

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

Service Tax Appeal No. 79/2019

(Arising out of Order-in-Original No. 07/Commissioner/CE/Haldia/Adjn./2008 dated 19.12.2008 passed by the Commissioner of Central Excise, Haldia Commissionerate, Kolkata)

Purba Medinipur Jilla Parishad

Applicant (s)/Appellant (s)

Versus

CCE- Haldia

Respondent (s)

Appearance:

Shri Lachman Samtani, C.A. for the Appellant (s)

Shri K. Choudhuri, Supdt. (A.R.) for the Respondent (s)

CORAM:

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

Date of Hearing/Decision :- 13.12.2018

ORDER NO: FO/77330/2018

PER SHRI P.K. CHOUDHARY

The appellant is a Local Body and has been awarded a contract by the Govt. of West Bengal, Deptt. of Panchayat and Rural Development for evacuation of certain Ash from the fly ash pond of Kolaghat Thermal Power Station under West Bengal Power Development Corpn. Ltd. The evacuation was necessary to ensure uninterrupted power generation of the said Power Station. The Adjudicating Authority confirmed the demand of Rs.76,53,349/- alongwith interest and imposed penalties under Section 76 and 78 of the Finance Act, 1994. Hence the present appeal before the Tribunal.

2. The Ld. Counsel appearing on behalf of the appellant submits that the activities as mentioned in the scope of work cannot be termed as 'cleaning' as alleged in the show cause notice. It is also submitted that an

ash pond is designed, devised to receive and store the fly ash and when it is wholly filled, the same is being emptied by mechanical means and not cleaned off but the 'ash pond' is ready to receive fresh fly ash for which the ash pond was created and devised. It is his submission that the show cause notice has been issued based on wrong classification of service. The Ld. Counsel filed written submission and contended that as per the definition of 'cleaning activity' under Section 65 24 (b) of the Finance Act, 1994, cleaning would include specialised cleaning services such as disinfecting, exterminating or sterilizing of objects or premises of commercial or industrial buildings and premises thereof; or factory, plant or machinery, tank or reservoir of such commercial or industrial buildings and premises thereof. It is his submission that the appellant/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 removed as per the contract and the same cannot be termed as a 'cleaning activity'.

3. Ld. D.R. submits that the services undertaken by the appellant is definitely coming under the category of 'cleaning services' as defined under Section 65 24 (b) of the finance Act, 1994. He reiterates the findings of the impugned order.

4. *Heard both sides and perused the appeal record.*

5. We find that the issue is no more res integra and has been decided by the Tribunal in the case of Commr. of Central Excise & Service Tax-Ranchi Vs. M/s. Hindustan Steel Works Construction Ltd. reported in 2018 (11) TMI 1217-CESTAT, Kolkata. The relevant paragraphs of the above mentioned order are being reproduced:

"8. The Ld. Advocate, also contended that the fly ash is a saleable goods, 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).

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

"Cleaning activity" means cleaning, including specialised cleaning services such as disinfecting, exterminating or sterilizing of objects or premises of

*Commercial or industrial buildings and premises thereof : or
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 channelling the slurry water-flow cannot be termed as “cleaning activity” in terms of Section 65(24B) of the Finance Act. The Respondent is not cleaning 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 goods 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 declaration of this Bench in the case of M/s. Calcutta Industrial Supply Corporation Vs. Commr. 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, DTSPS 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:

[(24(b) cleaning activity means cleaning including specialized cleaning services such as disinfecting, exterminating of objects 65 24 (b) 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]

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.*

6. We observe that the facts of the present case are squarely covered by the aforesaid decision of this Bench.

7. In view of the above discussion, the impugned order cannot be sustained and the same is set aside. The appeal filed by the appellant is allowed with consequential relief, if any.

(Operative part of the order already pronounced in the Court)

Sd/-

V. PADMANABHAN
(TECHNICAL MEMBER)

Sd/-

P.K.CHOUDHARY
(JUDICIAL MEMBER)

k.b/-