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

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.277 of 2012

(Arising out of Order-in-Original No.84/Commr/ST/Kol/2011-12 dated 14.03.2012 passed by Commissioner of Service Tax, Kolkata.)

M/s. Emta Coal Limited
(5B, Nandalal Basu Sarani, Kolkata-700071.)

...Appellant

VERSUS

Commissioner of Service Tax, Kolkata

.....Respondent

(GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata.)

APPEARANCE

Dr.Samir Chakraborty, Sr.Advocate & Shri Abhijit Biswas, Advocate for the Appellant
Shri J.Chattopadhyay, Authorized Representative for the Respondent

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

FINAL ORDER NO. 77595/2023

DATE OF HEARING : 30 November 2023
DATE OF DECISION : 30 November 2023

Per : R. MURALIDHAR :

The Appellant is aggrieved by the following confirmed demand:-

Sr. No.	Services	Demand as per SCN dated 21.10.2010	Demand as per Impugned Order dated 14.03.2012
1.	Cargo Handling Service (01.04.2005 to 31.05.2007) (a) Rs.1,09,72,551/- against registration under Jamuria Range (b) Rs.12,91,510/- against registration under Sahibganj Range	Rs.1,22,64,061/-	Confirmed; Para 15 of order (p-31-32)
2.	Mining Service (01.06.2007 to 31.03.2010) (a) 01.06.2007 to 31.03.2008	Rs.45,86,34,375/- Rs.14,07,10,518/-	Confirmed; Para 16, p32-33

	(b) 01.04.2008 to 31.03.2010	Rs.26.01,36,069/-	Appropriated [Para 17, p33-37]
	(d) 2008-09 (disclosure u/s 132(4) of IT Act, 1961 – alleged surreptitious mining services)	Rs.3,68,43,808/-	Confirmed; (Para 19, p38-40)

2. We notice from the documentary evidence placed before us tha the Appellant has provided 'Mining Service' as a composite service. The Department has vivisected the same by issuing demands under 'Site Formation and Clearance Service' and 'Cargo Handling Service'.

3. The Adjudicating authority has already dropped the proposed demand on 'Site Formation Service' and on appeal we have dismissed the Revenue's Appeal. On the same ground, we set aside the confirmed demand of Rs.1,22,64,061/- in respect of 'Cargo Handling Services'.

4. Being satisfied with the documentary evidences placed, we set aside the amount of Rs.70,350/- along with interest and penalty thereon.

5. The Appellant has submitted that the confirmed demand of Rs.3,68,43,808/- is on account of information gathered from the Income Tax authorities. They submit that they can properly account for the source of such income which as per them, would not require any Service Tax payment. Therefore, we remand this matter to the adjudicating authority for proper verification of the documentary evidence to be provided by the Appellant.

6. In respect of the confirmed demand of Rs.45,86,34,375/- and 14,07,10,518/- in respect of 'Mining Services', the Appellant submits that they were raising the invoice on their client which were not being paid in full by them. As per the terms of the Agreement entered into with the clients, several deductions were made and the Appellant was being paid only the net amount after such deductions. The Appellant submits that on the net amount received they have already paid the Service Tax in the normal course. The present confirmed demands are on account of their deductions carried out by their clients.

7. We have gone through some invoice copies provided by the Appellant. From these invoices it is seen that they are showing that quantity involved, the service charges and the Service Tax element. It

is not clear from these invoices as to what kind of deduction was made by the client. The Appellant is required to give invoice-wise details of the deductions made by the client, to prove that those amounts were not received by the appellant so as to get exemption from Service Tax payment. They are also required to show the details of the client's ledger towards the value of invoice amount debited in their ledger, amount received from the client and Credit Note passed for the balance amount so as to tally with the invoice value in the ledger. All these details are required to be produced in respect of the invoices raised during the period 2007 to 2010, along with reconciled statement, the same also would be required to be verified in a detailed way. Therefore, we remand even this matter to the adjudicating authority. The adjudicating authority would follow the principles of natural justice and allow the Appellant to file all the documentary evidences in support of their submissions and pass a considered decision within 6(six) months from the date of receipt of this communication.

8. To summarize:

(1) The confirmed demand of Rs.3,68,43,808/- on account of I.T. Seizure is being remanded.

(2) The confirmed demand in respect of Mining Services of Rs.45,86,34,375/- and Rs.14,07,10,518/- is being remanded.

(3) All other confirmed demands along with interest and penalties are set aside.

9. The Appeal is disposed of thus.

(Operative part of the order pronounced in the open Court.)

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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