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

Service Tax Appeal Nos. 75479 of 2015

(Arising out of the Order-in-Original No. 01/S. Tax/Commr/2015 dated 20.02.2015 passed by Commissioner of Service Tax, Ranchi.)

M/s BKB Transport Pvt. Ltd,
Flat No. 2F, Vatika Apartment, Line Tank Road, Ranchi, Jharkhand-834001.

...Appellant (s)

VERSUS

Commissioner of Central Excise & S. Tax, Ranchi,
C. R. Building, 5-A, Main Road, Ranchi-834001.

. ...**Respondent(s)**

With

Service Tax Appeal Nos. 75521 of 2015

(Arising out of the Order-in-Original No. 01/S. Tax/Commr/2015 dated 20.02.2015 passed by Commissioner of Service Tax, Ranchi.)

Commissioner of Central Excise & S. Tax, Ranchi,
C. R. Building, 5-A, Main Road, Ranchi-834001.

... .Appellant (s)

VERSUS

M/s BKB Transport Pvt. Ltd,
Flat No. 2F, Vatika Apartment, Line Tank Road, Ranchi, Jharkhand-834001.

. ...**Respondent(s)**

APPERANCE :
Shri Arvind Modi & Shri Rajeev Mittal, both Chartered Accountant for the Appellant
Shri S. S. Chattopadhyay, Authorized Representative for the Respondent

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

FINAL ORDER No...77699-77700/2023

DATE OF HEARING : 12.12.2023

DATE OF PRONOUNCEMENT: 19.12.2023

PER K. ANPAZHAKAN :

The Appellant, M/s. BKB Transport Pvt. Ltd. are engaged in providing the services of Transportation of Goods, Mining Services, Cargo Handling Services, Works contract Services etc. The Appellant has been primarily rendering the above said services to the Subsidiaries of Coal India Ltd., Mejia Thermal Power Station, Bokaro Thermal Power Station, Tenughat Vidyut Nigam Ltd., Jindal Steel & Power Ltd., Hindalco Ltd., Damodar Valley Corporation etc.

2. The Appellant was issued a Show cause Notice dated 07.04.2014, demanding total Service Tax of Rs.23,12,96,812/-on various Work Orders and recovery of Cenvat credit of Rs. 9,36,76,181/-under Rule 6(3)(i) of Cenvat Credit Rules, 2004 (CCR "04). The total Service Tax/ Cenvat credit reversal demanded in the Notice amounts to Rs. 32,49,72,993/- along with interest and penalties, on the following grounds:

(i) Non-payment of Service Tax on evacuation of Ash and Nuisance Free Disposal at the abandoned mines of CCL/BBCL under the category of 'Cargo Handling Services"

(ii) Non-payment of Service Tax on transportation of Coal, under the category of 'Mining Services'

(iii) Non-payment of Service tax under the category of 'Supply of Tangible Goods Service'

(iv) Non-payment of Service Tax on the services availed for hire of trucks from various persons for transportation of coal under the category of GTA Service

(v) Violation of CCR '04 by not paying 6% on the value of exempted services

3. The Notice was adjudicated by Commissioner Service Tax, Ranchi, vide impugned Order-in-Original dated 20.02.2015, wherein the Ld. Commissioner has confirmed the following demands and dropped the

remaining proceedings initiated in the Notice. The summary of the demands confirmed and the contention of the Appellant are as under:

Activity carried out by the appellant	Category under which activities are classified in O-I-O	Amount of Service Tax Demand Confirmed	Contention of The Appellant
Transportation of Ash	Cargo Handling	6,47,58,416	a) This is not Cargo Handling Service b) Department has taken different view in SCN of different periods of the same assessee and therefore the department itself is not clear about the clasiification of the service c) The service is covered by Judgment in the matter of : 1) **Purba Medinipur Jilla Parishad vs. CCE, Haldia**- Order No. FO/77330/2018- CESTAT Kolkata – 2) **Calcutta Industrial Supply Corpn.vs. Commissioner of S.T., Kolkata** – Order No. 77607/Kol/2017 -CESTAT, Kolkata 3) **M/S Arun Udyog vs. Commissioner of Central Excise, Customs & Service Tax, Bhubneshwar-I** – Order No. 77577/2023
Transportation of coal in mines	Mining Service	86,95,334	1) It is Not Mining Service and the department has taken different view in SCN of different periods of the same assessee 2) The service has been classified as GTA service by Hon'ble Supreme Court in the matter of **Commissioner of Central Excise & Service Tax vs. Singh Transporters – [2017] 84 taxmann.com 39 (SC)** 3) Consignment Notes are not issued by transporters but CCL and other units of Coal India Limited have paid Service Tax under GTA Services on RCM basis
Transportation service provided by Others	GTA	48,70,243	The Service Providers are not issuing any Consignment Note and are the agents of the Appellant. Further, taxation of the service will result in double taxation (once in the hands of the appellant and then in the hand of the ultimate service recipient i.e the clients of the appellant) hence not taxable
Total		7,83,23,993	

4. Aggrieved against the confirmation of the demands in the impugned order, the Appellant filed appeal before this Tribunal. The department also filed appeal against the dropping of the demand. Since, both the issues arise from the same Order-in-Original, both the appeals are taken up together for decision by a common order.

5. In their grounds of appeals the Appellant made the following submissions:

(i) Regarding the demand of Service Tax under Cargo Handling Service, the Appellant submits that they have actually rendered transportation service to Tenughat Vidyut Nigham Limited, Damodar valley Corporation and Mejia Thermal Power Corporation for evacuation of ash from different filled up Ash Ponds located at the power stations, by way of Nuisance Free Transportation to the abandoned mines of CCL, ECL, BCCL for the disposal of ash. The ash was transported in automatic dippers/dumpers/trucks and unloaded the same into the abandoned mines, by automatically sliding down the ash in the core of such mines. The Ld. Commissioner has classified this service under the category of 'Cargo Handling Service, and confirmed Service Tax whereas they have rendered only transportation service. The Appellant further submits that the department itself was not very clear about the classification of this service. The SCN dated 20.10.2008 issued to the Appellant earlier classified the same service under the category of 'Cleaning Service'. Further, in respect of the transportation services rendered by them, the service receiver has paid service tax under the category of 'GTA Service' in terms of Rule 2(1)(d)(v) of the Service Tax Rules, 1994. Accordingly, they contended that the demand confirmed against them on this count is not sustainable. In support of their contention that the services of evacuation of Ash and disposal of the same at abandoned mines would not be classifiable under the category of 'Cargo Handling Services", the Appellant relied on the following decisions:

1) **Purba Medinipur Jilla Parishad vs. CCE, Haldia**- Order No. FO/77330/2018- CESTAT Kolkata –
2) **Calcutta Industrial Supply Corpn.vs. Commissioner of S.T., Kolkata** – Order No. 77607/Kol/2017 -CESTAT, Kolkata
3) **3.M/S Arun Udyog vs. Commissioner of Central Excise, Customs & Service Tax, Bhubneshwar-I** – Order No. 77577/2023

(ii) Regarding the demand of Service Tax under the category of 'Mining Services', The Appellant submits that the service rendered by them was transportation of coal. They have not received any contract for actual mining of coal. A perusal of the Work Order received by them would reveal that it is a composite contract involving transportation as the primary service. All other services are incidental or ancillary to transportation service. The department has been collecting Service tax under the category of GTA service from the recipients from 2005 onwards. Accordingly, they contended that the demand of service tax under the category of 'mining service' is not sustainable. In support of their contention, the Appellant relied on the decision of the Hon'ble Supreme Court in the case of **Commissioner of Central Excise & Service Tax vs. Singh Transporters – [2017] 84 taxmann.com 39 (SC).**

(iii) Regarding the demand of Service Tax on the transportation services rendered by other transporters as sub-contractors, the Appellant submits that the transporters have not issued any 'Consignment Notes'. In fact, they have raised the invoice for transportation service to their clients CCL/BCCL and the receiver has paid service tax on the full value of the contract. As the sub-contractors who provided the transportation service have not issued any 'consignment note', they are not liable to pay service tax under the category of GTA service under reverse charge. Further, they submit that there is only one transportation service carried out, for which they have raised the invoice and the recipients have paid service tax under GTA for the full value. Hence demanding Service Tax from the sub-contractor transporter would amount to 'double-taxation'. In support of their contention, the Appellant relied on the decision in the case of Lakshmi Narayan Transport Vs Commissioner of CGST and Central Excise, Bhubaneshwar, reported in (2023) 11 Centax 60 (Tri.-Cal).

6. In view of the above submissions, the Appellant prayed for setting aside the demands and allowing their appeal.

7. The Ld. D.R submits that the contract entered by the Appellant are not mere transportation contracts. Every contract has to be looked into separately to identify the nature of service rendered. The contract for evacuation of ash from different Ash Ponds located at the power stations to the abandoned mines is not transportation service as the distance involved in these contracts is only two to three kilometers. Here, the primary service is loading and unloading and hence it has been rightly classified as 'Cargo Handling service' in the impugned order. Regarding the demand of service tax under 'Mining service', he submits that the primary service in this case is not transportation. The Appellant has rendered mining of coal and hence service tax has been rightly demanded under mining service. Regarding the demand of

Service Tax on the transportation services rendered by other transporters as sub-contractors, he submits that the transporters have rendered GTA service and raised bills to the Appellant and hence the Appellant is liable to pay service tax under GTA category as recipient of service. Accordingly, regarding the demands confirmed in the impugned order, he supported the findings of the adjudicating authority.

8. In the impugned order, the adjudicating authority has dropped the demand under the category of 'Supply of Tangible Goods Service' and the demand of payment of an amount of Rs.9,36,76,181/- for non-compliance of Rule 6(3)(i) of CCR '04. Also no penalty was imposed under Section 78 of the Finance Act, 1994 and Rule 15 of the CCR '04. The demand on 'supply of Tangible Goods' was dropped on the ground of limitation. The demand of payment of an amount of Rs.9,36,76,181/- for non-compliance of Rule 6(3)(i) of CCR '04, was dropped on the ground that separate accounts have been maintained for exempted and taxable services. Penalty under Section 78 was not imposed as suppression with an intent to evade payment of duty was not established. In this regard, the Ld. D.R relied upon the grounds of appeal filed by the department.

9. Heard both sides and perused the appeal records.

10. Regarding the demand of Service Tax under Cargo Handling Service, we observe that the Appellant has rendered the service to Tenughat Vidyut Nigham Limited, Damodar valley Corporation and Mejia Thermal Power Corporation, for evacuation of ash from different Ash Ponds located at the power stations. The ash was transported to the abandoned mines of CCL, ECL, BCCL for the disposal of ash. We

observe that the ash was transported in automatic dippers/dumpers/trucks and unloaded the same into the abandoned mines, by automatically sliding down the ash in the core of such mines. A copy of the Work Orders received by the Appellant is scanned and Reproduce below:

225.

TENUGHAT VIDYUT NIGAM LIMITED
(A GOVT. OF JHARKHAND UNDERTAKING)
HINOO, DORANDA, RANCHI-834002
JHARKHAND
(TEL: 0651-2502325, 2503399, FAX: 2253181, 2501015)

W. O. No: - TVNL/WORKS/W.O./11-12/5017

Date 12.11.11

M/S BKB Transport (P) Ltd.
2F, Vatika Apartment, 2nd Floor,
Line Tank Road, Ranchi,
Jharkhand

Sub: - Work Order for Evacuation of ash from ash Pond of TTPS, Lalpania and its nuisance free transportation & disposal in defined area provided by the plant.

Ref No: - 1.NIT No. 0014/Civil/W/TVNL/RAN/ 11-12 dtd. 06.07.11
2. T. O. Letter No. 11-12/0194 dtd. 07.09.11
3. T.O. Letter No. 11-12/0253 dtd. 14.10.11
4. Your Letter No.BKB TPL/ /11-12/333 dtd. 18.10.11

Dear Sir,

With reference to above the undersigned is pleased to place a work order on you for 25% of estimated quantity of the work under subject for disposal lead beyond to 1 - 2KM, 2 - 3 KM, 3 - 4 KM and Earth work at the rate (Annexure-I) at a total amount of Rs.- **76,63,800.00** (Rupees Seventy Six Lakh Sixty three Thousand Eight Hundred) Only plus service tax if any shall be borne by TVNL. The other terms and conditions shall be as follows:-

1. **Scope of work**- As per **Annexure-I.**

2. **Security Deposit**

2.1 The Contractor shall be required to submit initial Security Deposit of 5% of the ordered value including the EM already deposited in the form of Demand draft in favour of "Tenughat Vidyut Nigam Limited" payable at Ranchi to Bank Guarantee in our enclosed Performa at the time of agreement. Balance 5% of the Security Money will be deducted from R/A bills.

2.2 The Security Deposit furnished by the Contractor will be subject to the terms and conditions of the contract and the TVNL will not be liable for payment for any interest on the security deposit or depreciation thereof.

2.3 Security Deposit against the contract shall be for the due and faithful performance of the Contract and shall remain binding notwithstanding such variations, alterations or extension of time, as may be made, given concluded or agreed to between the otherwise.

2.4 The Security Deposit furnished by the Contractor shall be subject to the ... conditions of the contract finally ...

For B.K.B. Transport Pvt. Ltd.
Authorised Signatory

TENUGHAT VIDYUT NIGAM LIMITED

HINOO, RANCHI

Schedule of quantity & rate (Annexure-I)

Sl. No.	Item of Work	Quantity	Estimated rate Rs./M^3	Amount (Rs.)
1.	Evacuation of ash from ash pond of TTPS, Lalpania up to all possible lift required, loading by payloaders/ excavator washing the outside of dumpers truks as per specification on approved route and unloading at disposal site as directed by Engineer-in charge. The rate includes cost of sprinkling of water at the excavation site, haulage route and disposal site, dozing of ash by dozers at the disposal site, including levelling the ground as per direction of Engineer- in charge and specifications in conformity with pollution control norms and status and repairing of road in en-route (Section measurement)			
	(a) Lead beyond 1 - 2KM	5,000 M^3	60.08	3,00,400.00
	(b) Lead beyond 2 - 3KM	47,500 M^3	67.09	31,86,775.00
	(c) Lead beyond 3 - 4KM	47,500 M^3	73.75	35,03,125.00
2.	Earthwork in excavation in ordinary soil by manual excavation and carriage b truck / dumpers with all lifts and lead up to 1KMand spreading over ash disposed area including levelling etc all complete as per specification ad direction of E/I (Section measurement)	7,500 M^3	89.80	6,73,500.00
			Total	76,63,800.00

(Rupees Seventy Six Lakh Sixty three Thousand Eight Hundred) only.

12-11.11

(R.K.Sinha)
Chief Engineer

For B.K.B.Transport Pvt. Ltd.

Authorised Signatory

8. A perusal of the work order reveal that the primary service in this case is transportation and the loading and unloading work is ancillary to

the transportation service. Thus, we do not agree with the contention of the Ld. D.R. that the primary service in this case is loading and unloading. The Appellant cited the decision in the case of **Purba Medinipur Jilla Parishad vs. CCE, Haldia**-, Order No. FO/77330/2018- CESTAT Kolkata, in support of their contention. We observe that this decision is squarely applicable in this case. The relevant para of the decision is reproduced below:

> *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 TaxRanchi 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: " ....*
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> *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, Service Tax Appeal No. 79/2019 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 waterflow 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 bei8ng 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 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, DTPS 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 o65 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 remises 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. Service Tax Appeal No. 79/2019

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 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.

10. Thus, by relying on the decisions cited above, we hold that the Appellant has rendered transportation service. In terms of Rule 2(1)(d)(v) of the Service Tax Rules, 1994, the recipients are liable to pay service tax for the GTA services received by them. Hence, we hold that the demand of service tax from the Appellant under the category of 'Cargo Handling Service' is not sustainable.

11. Regarding the demand of Service Tax under the category of 'Mining Services', we observe that the services rendered by the Appellant was transportation of coal. They have not received any contract for actual mining of coal. A copy of the work orders are scanned and reproduced below:

Service Tax Appeal Nos. 75479 & 75521 of 2015

ANNEXURE – 8

CENTRAL COALFIELDS LIMITED
OFFICE OF THE GENERAL MANAGER (WS)
COKING COAL WASHERY DIVISION
PO: KATHARA :DISTT: BOKARO

Ref.No.GM(WS)/S.E.(E&M)/CCWD/T/KA-2 /08/ 1159 Dated:- 24 .07.2008

To,
M/S BKB Transport Pvt. Ltd.
At . New Road, Phusro
Dist.Bokaro (Jharkhand).

Sub: Award of work for transportation of raw coal from stock yard to Primary Crusher / Bunker at Kathara Washery .

Ref:- NIT No.CGM(CMC)/CCWD-Kathara/2008/15 dt. 02.02.08

Dear Sir,

The Chief General Manager(CMC), CCL, Ranchi has conveyed the approval of TCR for award of work for transportation of raw coal from stock yard to Primary Crusher / Bunker at Kathara Washery.

CMD based on the recommendation of the D(T) Opr. and D(F) has approved the recommendation of the Tender Committee for award of work in favour of M/S BKB Transport Pvt. Ltd. For a period of three years, as under:-

Item of work.	Qnty. Te.	Rate Rs./te	Value (Rs.)
Transportation of raw coal by Contractor's tipping trucks after loading by Contractor's payloader from stockyard of Kathara Washery to Primarry Crusher / Bunker, unloading mechanically after weighment at Kathara Washery road weigh bridge. Dist- Up to 1.0 K.M.	750000	16.50	12375000/-
Rupees One crore twenty three lakhs seventy five thousand only.			
Period: Three yeasr from actual date of commencement of work			

:-TERMS & CONDITIONS :-

1. Security Money:- Total 10% security money of the annualized value amounting Rs.4,12,500/- (Rupees Four lakhs twelve thousand five hundred) only to be deducted/ deposited shall consist in two parts.

a) 5% performance security money amounting Rs. 2,06,250/- (Rupees Two lakhs six thousand two hundred fifty) only should be deposited within 28 days of receipt of LOA after adjusting 1% initial bid/Earnest money already deposited by you in the form of Bank draft No. 380021 dt. 03.03.08 amounting Rs.42,000/- only.

b) Balance 5% security money will be recovered / deducted from running on a/c bills of the contract for the work done under the contract.

Whole money so deducted/deposited shall remain at the disposal of the company as security for the satisfactory execution and completion of the work in accordance with the provision of the contract.

2 Paying Authority:- Area Finance Manager (WS),CCWD, Kathara.

For B.K.B.Transport Pvt. Ltd.

Authorised Signatory

Contd. P/2.

Pay...

CENTRAL COALFIELDS LIMITED

OFFICE OF THE PROJECT OFFICER

JARANGDIH COLLIERY

P.O. JARANGDIH, DIST.-BOKARO

Ref: PO/JRD/Rly.Sdg/PE-D/954

Date: 30.3.09

SITE HANDOVER CERTIFICATE

Subject of Work	:- **Transportation of crushed coal by contractor tipping trucks from Jarangdih Feeder Breaker to Jarangdih Railway Siding P.F No.-II, Jarangdih Colliery, Loading by chute and unloading mechanically, Period Three Years**
NIT No.	:- CGM(CMC)/Kathara/2008/56 dt. 11/15.04.2008
LOI No./Work Order No.	:- CGM(KTA)/SO(M)/T/483/2009/BKB/305-15 dt. 19.02.09
Period of Work	:- Three (3) Years.
Date of Commencement	:- 01.12.2008

It is certified that the above referred work, which was awarded to M/s. BKB Transport Pvt. Ltd. has been commenced w.e.f 01.12.2008.

Contractor

Project Officer
.... Colliery

Siding Manager
SIDING MANAGER
Rly. Sdg. Jrd
.... Colliery

For B.K.B.Transport Pvt. Ltd.
Authorised Signatory

12. A perusal of the work order received by them would reveal that it is a composite contract involving transportation as the primary service. All other services are incidental or ancillary to transportation service. We find that the adjudicating authority has not brought in any evidence to substantiate the allegation that the appellant has rendered 'Mining Service'. The Appellant has relied on the decision of the Hon'ble Supreme Court in the case of **Commissioner of Central Excise &**

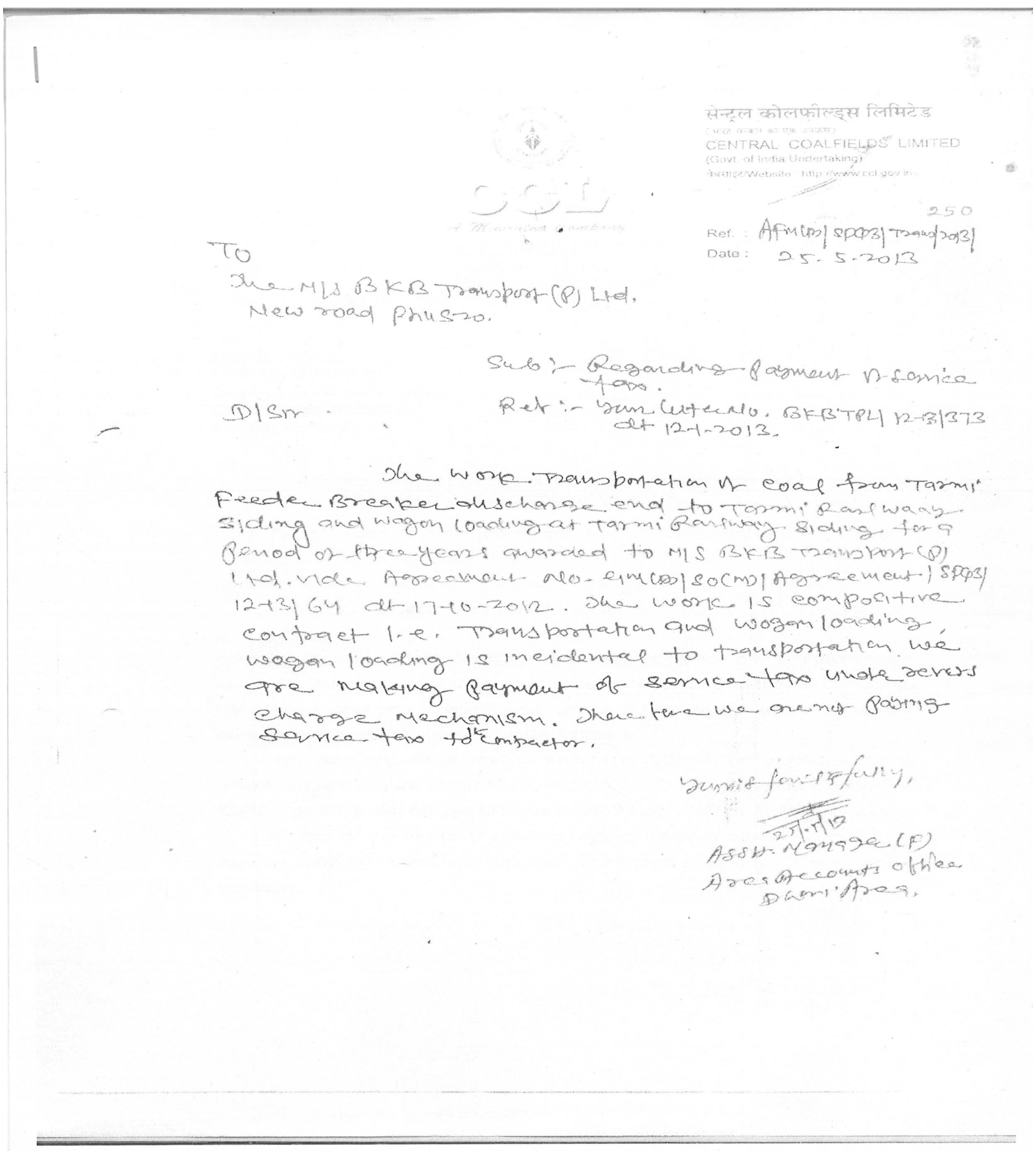
Service Tax vs. Singh Transporters – [2017] 84 taxmann.com 39 (SC). We observe that this decision is squarely applicable in this case. The relevant para of the decision is reproduced below:

> ***6.*** *Be that as it may, even if the relied upon judgment in the case of Arjuna Carriers (supra) is of no consequence to the present case, we are of the view that the activity undertaken by the respondent i.e. transportation of coal from the pit-heads to the railway sidings within the mining areas is more appropriately classifiable under Section 65(105)(zzp) of the Act, namely, under the head "transport of goods by road service" and does not involve any service in relation to "mining of mineral, oil or gas" as provided by Section 65(105)(zzzy) of the Act.*
>
> ***7.*** *The reliance placed on the definition of the term "mines" under Section 2(j) of the Mines Act, 1952 does not assist the Revenue inasmuch as what would be indicated by the said definition is that a mine is not to be understood necessarily in respect of pit-heads of the mining area or the excavation or drilling underground, as may be, but also to the peripheral area on the surface. The said definition has no apparent nexus with the activity undertaken and the service rendered.*
>
> ***8.*** *For the aforesaid reasons, we find no merit in this appeal(s). The appeal(s) is accordingly dismissed.*

13. Accordingly, by relying on the decision cited above, we hold that the service rendered by the Appellant is transportation service. As the receiver has already paid service tax in terms of Rule 2(1)(d)(v) of the Service Tax Rules, 1994, we hold that the demand confirmed in the impugned order under 'Mining Service' against the Appellant is not sustainable.

14. Regarding the demand of Service Tax on the transportation services rendered by other transporters as sub-contractors, we observe that the transporters have not issued any 'Consignment Notes'. In respect of this transportation service, the Appellant has raised invoice for the full value to their clients CCL/BCCL and the receiver has paid service tax on the full value of the contract. As the sub-contractors who provided the transportation service has not issued any 'consignment note', we observe that the Appellant are not liable to pay service tax under the category of GTA service on reverse charge. Further, we find that there is only one transportation service carried out as per the Work Order, for which two invoices have been raised. One invoice was raised by the

Sub-contractor to the Appellant and the other by the Appellant to CCL. Since the sub-contractor who rendered the transportation service to the Appellant has not issued any 'consignment note' for the transportation service, we hold that the Appellant is not liable to pay service tax as recipient of GTA Service. As the Appellant has raised the invoice on the full value and the recipient has paid service tax under GTA on the full value, demanding Service Tax again from the sub-contractor for the transportation service would amount to 'double-taxation'. The Appellant submitted the letter dated received from Coal India Limited to the effect that they were paying service tax under RCM basis for the transportation contract given to the Appellant. A scanned copy of the letter is reproduced below:



सेन्ट्रल कोलफील्ड्स लिमिटेड
CENTRAL COALFIELDS LIMITED
(Govt. of India Undertaking)
Website : http://www.ccl.gov.in

250

Ref. : AFM(D)/SPD3/Trans/2013/
Date : 25.5.2013

To
The M/s BKB Transport (P) Ltd.
New road Phusro.

Sub :- Regarding payment of service tax.
Ref :- Your letter No. BKBTPL/12-13/373 dt 12-4-2013.

D/Sir,

The work Transportation of coal from Tarmi Feeder Breaker discharge end to Tarmi Railway Siding and wagon loading at Tarmi Railway Siding for a period of three years awarded to M/S BKB Transport (P) Ltd. vide Agreement No. GM(D)/SO(M)/Agreement/SPD3/12-13/64 dt 17-10-2012. The work is composite contract i.e. Transportation and wagon loading, wagon loading is incidental to transportation. We are making payment of service tax under reverse charge mechanism. Therefore we are not paying service tax to contractor.

Yours faithfully,
27.5.13
Asstt. Manager (F)
Area Accounts office
Dhori Area.

15.In support of their contention, the Appellant relied on the decision in the case of Lakshmi Narayan Transport Vs Commissioner of CGST and Central Excise, Bhubaneshwar, reported in (2023) 11 Centax 60 (Tri.-Cal). We observe that the decision is squarely applicable in this case. The relevant part of the said decision is reproduced below:

> 23. During the period January 2015 to March 2017, the Appellant started providing the services directly to M/s. JSL w.e.f. January, 2015. The Appellant issued 'Consignment notes' to M/s. JSL and invoices were raised directly to M/s.JSL. Service tax under reverse charge was duly discharged by M/s. JSL on the GTA service.
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> 24.---
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> 25.---
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> 26. We observe that Board has issued Circular No. 186/5/2015-ST dated 5-10-2015, clarifying the issue, which is reproduced below:
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> "3. Goods Transport Agency (GTA) has been defined to mean any person who provides service to a person in relation to transport of goods by road and issues consignment note, by whatever name called. The service provided is a composite service which may include various ancillary services such as loading/unloading, packing/unpacking, transshipment, temporary storage etc., which are provided in the course of transportation of goods by road. These ancillary services may be provided by GTA himself or may be sub-contracted by the GTA. In either case, for the service provided, GTA issues a consignment note and the invoice issued by the GTA for providing the said service includes the value of ancillary services provided in the course of transportation of goods by road. These services are not provided as independent activities but are the means for successful provision of the principal service, namely, the transportation of goods by road.

4. A single composite service need not be broken into its components and considered as constituting separate services, if it is provided as such in the ordinary course of business. Thus, a composite service, even if it consists of more than one service, should be treated as a single service based on the main or principal service. While taking a view, both the form and substance of the transaction are to be taken into account. The guiding principle is to identify the essential features of the transaction. The interpretation of specified descriptions of services in such cases shall be based on the principle of interpretation enumerated in section 66 F of the Finance Act, 1994. Thus, if ancillary services are provided in the course of transportation of goods by road and the charges for such services are included in the invoice issued by the GTA, and not by any other person, such services would form part of GTA service and, therefore, the abatement of 70%, presently applicable to GTA service, would be available on it."

27. We observe that the clarifications cited above clearly establishes that when a composite contract is entered into between parties for transportation service including various intermediate or ancillary services provided in relation to the principal service of road transport of goods such as loading/unloading, packing/unpacking, transhipment etc., which are provided in the course of transportation, such contract cannot be vivisected. It will be treated as a contract for transportation only as the other services are naturally bundled together with the principal service of transportation."

16. By relying on the decision cited above, we hold that the demand of service tax from the Appellant on reverse charge basis under GTA service is not sustainable.

17. Regarding the department's appeal, we observe that the Appellant was issued the following two Show Cause Notices earlier:

(i) DGCEI F.No. 279/KZU/JST/ST/Gr/08/5293 dated 20.10.2008 covering the period 01.04.2003 to 31.03.2008

(ii) C.No.-V (65) 157/BKB/Adj/Ran/09/12741 dated 21.10.2011.

In the grounds of Appeal, the department contended that the SCN dated 20.10.2008 issued by DGCEI covered certain Contracts/Work Orders. However, the Contracts/ Work Orders dealt with in the SCN dated 11.04.2014 are different from the earlier Work Orders. The provision of service depends on each Work Order separately. The earlier Notices have not demanded Service Tax on Supply of Tangible Goods Service' or GTA service'. Hence, they contended that the demands in the SCN dated 11.04.2014 are not hit by limitation.

18. In this regards, we observe that the issue involved in the Work Orders covered by earlier Notices were also related to the issue whether Evacuation of Ash from the ponds and transporting it out side ti fill the abandoned mines. Earlier Notice demanded service tax under the category of ‚Cleaning Service, for the same work. Thus, it is evident that even though the Work Orders are different, the issue involved is the same. The demand was under 'Cleaning Services' earlier, whereas it is under 'Cargo Handling Service' now. Thus, we hold that as per the decision of Hon'ble Supreme Court in the case of Nizam Sugars, suppression of fact ground cannot be invoked again to demand service tax. We also obeerve that the department has not vbrought in any evidence to substantiate the allegation of suppression in this case, to invoke extended period. Accordingl;y, we hold that the adjudicating authority has rightly dropped the demands on the ground of limitation and not imposed penaltied under Section 78 of the Finance Act, 1994

and Rule 15 of the CCR ’04. Thus, we hold that the department’s appeal is not sustainable and it is liable for rejection.

19. In view of the above discussion, we set aside the impugned order and allow the appeal filed by the Appellant. The appeal filed by the department is rejected.

(Pronounced in the open court on…19.12.2023.)

Sd/-
(R. Muralidhar)
Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

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