65 (23) of the Finance Act, 1994 (Act). For the work carried out on the basis of the agreement dt. 13/01/2005, the department was of the opinion that such activity will be liable for payment of Service Tax under the category of "Business Auxiliary Service" under Section 65 (19) of the Act since the activity is in the nature of production of coal on behalf of M/s. CCL. Show Cause Notice dt. 28/05/2007 was issued proposing the demand of Service Tax under the above two categories.

4. The Adjudicating Authority confirmed the demand of Service Tax as proposed in the Show Cause Notice by issue of the impugned order. This order is under challenge in the present proceeding.

5. The appellant's case is argued by Shri A. C. Tikadar, Ld. Authorized Consultant and Revenue is represented by Shri D. Haldar, Ld. DR. The arguments advanced on behalf of the appellants are summarized below:-

(i) It was submitted that the activity carried out under the agreement dt. 01/06/2004 was nothing but mere transportation of coal within the mining area. The loading and unloading of the coal carried out by the appellant was incidental to the activity of transportation of coal within the mining area. He submitted that such activity cannot be covered under the category of "Cargo Handling Service". He relied on various decisions to support his argument that such activity can only be covered under "Transportation of goods by road service" (GTA). The category of 'GTA' was included in the statute only with effect from 01/01/2005 and since the demand made under the category of "Cargo Handling Service is for the period 10/04/2004 to 31/07/2004, which is prior to the introduction of GTA Service, he submitted that no liability for Service Tax will arise on the appellant.

(ii) Activity carried out under the agreement dt. 13/01/2005, he submitted, was in the nature of mining. It involved extraction and transfer of coal and the same can only be classifiable under "mining" which became chargeable to Service Tax only w.e.f. 01/06/2007 as classifiable under Section 65 (105) (zzzy) of the Finance Act, 1994. The period of demand under this category was February 2005 to 24/03/2006. Since the period of demand is prior to the introduction of the mining service, no Service Tax liability will arise on the appellant.

(iii) In this connection, he relied on the decision of the Tribunal in the case of Sainik Mining Allied Services Ltd. Vs. Commissioner of Central Excise, Bhubaneswar reported in 2008 (09) STR 531 (Tri. Kolkata). He submitted that both the activities have been decided in the said decision in favour of the appellant.

6. Ld. DR however justified the order.

7. He submitted that it is not clear from the record whether transportation activity was carried out within the mining area. He also reiterated the views expressed by the Adjudicating Authority on the classification of the services.

8. We have heard both sides and perused the appeal record.

9. At the outset, we discuss the activity carried out under the agreement dt. 01/06/2004. As per this agreement, the appellant was required to carry out loading/unloading and transportation of coal from Piparwar to Bachra Siding. The agreement makes it clear that the contract is for the work of transportation of coal. Such activity is to be classified only under the category of "Goods Transfer Agency", since it involved mere transportation of goods. We find support for this view in the decision of the Tribunal relied by the appellant in the case of Sainik Mining Allied Services Ltd. (Supra).

10. Next we consider the agreement dt. 13/01/2005. As per this agreement, the appellant was required to carry out the activity of extraction and transfer of coal, by deploying "Surface Miners". From the description of the Service, it is evident that the Service provided is in the nature of mining. Mining as a separate category of service liable to Service Tax was introduced only w.e.f. 01/06/2007. Since the demand made in this case is prior to this date, no Service Tax liability will arise on the appellant. Similar Service has also been ordered for classification only under Mining in the decision of Sainik Mining Allied Services Ltd (Supra).

11. The observation of the Tribunal in the Sainik Mining Case case in respect of both the services under dispute in case are extracted below for ready reference:-

"3. *The appellant has carried out the following three types of work for M/s. Mahanadi Coal Fields Ltd.*

	Nature of work
(1)	*Extraction and transfer of Coal/Coal measure strata by deploying Surface Miners on hiring basis.*
(2)	*Mechanical Transfer and Transportation of Coal for*

	further processing within the mines.
(3)	*Hiring of Pay Loaders for mechanical transfer of Coal into Wagons.*

6. *The activity covered under Sl. No. (1) of the table of the previous page involves extraction of coal in the coal mines making use of machinery. Further, the scope of work also includes transfer of such coal to tippers for dumping inside the mines. We note that same activity has been held to be covered under Mining service which is leviable to Service Tax only w.e.f. 1-6-2007. Such a view has also been taken by the Commissioner (Appeals) for the earlier period vide his order dated 27-2-2008. The Revenue did not file any appeal against this order. We hold that the issue has achieved finality in favour of the appellant. In any case, we are convinced that the activity of extraction of coal is nothing but other category.*

7. *After hearing both sides and on perusal of the records, we find that the activity mentioned in Sl. No. (2) above is for loading and transportation of coal from one point to another point within the mines. The contract is mainly for transportation of raw coal for further processing and involves, loading and unloading of the dumpers/tippers. We find that the activity has been decided in the appellant's own case in their favour as reported in Sainik Mining & Allied Services Ltd. v. Commr. of Central Excise, Customs & Service Tax, BBSR [2008 (9) S.T.R. 531 (Tri.-Kolkata). In the above case Tribunal observed as follows :*

> *"8. We find that the activity undertaken by both the appellants for mechanical transfer of coal from the coal face to tippers and subsequent transportation of the coal within the mining area, does not come under the purview of cargo handing service. The dominant activities undertaken by the appellants under the contract in question are primarily the movement of coal within mining area and transfer of coal from the coal face to the tippers, if at all, includes loading and unloading which are merely incidental. Cargo in commercial parlance has a definite connotation which is carried as freight in a ship, plane, rail or truck and the activities undertaken by the appellants in terms of the contracts on behalf of M/s. MCL to move coal within mining area do not fall in the category of cargo handling service. Moreover, the activities undertaken are principally the transportation of coal within mining area and hence, the gross amounts received for the same cannot be taxed under the category of cargo handling service. We have, therefore, no hesitation in our mind to hold that the definition of cargo handling service under the Finance Act, 1994, does not include the kind of activities undertaken by the appellants and hence the same are not chargeable to service tax. We also find that there was no suppression or misstatement by the appellants regarding the nature of activities undertaken by the appellants and hence the imposition of penalty on them is not at all justified. Accordingly, we set aside the impugned order and allow both the appeals with consequential benefit to the appellants."*

The same has been followed by the Tribunal in various other cases. Consequently, we find no justification to uphold the demand of Service Tax under the category of Cargo Handling services for the work carried out in respect of transportation of coal within the Mining area."

12 . We also note that transport of coal within the mine was held to be under GTA Service by the Hon'ble Supreme Court in the case of CCE & ST, Raipur Vs. Singh Transporters 2017 (4) G.S.T.L. 3 (S.C.).

13. Following the above decisions, we find no justification for the demand of Service Tax, as made in the impugned order. The order is set aside and appeal is allowed.

(Dictated and pronounced in the open court.)

Sd/-

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-

(V. PADMANABHAN)
MEMBER (TECHNICAL)

Pooja