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

Service Tax Appeal No. 242 of 2012

(Arising out of the Order-in-Original No. 01-02/ST/ADJ/COMMR/DIB/12dated 27.02.2012 passed by Commissioner of Central Excise & Service Tax, Dibrugarh.)

M/s North Eastern Coalfields,
(Coal India Ltd,) P.O.- Margherita, Dist.-Tinsukia, Assam, Pin-786181.

...Appellant (s)

VERSUS

Commissioner of CGST & Central Excise, Dibrugarh,
Nagar, Lane, 'F', P.O.- C. R. Building, Dibrugarh-786003, Asssam.
. ...**Respondent(s)**

APPERANCE :
Shri Chirag Mehra, Chartered Accountant for the Appellant
Shri J. Chattopoadhyay, Authorized Representative for the Respondent

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

FINAL ORDER No...77670/2023

DATE OF HEARING : 06.12.2023
DATE OF DECISION : 06.12.2023

PER K. ANPAZHAKAN :

The Appellant M/s.North Eastern Coalfields, a unit of Coal India Limited, a public sector undertaking, are engaged in the business of mining and selling of coal at the mines located in Assam. The audit conducted at the unit of the Appellant 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 08.03.2011 was issued to the Appellant demanding service tax of Rs.81,25,462/- including Education Cess and SHE Cess, for the period 01.04.2006 to 31.03.2009.

Another Notice dated 14.12.2011 was issued demanding service tax including Cess of Rs.85,33,419/-, on the same issue for the period 01.04.2009 to 31.03.2011. Both the notices were adjudicated by the Commissioner, Central Excise and Service Tax, Dibrugarh, vide impugned Order-in-Original dated 27.02.2012, wherein the demands of service tax of Rs.1,62,35,484/- for the period 01.04.2006 to 28.02.2011,made in both the notices were confirmed along with interest and imposed equal amount of tax confirmed as penalty. Aggrieved against the impugned order, the Appellant has filed the present appeal.

2. In their grounds of appeal, the Appellant submits 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 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.

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

4. Heard both sides and perused the appeal documents.

5. 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.

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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." 10.2 This decision has since been followed by the Principal Bench of the Tribunal, in cases involving the same issue: (i) Northern Coalfields Ltd. Vs. Commissioner, CGST, CE&C, 2020-TIOL-338-CESTAT-DEL (ii) South Eastern Coalfields Ltd. Vs. CCE&ST, 2018-TIOL1691-CESTAT-DEL Studycafe.in Excise Appeal No.75388/2014 12 (iii) Northern Coalfields Ltd. Vs. CGST, CC&CE, 2018 (8) TMI 1742 - CESTAT - DELHI. 11.3 In this regard reference is also made to the decision of a coordinate bench of the Tribunal in CCE Vs. Spectron Engineers Pvt. Ltd., 2020 (33) GSTL 223 (T). In para 4 of the order it has been observed as follows: "4. Having heard both sides, we find ourselves confronted with a dispute in which the jurisdictional central excise authorities seek to levy duties under Central Excise Act, 1944 while respondent claims leviability under Finance Act, 1994. That the respondent had been discharging service tax liability on 'job work' and had been paying VAT on the material component is not in doubt. The original authority has placed reliance on the decision of the Tribunal in Osnar Chemical Pvt. Ltd. V. Commissioner of Central Excise, Bangalore-II [2009 (240) ELT 115 (Tri-Bang.)] to hold that discharge of tax liability under one law precludes the invoking of another law merely for garnering revenue that has thereby escaped one of the jurisdictions. By discharging the tax liability on the job work charges as well as by discharge of VAT liability on 'brought out' items used for fabrication at site, the scope for considering the activity as manufacture is eclipsed entirely. In this context of mutually exclusive levies under the scheme of taxation in the Constitution, the activity of the respondent is works contract and hence not leviable to duty under Central Excise Act, 1944." (emphasis added) 10.4 Respectfully following the abovestated decisions, which also apply fully to the instant case, we find no infirmity with the impugned order of the Commissioner. The appeal of the Revenue against the same has no merit.*

6. 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, has held as under:

> *3. We find that there is no service involved in the facts of the matter, being an activity before sale. Considering in the facts of matter we find that the appellant company offering the „cut to size coal" to its customer, is like offering their coal in various forms and sizes. Hence, the cutting of coal to various sizes is not a service to the buyer, because buyer is being charged on per tonnage basis of coal including the sizing charge. Further, on this amount, appellant have paid excise duty, VAT, clean energy cess etc. We also find that the present appeals are squarely covered by the decision of this Tribunal in the case of Commr. of Central Excise & Service Tax, BBSR-I Vs. Mahanadi Coal Fields Ltd. vide Final Order No. 76585/2017 dated 21.08.2017. On 4 perusal of the said order, we find that in the similar set of facts, the Tribunal has allowed the appeal holding as under:-*
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> *"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 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.*
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> *3. With this background, we heard Shri K. Chowdhury and Shri Rajiv Agarwal, Ld. Counsels for the parties. 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 exclusive of each other". 4. In view of above, we do not find any merits in the impugned orders. Accordingly, the same are set aside and the appeals are allowed in favour of the appellants, with consequential benefit.*

7. By following the decisions cited above, we hold that the Appellant is not liable to service tax under the category of 'Business Auxiliary Service' *and hence the demands confirmed in the impugned order is not sustainable.*

8. In view of the above discussions, we set aside the demands of duty along with interest and penalty confirmed in the impugned order llow the appeal filed by the Appellant.

(Dictated and pronounced in the open Court)

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

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

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