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

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.70139 of 2013

(Arising out of Order-in-Original No.COMMR/B-I/ST-30/2012 dated 30.11.2012 passed by Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-I.)

M/s. Mahanadi Coalfields Limited
(P.O. N.S. Nagar, Bhartpur, Dist.Angul-759148, Odisha.)

...Appellant

VERSUS

Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-I

.....Respondent

(C.R. Building, Rajaswa Vihar, Bhubaneswar, Odisha.)

APPEARANCE

Shri Sanjay Dixit & Shri Rajeev Agarwal, both Advocates for the Appellant (s)
Shri S.Mukhopadhyay, Authorized Representative for the Revenue

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

FINAL ORDER NO. 77656/2023

DATE OF HEARING : 12 December 2023
DATE OF DECISION : 12 December 2023

Per : K. ANPAZHAKAN :

The Appellant M/s. Mahanadi Coalfields, Bharatpur Area, are engaged in the business of mining and selling of coal. The department raised an objection that the Appellant has been providing the services of 'Sizing of coal' to their customers but not paying service tax on the consideration received towards rendering the services under the category of 'Business Auxiliary Service'. Accordingly, a show cause notice dated 10.10.2011 was issued to the Appellant demanding service tax of Rs.24,86,45,980/-including Education Cess and SHE Cess, for the period April 2006 to February 2011. The Notice was adjudicated by the Commissioner, Central Excise, Customs and Service Tax, Bhubaneswar-I, vide impugned Order-in-Original COMMR/B-I/ST-30/2012 DATED 30.11.2012, wherein the demands of service tax of Rs. 24,86,45,980/- was confirmed along with interest and imposed equal amount of tax as penalty under Section 78 of the Finance Act, 1994. Penalty of Rs.5000/- was also imposed under Section 77 of the finance Act, 1994. Aggrieved against the impugned order, the Appellant has filed the present appeal.

2. Briefly stated facts of the case are that the Appellant had entered the contracts for sale with the purchasers of coal which are generally nomenclated as Fuel Supply Agreement('FSA'). In the FSA entered with NALCO and NTPC, which are power generating companies, the Appellant was required to deliver sized coal with size confirming to the specifications laid down in the agreement which range between 100 mm to 250 mm. The Appellant has recovered consideration for such sizing activity nomenclated as "sizing/crushing charges". The term "delivered price of coal" as per the FSA includes base price of coal as notified by the price notification issued by Coal India Limited and further includes additional charges such as Sizing/Crushing charges, Surface Transportation Charges (STC), Rapid Loading charges/Silo Loading Charges and other statutory charges etc. wherever applicable. The Appellant, in pursuance of its FSA, while invoicing the sale of coal has included all the components of its sale price of coal which includes the sizing charges and paid applicable VAT on such assessable value as per the State Laws. The department demanded service tax on these charges collected for sizing of coal and confirmed the demand under 'Business Auxiliary service. Hence, this appeal.

3. In their grounds of appeal, the Appellant submits that the issue is no longer *res integra*, as the coordinate Bench of this Tribunal in Appellant's own case – **Commissioner of Central Excise & Service Tax, BBSR-I vs Mahanadi Coalfields Limited, Final Order No 76585/2017 dated 21.08.2017,** after placing reliance on the

judgment of Bharat Sanchar Nigam Limited v Union of India, 2006 (2) STR-161(SC) has held that sales tax and service tax cannot be made applicable on the same transaction. The above judgment of the CESTAT Kolkata has been followed consistently by other Benches on the same issue in the following cases wherein they have set aside the demand of service tax:

(i) M/s South Eastern Coalfields Limited v CCE & ST, Raipur in Service Tax Appeal No 54276 of 2014, Final Order No 50878 dated 22.02.2018

(ii) Commissioner of Central Excise & Service Tax, Bhopal v Northern Coalfields Ltd & Another, Service Tax Appeal No’s 52895-52896, 53115-53116,53130, 53186,53190 of 2015 with 50268, 50420 and 50434 of 2017, Final Order No 52911-52920/2018 dated 31.08.2018

(iii) M/s South Eastern Coalfields Limited v Commissioner of CGST, Customs & Excise, Jabalpur in Service Tax Appeal No 50422 of 2017, Final Order No 50317 dated 02.03.23

4. The Tribunal, Kolkata Bench has decided the issue in favour of the Appellant in the case of M/s Integrated Coal Mining Ltd. Vs Commissioner of Central Excise and Service Tax, Bolpur, vide Final Order No.75012/2021 dated 05.01.2021.The same view was earlier taken by the Principal Bench, Tribunal, New Delhi in the case of M/s.Northern Coalfields Ltd. Vs Commissioner of Central Excise and Service Tax, Jabalpur vide Final Order Nos. 51761-51767/2019 dated 05.12.2019 and in the case of South Eastern Coalfields Ltd. Vs. Commissioner of Central Excise and Service Tax, Raipur, vide order dated 22.02.2018. On the basis of the said decisions, the Appellant prayed for setting aside the demands confirmed in the impugned order.

5. The Ld. D.R. reiterated the findings in the impugned order.

6. Heard both sides and perused the appeal documents.

7. We observe that the issue is no longer *res integra*, as the Tribunal Kolkata Bench has decided the issue in favour of the Appellant in the case of M/s Integrated Coal Mining Ltd. Vs Commissioner of Central Excise and Service Tax, Bolpur, vide Final Order No.75012/2021 dated 05.01.2021. The relevant part of the decision is reproduced below:

> *8.1 Sizing of coal is an incidental and ancillary process to make coal marketable and thus complete "manufacture" of coal and to make it into "excisable goods" as per Section 2(d) of the Central Excise Act. The process of sizing of coal is also therefore outside Section 65(19) of the Act since it is a process in the manufacture of the final product, sized coal.*
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> *8.2 We also find from the records of the present proceedings that in respect of exactly the same work undertaken by ICML at the said mines, right from the beginning when central excise duty became payable, ICML has been paying central excise duty on the coal manufactured/produced in the mine, upon determination of assessable value/transaction value by including all expenses incurred, including sizing and transportation right up to the place of removal, as per the provisions of the Central Excise Act, for which it was duly registered under the provisions of the Central Excise Act with the jurisdictional Central Excise authorities. Returns under the Act have also been submitted by ICML, which have been finally assessed and differential duty, if any assessed, have also been paid by ICML.*
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> *8.3 Further, in case of the period from March 24, 2011 to April 24, 2015 proceedings by issuance of show cause notices were initiated by the jurisdictional Commissioner/Principal Commissioner of Central Excise against ICML alleging undervaluation of the transaction values declared for the said period, of bituminous coal manufactured and cleared from the mine, by non-inclusion of elements, namely, royalty, stowing excise duty, primary education cess, rural employment cess, public works cess, road cess and AMBH fees and thereby short paying "central excise duty" to the extent*

contained in the show cause notices. The proceedings under the said show cause notices have resulted in adjudication orders, passed by the Commissioner of Central Excise, Kolkata-I Commissionerate/Principal Commissioner of Central Excise, Kolkata-I, dated 16.12.2014, 14.10.2015 and 27.05.2016 Studycafe.in Excise Appeal No.75388/2014 10 respectively. There the stand of the Central Excise Department is that ICML is engaged in the manufacture of bituminous coal classifiable under Chapter Sub-Heading 27011200 of the First Schedule to the Central Excise Tariff Act, 1985, for which it is holder of central excise registration number, and that ICML had manufactured and cleared the said goods on payment of central excise duty computed on the assessable value/transaction value that included the base price, sizing charges, washing charges and transportation charges, but had not paid central excise duty by not including cesses/fees, royalty and stowing excise duty, resulting in short payment of excise duty payable of amounts confirmed by the respective adjudication orders. Even for the periods pertaining to years 2015-16, 2016-17 and 2017-18 (upto June 30, 2017) the assessments under the Central Excise provisions have been finalised by the jurisdictional proper officer and differential central excise duty, as finally assessed, along with interest, were demanded and paid by ICML.

9. It is also not disputed that all along ICML has paid value added tax or Central Sales Tax on the coal and shale sold by it to CESC and CPL respectively.

10. In such circumstances, applying the principle laid down by the Supreme Court in Bharat Sanchar Nigam Ltd. Vs. UOI, 2006 (2) STR 161 (SC), since scheme of taxation under the Constitution of India provides for mutually exclusive levies, if certain activity amounts to "manufacture", it cannot become or be contended to be service. This issue is no more res integra.

10.1 In the case of Commr. of CE&ST Vs. Mahanadi Coalfields Ltd., Final Order No. 76585/2017 dated 21.08.2017 passed in Appeal No. STA/75816/2014, this Bench of the Tribunal, dealing with the self same issue, has held as follows:

2. Brief facts of the case are that during the period under consideration, the appellant was engaged in the crushing/sizing of the coal in its own mines. While receiving the consideration Studycafe.in Excise Appeal No.75388/2014 11 from the buyer in addition to the base price, the department is of the view that the crushing/sizing of the coal by the respondents for sale attracts the service tax under the business auxiliary service as per Section 65(19) of the Finance Act, 1994. But by the impugned order, the Commissioner dropped the demand. Being aggrieved, the Department has filed the present appeal.

3. ………………………………………………………………

4. After hearing both the parties it appears that the appellants had paid the sales tax/vat and total amount of sale includes crushing charges as well as other charges e.g. silo loading charges and the same was shown in the profit and loss account. The Hon'ble Supreme Court in the case of Bharat Sanchar Nigam Ltd. Vs. UOI reported in 2006 (2) STR 161 (SC) observed that sales tax and service tax cannot be made applicable on the same transaction as the same is includible to each other.

5. In the instant case undisputedly, the appellant has paid the sales tax/vat when it is so crushing charges are not leviable. Regarding the payment of sales tax/vat, the Ld. Counsel for the appellant has shown proof to the Ld. Counsel for the Department.

6. By following the ratio laid down by the Hon'ble Supreme Court, we find no reason to sustain the impugned order.

8. By following the decisions cited above, we hold that the demands confirmed in the impugned order is not liable to service tax under the *category of 'Business Auxiliary* Service'. Accordingly, we set aside the demands of service tax, interest and penalty confirmed in the impugned order.

9. In view of the above discussion, we set aside the impugned order and allow the appeal filed by the Appellant, with consequential relief, if any, as per law.

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

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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