

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

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.75121 of 2021

(Arising out of Order-in-Original No.45/S.Tax/Pr.Commr./2020 dated 07.10.2020 passed by the Principal Commissioner, Central Goods & Services Tax & Central Excise, Ranchi.)

M/s. Jindal Steel & Power Limited

(Balkudra, Ramgarh, Jharkhand-829143.)

...Appellant

VERSUS

Principal Commissioner of CGST & CX, Ranchi Commissionerate

.....Respondent

(C.R. Building, 5A, Main Road, Ranchi-834001.)

APPEARANCE

Shri Vishal Agarwal, Ms.Tuhina & Ms.Isha Shah, all Advocates 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)**

FINAL ORDER NO. 75247/2022

DATE OF HEARING : 20 January 2022

DATE OF DECISION : 04 May 2022

PER BENCH :

M/s. Jindal Steel & Power Ltd. (JSPL), the Appellant herein, is a company *inter alia* engaged in the business of manufacturing steel. The Appellant was allocated the Jitpur Coal Block/Mine at Jharkhand. The Hon'ble Supreme Court vide its order dated 24.09.2014, cancelled the allotment of 203 coal mines, one of which was the Jitpur Coal Mine allocated to the Appellant.

2. Subsequently, the Coal Mines (Special Provisions) Act, 2015 (CMSPA) was passed, which *inter alia* provided for the manner of subsequent allocation of rights over the cancelled coal mines.

3. As per the provisions of Section 16 of the CMSPA, at the time of re-allocation of the cancelled coal blocks to the successful bidder, the prior allottees were to be compensated for the transfer of the right, title and interest in the land and mine infrastructure to the successful bidder. Accordingly, the Appellant being a prior allottee, received an amount of Rs.22,72,64,253/- as compensation in respect of land and mine infrastructure.

4. The Appellant was issued a Show Cause Notice dated 03.04.2019, alleging that it had tolerated the act of cancellation of the coal blocks by the Ministry of Commerce, Government of India, in lieu of which it received compensation, on which it was liable to discharge Service Tax. It was alleged that the service rendered by the Appellant was that of '*agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act*', which was a declared service under Section 66E(e) of the Finance Act, 1994.

5. The Appellant filed its reply dated 10.06.2019 to the aforesaid notice *inter alia* contending that there was no rendition of service, declared or otherwise, by the Appellant to the Ministry of Commerce/Government of India and that the compensation received by it was not consideration which was leviable to Service Tax. The Appellant attended a personal hearing before the adjudicating authority. The Appellant also filed additional submissions post the hearing dated 04.09.2020.

6. Pursuant to the above, the Principal Commissioner passed the impugned order dated 07.10.2020 confirming the demand raised in the Show Cause Notice, *inter alia* on the ground that the Appellant had tolerated the act of cancellation of the coal mine and received the amount of compensation in lieu thereof, which was covered by the definition of 'service' in Section 65B(44) read with Section 65B(22) and Section 66E(e) of the Finance Act, 1994. Aggrieved by the impugned order, the Appellant has filed the present Appeal.

7. At the outset, the Ld.Advocate for the Appellant submits that the issue in dispute in the present case has already been decided by this

Tribunal in the case of MNH Shakti Limited Vs. Commissioner of CGST & Central Excise, Rourkela, in Final Order No.75689/2021 dated 10.11.2021 in Service Tax Appeal No.75218 of 2020 (reported in 2021 (11) TMI 427 – CESTAT Kolkata). The assessee in that case was also a prior allottee of a coal block, the allocation of which was cancelled by the Hon'ble Supreme Court vide order dated 24.09.2014. The Revenue authorities demanded Service Tax from the assessee therein on the amount of compensation received by it on the ground that the same was consideration for rendition of the declared service of tolerating the act of cancellation of coal blocks by the Ministry of Commerce, Government of India. The Tribunal, vide its order, allowed the Appeal of the assessee and held that the coal blocks were cancelled in terms of the Hon'ble Supreme Court's order and that to reimburse such prior allottees for their investment in land and mine infrastructure, the CMSPA provided for payment of compensation to the prior allottees by the new bidder. It has been held that the cancellation of the coal block was in terms of the order of the Hon'ble Supreme Court and the assessee had no choice of tolerating the same or otherwise. The compensation paid to the assessee was statutorily provided for recouping the investment made in the mines and not as a consideration for tolerating the cancellation of the coal blocks.

8. Ld.Authorized Representative for the Department justified the impugned order.

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

10. It is undisputed that the compensation was received by the Appellant. Coal blocks allocated to the Appellant as well as to several others were cancelled as per the judgment of the Hon'ble Supreme Court. Thereafter, they were allotted to new companies. From the time they were allotted to the Appellant till their cancellation by the Hon'ble Supreme Court, the Appellant had invested in mining of these blocks. Similar was the case with other allottees. In order to take care of this situation, CMSPA was passed which provided for payment of

compensation to the old allottees by the new allottees. The Appellant received such compensation through the Government. The case of the Revenue is that the Appellant is tolerating the act of cancellation and has received this amount as consideration for such tolerance.

11. The question of tolerating something and receiving a compensation for such tolerance pre-supposes that:

- a) the person had a choice to tolerate or not;
- b) the person chose to tolerate;
- c) such tolerance was for a consideration as per an agreement (written or otherwise) to tolerate;
- d) the tolerance was a taxable service.

None of the above elements are present in the case under consideration. The Appellant had no choice of tolerating cancellation or not. The Appellant has not chosen to tolerate the cancellation. The cancellation was in pursuance of the order of the Hon'ble Supreme Court and not as a result of a contract to tolerate cancellation. There was no consideration for tolerating the cancellation, only a compensation provided for statutorily for the investment made in the mines by the Appellant.

12. Even in cases where any amount is received under a contract as a compensation or liquidated or unliquidated damages, it cannot be termed 'Consideration'. This case is not even a case of payment under a contract. Both the cancellation of the allocation of the blocks and the receipt of compensation are by operation of law. They are like the receipt of a compensation when one's land is acquired by the Government in public interest or the payment to a Government employee of an amount equal to the salary for unused leave at the time of his/her retirement. It is unthinkable to say that the land-owner has tolerated the acquisition of his land as per an agreement and charge Service Tax on the compensation. Equally unthinkable is to say that the Government employee has tolerated the non-sanction of leave during his service as per an agreement and in consideration, received the leave encashment at the time of retirement and to charge Service Tax

on the amount received as leave encashment. These, cannot be called taxable services of tolerating a situation by any stretch of imagination. No Service Tax can be levied on the amounts received by the Appellant as compensation.

13. Since we have decided the matter in favour of the Appellant on merits, we do not find it necessary to examine the question of limitation. For the same reason, all the penalties need to be set aside as well.

14. In view of the above, the impugned order cannot be sustained and accordingly the same is set aside. The Appeal is allowed with consequential relief, if any, to the Appellant.

(Order pronounced in the open court on 04 May 2022.)

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

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