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

REGIONAL BENCH - COURT NO.2

**Service Tax Appeal No.75218 of 2014**

(Arising out of Order-in-Original No.12/S.Tax/Commr/2013 dated 11.10.2013 passed by Commissioner of Central Excise & Service Tax, Jamshedpur.)

**M/s. Interstate Syndicate**
**Prop: Shri Bhim Sharma**
(At/PO: Barajamda, West Singhbhum,Jharkhand-833221.)

**...Appellant**

*VERSUS*

**Commissioner of Central Excise & Service Tax, Jamshedpur**
**.....Respondent**
(143, New Baradwari, Sakchi, Jamshedpur-831001.)

**<u>APPEARANCE</u>**

Shri K.Kurmy, Advocate for the Appellant (s)

Shri S.Mukhopadhyay, Authorized Representative for the Respondent (s)

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

**<u>FINAL ORDER NO. 75076/2022</u>**

DATE OF HEARING : 28 October 2021
DATE OF DECISION : 09 February 2022

**P.K.CHOUDHARY :**

The facts of the case in brief are that the Appellant is having office at Opp: Telephone Exchange, Post Office Road, At/PO-Barbil, Distt. Keonjhar in the state of Odisha till 2009-10. In the state of Jharkhand, the Appellant has its office at/PO Barajamda, West

Singbhum-833221, which started in December, 2010. The Appellant got registered under Chapter V of the Finance Act, 1994 in the year 2006 under the name and style of M/s. Interstate Syndicate, Barbil, Odisha with the Superintendent, Barbil Range in the state of Odisha under Bhubaneswar-II Commissionerate vide registration bearing No.AAAFI4408CST001 which was granted on 30.06.2006 for providing 'Mining of Mineral Services', 'Goods Transport Agency Services' and 'Business Auxiliary Services'. During the period 2006-07 to 2009-10, Service Tax Returns were filed with the jurisdictional Range Superintendent, Barbil (Odisha). They surrendered their registration in the state of Odisha on 03.06.2010. The demand in the instant case relates to the period from 2007-08 to 2009-10, when the Appellant was discharging the Service Tax liabilities in the state of Odisha. During 2007-08, 2008-09 and 2009-10, the Appellant provided 'Mining Service' in the state of Odisha amounting to Rs.3,34,58,986/-, Rs.1,70,00,285/- and Rs.1,59,85,488/- respectively and aggregating to Rs.6,64,44,759/- in the state of Odisha on which Service Tax of Rs.67,04,137/- was paid excluding the value of Rs.25.00 Lakhs during the period 2009-10 due to claim of exemption on local transportation with freight below Rs.750/- under exemption Notification No.34/2004-ST dated 03.12.2004.

2. The Appellant subsequently in the year 2010 filed an application before Range Superintendent, Chakradharpur Range, Jharkhand for granting of registration in the name of Shri Bhim Sharma, Proprietor, which was granted on 31.12.2010 vide registration bearing No.AEIPS7146FSD003 and started paying tax w.e.f. 20.10.2011. The PAN AEIPS7146F was in the name of Shri Bhim Sharma. Thereupon, the Appellant stopped filing returns and paying taxes in the state of Odisha.

3. On the basis of departmental audit and verification of books of accounts, records, Returns, Balance Sheet, Profit & Loss A/c of M/s.Interstate Syndicate, Proprietor: Shri Bhim Sharma, a Show Cause

Notice dated 16.10.2012 was issued under Section 73 *inter alia* alleging that the Appellant has purportedly provided services classifiable under the category of ‘Mining of Mineral Services’ of the value of Rs.6,64,44,759/-, but failed to pay Service Tax of Rs.78,83,271/- along with interest under Section 75 during the period 2007-08 to 2009-10 and also failed to take registration in the state of Jharkhand. The Appellant is also required to show cause why penalty under Section 76, 77 and 78 of the Act should not be imposed.

4. By the impugned order, the learned Commissioner has confirmed the Service Tax demand of Rs.67,04,137/- under the category of ‘Mining of Mineral Services’ defined under Section 65(105)(zzzy), Service Tax demand of Rs.8,70,132/- is confirmed under the category of ‘Business Auxiliary Services’ defined under Section 65(105)(zzzb) and Service Tax demand of Rs.3,09,002/- under the category of ‘Cargo Handling Services’, defined under Section 65(23) read with Section 65(105)(zr) aggregating to Rs.78,83,271/-. The learned Commissioner rejected the contention of the Appellant that during the period from 2007-08 to 2009-10, they had already discharged Service Tax of Rs.67,04,137/- in the state of Odisha under the category of ‘Mining of Mineral Services’ on the ground that they should have discharged their Service Tax liability under the Jamshedpur Commissionerate in the state of Jharkhand and payment made in the state of Odisha is not acceptable as their office is situated in Barajamda, Jharkhand. The learned Commissioner by the impugned order further imposed penalty of Rs.10,000/- under Section 77(1)(a), Rs.10,000/- under Section 77(1)(b), Rs.10,000/- under Section 77(2) and Rs.78,83,271/- under Section 78 of the Act. Hence, the present Appeal before the Tribunal.

5. The case of the Revenue is that the Appellant had been providing services in the state of Jharkhand much prior to 31.12.2010, i.e. before it obtained Service Tax registration in Jharkhand. Therefore, the Appellant ought to have discharged the applicable Service Tax liability

in the State of Jharkhand vis-à-vis the services provided from their premises in Jharkhand.

6. The contentions of the Appellant are that :-

i) The Appellant had paid Rs.63,45,060/- as Service Tax on the value of 'Mining Service' amounting to Rs.5,69,04,838/- provided in the state of Odisha and the said payment has been accepted by the Department.

ii) The Appellant was operating from its premises in Odisha during the period from 2006-07 to 2009-10 and therefore, the question of payment of tax in the state of Jharkhand does not arise.

iii) The Appellant is a proprietorship concern and that their offices in Odisha and Jharkhand are merely two office premises under the same proprietorship.

iv) Service Tax demand of Rs.8,70,132/- confirmed under the category 'Business Auxiliary Service' is outside the scope of the Show Cause Notice, as no Service Tax was proposed under the said category in the Show Cause Notice. Similarly, demand of Rs.2,57,502/- under the category 'Cargo Handling Service' is also outside the scope of the Show Cause Notice.

v) The demand of Service Tax is barred by limitation.

7. Heard both sides through video conferencing and perused the Appeal records.

8. We find that the questions to be decided in the instant case are:-

i) Whether the Appellant had been providing taxable services in the state of Jharkhand prior to obtaining registration in the state of Jharkhand.

ii) Whether the offices of the Appellant in Odisha and Jharkhand can be construed to be two premises of the proprietor.

iii) Whether the 'Mining Services' provided by the Appellant prior to 01.06.2007 are taxable.

9. At the outset, we observe that the registration obtained by the Appellant in the state of Odisha was under PAN : AAAFI4408C, whereas the registration obtained by the Appellant in the state of Jharkhand was under PAN : AEIPS 7146F. The fourth character of a PAN represents the status of the PAN holder. The various possible status are :

i) F – Firm/LLP
ii) P – Individual
iii) C – Company
iv) H – HUF
v) A – Association of Persons
vi) B – Body of Individuals
vii) G – Govt. Agency
viii) J – Artificial Juridical person
ix) L – Local authority
x) I – Trust

Similarly, the fifth character of a PAN represents the first alphabet of the PAN holder's surname in case of individuals and the first alphabet of the PAN holder's name in case of non-individuals.

Therefore, in the instant case, PAN AAAFI4408C represents a firm/limited liability partnership with the name starting with 'I'; in this case Interstate Syndicate. Further, PAN AEIPS7146F represents an individual whose surname starts with 'S'; in this case Sri Bhim Sharma. Therefore, the contention of the Appellant M/s.Interstate Syndicate is the proprietorship concern of Mr. Sharma and that they had obtained registration under a different PAN is factually incorrect. M/s. Interstate Syndicate is a firm/LLP, although no documents in respect of its constitution have been produced before us. In view of the above, we find that under the eyes of law, M/s. Interstate Syndicate and Prop.

Bhim Sharma are separate legal entities and the attempt on the part of the Appellant to mislead this Tribunal and the Adjudicating authority is unwarranted.

In this view of the matter, we find that the services provided by the Appellant in Odisha and the services provided in Jharkhand are to be considered as services provided by two different entities.

10. Further, we find that the contention of the Appellant that they had not been providing services in the state of Jharkhand prior to obtaining registration in the state of Jharkhand is contrary to the evidence on record.

11. We find that as per the work orders and statement of Bills produced by the Appellant for the period prior to 31.12.2010, it is evident that the Appellant was accepting work orders addressed to its address in Jharkhand during the period from 2007 to 2010.

12. Further, the Appellant was also raising invoices during the period from 2007 to 2010 which contained its address in Jharkhand. It is also observed that surprisingly, certain invoices raised by the Appellant did not contain any address. Therefore, even if for the sake of argument it is accepted that the Appellant was providing services from Odisha, we find no cogent reason to justify the mention of their address in Jharkhand in the invoices while there being no mention of their registered address in Odisha at the same time.

13. In respect of the contention of the Appellant that the demand of Service Tax in respect of 'Mining Services' provided prior to 01.06.2007, we find that the Central Board of Excise & Customs (As it then was) had issued various clarificatory Circulars and Notifications to clarify the treatment of specific services, forming part of 'Mining Services', prior to 01.06.2007. Therefore, to the extent of the demand

raised on the value of service of Rs.70,35,178/- we deem it fit to remand the matter to the Adjudicating authority to calculate the actual demand payable by the Appellant keeping in mind the exact nature of service provided by the Appellant and the clarifications issued by CBEC from time to time in respect thereof.

14. In view of the above discussion, we observe as under:

The matter is remanded to the Adjudicating authority to verify and calculate the Service Tax demand in respect of Mining services provided prior to 01.06.2007.

The Appeal is disposed of in the above terms.

(Order pronounced in the open court on 09 February 2022.)

Sd/
**(P.K.CHOUDHARY)**
**MEMBER (JUDICIAL)**

Sd/
**(P.V.SUBBA RAO)**
**MEMBER (TECHNICAL)**

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