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

Service Tax Appeal No. 538 & 545 of 2011

(Arising out of the Order-in-Original No. 68/COMMR/ST/BOL/11 dated 12.09.2011 passed by Commissioner of Central Excise, Bolpur.)

M/s Ujjal Transport Agency,
G.T. Road, (East), Murgasol, Asansol-713303.
Commissioner of CGST & Central Excise, Bolpur,

...Appellant (s)

VERSUS

Commissioner of CGST & Central Excise, Bolpur,
Sian, Bolpur, Dt. Birbhum, West Bengal, Pin– 731204.
M/s Ujjal Transport Agency,
G.T. Road, (East), Murgasol, Asansol-713303.
. ...**Respondent(s)**

APPERANCE :
None, for the Appellant/Assessee.
Mr. Manish Mohan, Authorized Representative for the Respondent

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

FINAL ORDER No...77754-77755/2023

DATE OF HEARING : 16.10.2023
DATE OF DECISION : 16.10.2023

PER K. ANPAZHAKAN :

There are two appeals filed against the Order-in-Original dated 12.09.2011, passed by Commissioner of Central Excise, Bolpur. In the impugned order, the Ld. Commissioner has confirmed the service tax including Education Cess amounting to Rs.9,05,78,692/- along with interest and imposed equal amount of tax as penalty, out of the total demand of Rs.16,21,77,190/- made in the Notice. He has dropped the demand of Rs.7,15,98,498/- which was paid by the appellant before issue of the Notice. Aggrieved against confirmation of the demand in the impugned order, the Appellant filed the present appeal No. ST-

538/2011. The Respondent department filed appeal No.ST 545/2011 against that portion of the demand which is dropped in the impugned order. As both the appeals emanate from the common Order-in-Original, they are taken up together for disposal by a common order.

2. Briefly stated facts of the case are that the Appellant, M/s Ujjal Transport Agency is a service provider of "Site Formation and Clearance, excavation and Earthmoving and Demolition services", "Transportation of goods by road", and "Mining Services" to its customers such as M/s Eastern Coal Fields (ECL), Burdwan, M/s North Eastern Coal Fields, Tinsukia, Assam and other concerns as per contractual arrangements. They recovered service charges from their customers as per contracts from 16.06.2005 to 31.05.2007, but not paid service tax on the amount collected.

3. Officers of DGCEI initiated investigation against the Appellant on the allegation that the services rendered by the Appellant are chargeable to service tax under the category of 'Site Formation and Clearance, excavation and Earthmoving and Demolition services' for the period 16.06.2005 to 31.05.2007. With effect from 01.06.2007, the services rendered by the Appellant were chargeable under 'Mining Services'. The investigation alleged that the Appellant did not discharge their service tax liability in respect of ' Mining Service' till 31.03.2010. On the basis of the investigation, a show cause notice dated 21.10.2010 was issued to the Appellant demanding service tax of Rs.16,21,77,190/-.The said Notice was adjudicated by the Commissioner, wherein he partly confirmed and partly dropped the demand raised in the Notice. Aggrieved against the impugned order, both the Appellant and Department are before this Tribunal.

4. In their grounds of appeal, the Appellant made the following submissions:

(i) They have rendered service in the state of Assam and Jharkhand, which do not fall within the jurisdiction of Bolpur Commissionerate. Hence, the adjudication of entire demand in the Notice by Commissioner, Bolpur is without jurisdiction.

(ii) The service rendered by them was primarily transportation of coal, for which the service receiver was liable to pay service tax under the category of GTA service.

(iii) The services of hiring of HEMM (Heavy Earth Moving Machineries) were liable to service tax under the category of 'supply of tangible goods service' which was not liable to service tax till 15.05.2008.

(iv) Service rendered by them to M/s.ECI, Salanpur during the period 2008-09 and 2009-10 were 'Mining Services' for which they have paid service tax from their Dhanbad Office , which is registered with service tax. No service tax was payable for the 'Mining service' rendered by them prior to 01.06.2007.

(v) They have not suppressed any information from the department and hence extended period not invocable to demand service tax.

(vi) Accordingly, they prayed for setting aside the demands confirmed in the impugned order.

5. The Ld. A.R. reiterated the findings of the adjudicating authority in the impugned order and supported the confirmation of the demand. Regarding dropping of the demand in the impugned order, he submitted that the Adjudicating Authority committed an error by reducing the service tax demand made in the Notice. Once the case of suppression was established, the provision of sub-section (3) of the Section 73 of the Finance Act,1994 as amended does not apply . Thus, the Adjudicating Authority is not correct in imposing a lesser penalty of Rs 9,05,78,692/ under Section 78 of the Finance Act,1994 and this has a bearing on the penalty under Section 76 of the Finance Act, 1994 as well. Accordingly, he prayed for allowing the department's appeal.

6. Before going into the merits of the issue, let us answer the preliminary objection raised by the appellant regarding the jurisdiction of Commissioner, Bolpur to adjudicate this demand. The Appellant contended that they have rendered service in the state of Assam and Jharkhand, which do not fall within the jurisdiction of Bolpur Commissionerate.

Hence, the adjudication of entire demand in the Notice by Commissioner, Bolpur is without jurisdiction. We observe that this contention of the Appellant has no merit. Unlike in Central Excise, Service Tax registration for a single premise under rule 4(1), enables the registrant to provide service anywhere in the taxable service territory of India. By taking single-premise registration in multiple locations, the service provider can provide service in a PAN-India manner. It is not that from Mumbai registration, the service provider cannot provide service in Kolkata or vice versa. Thus, service tax registration is not location-based with reference to the provision of service. It is only that a particular premise is registered so that said premise can be used for billing, accounting or relevant records and documents to be maintained in connection with the provision of service. It is the liberty of the service provider to take registration at several places and to maintain the account, and use it for billing only one particular premise out of such several registrations. If the service provider so wishes, he may take one registration in each service tax Commissionerate but provide service in all the places covered under the jurisdiction of each such Commissionerate from one and only one registered premises. No overlapping of jurisdiction arises in that case. Under such circumstances, it would be absurd to draw an inference that the states of Assam and Jharkhand do not fall within the jurisdiction of Bolpur Commissionerate and Bolpur Commissioner cannot adjudicate the demand pertaining to services rendered outside his jurisdiction.

7. It is worthwhile to mention here that in the ST2 of Ujjwal transport agency, corresponding to AAAFU6732HST001 dated 10.03.08 (the date of original registration obtained from Ranchi Commissionerate), which is a single premise registration, the address of the (Single), business premises registration is as Kusum Vihar, GT Road (East) Murgasol, Asansol, Bardhaman,PIN, 713,303, which is coincidentally identical with Head office address of Ujjwal transport agency. It is also stated that billing is done from the aforesaid head office address of Ujjwal Transport Agency. It is also on record that consolidated and centralized accounting of the

firm is maintained at the head office at Asansol, the business premises of the head office being so registered under service tax and the said head office being located in the adjudication of Bolpur Commissionerate, we hold that that there is no infirmity in adjudication of the entire demand by Commissioner, Bolpur.

8. Regarding the demand confirmed in the impugned order, we observe that the Ld. Commissioner has confirmed the service tax including Education Cess amounting to Rs.9,05,78,692/-. Out of this, the demand of Rs.8.09,53,003/- pertains to demand of service tax on 'Site Formation and earth Moving and Demolition Services, rendered for the period 16.06.2005 to 31.05.2007. Regarding the nature of service rendered by the Appellant during the above mentioned period, it is observed from the statement dated 17.10.2008 of Shri V.S.Singh, Appellant’s Authorized representative, the main contract of ECL and others is for Coal mining. Coal mining is the extraction of coal from mines, which is preceded by many steps, such as Removal of Overburden, blasting of coal blocks, the raising of coal and, after extraction of coal, transfer of the same to the principal stockyard, and the final payment is related to the extraction of coal. Thus, we observe that the primary contract executed by the Appellant is meant for 'Mining Service'. This is evident from the fact that the department demanded service tax for the same service rendered by the appellant under the category of 'Mining Service' after the introduction of service tax on 'Mining Service' w.e.f.01.07.2007. A perusal of the contracts executed by the Appellant reveal that the contracts executed are composite nature where a combination of different services like site formation,

overburden, removal, extraction of minerals and transportation is present. In a composite contract, the classification is to be done as per Section 65A. As per this section, a composite service is to be classified according to the service which gives its essential character. In this case, we observe that 'Mining Service ' is the principal service which gives its essential character in the contract. The new taxable service 'Mining Service' that came into being w.e.f 01.06.2007, covered within its ambit not only the site formation and overburden removal activities but also the extraction of mineral portion of the work. Thus, we hold that prior to 01. 06. 07 the services rendered by the Appellant were not liable to service tax under the category of 'Site Formations and earth Moving and Demolition Services'. Accordingly, we hold that the demand confirmed in the impugned order on this count is not sustainable.

9. Another part of the demand confirmed under 'Site Formation and Earth Moving and demolition service' pertaining to supply of Heavy Earth Moving Machinery by the Appellant. It is the contention of the Appellant that hiring of HEMM would fall under the category of 'Supply of Tangible Goods Service' which is liable to service tax only w.e.f 16.05.2008. In the impugned order, the adjudicating authority observed that the HEMM were used to undertake the entire operation for raising of coal and over burden removal. Accordingly, he has classified the service under the category of 'Site Formation and Earth Moving and demolition service' and demanded service tax. In this regard, the Appellant submits that though coal extraction was undertaken using the HEMM supplied by them, mining activity in the leased area was the responsibility of the principals. They

have employed manual labour only for the purpose of operation and maintenance of the machinery. All mining activity were the responsibility of the principals, who supervise the mining activity. All the activities undertaken by them are only incidental or ancillary to the main service of hiring of HEMM, which is liable for service tax only after 16.05.2008. We find merit in the argument of the Appellant. The Appellant has given the HEMM for the purpose of undertaking the 'Mining work' which is the responsibility of the principal. The services of hiring of HEMM under the category of 'Supply of tangible goods service' came into existence only w.e.f 16.05.2008. Accordingly, we hold that the service of hiring of HEMM was not liable to service tax prior to 16.05.2008 and the demand confirmed in the impugned order for the period prior to 16.05.2008 on this count is not sustainable.

10. Regarding dropping of the demand of Rs.7,82,74,370/- in the impugned order, we find that the adjudicating authority has given a clear finding in the impugned order. It is observed that the Appellant has paid service tax amounting to Rs.7,82,74,370/- for the period from April 2007 to March 2010 in Ranchi Commissionerate and Dibrugarh Commissionerate, for the Mining services rendered by them. These payments were made by the Appellant during the normal course. These payments were not made consequent to the investigation initiated by the department. The adjudicating authority in Bolpur Commissionerate has confirmed the demand in the impugned order as these payments made by the Appellant in Ranchi Commissionerate and Dibrugarh Commissionerate, for the Mining services rendered by them was not available before him.

We find that the adjudicating authority has caused necessary verification at Ranchi Commissionerate and Dibrugarh Commissionerate and got a factual report about the payment confirmation, before dropping the demand. As these payments were made in the normal course, the question of invoking extended period to demand this service tax on 'mining service' does not arise. Accordingly, we hold that the adjudicating authority has rightly dropped the demand on this count and imposed reduced penalty to that extent. Thus, we do not find any infirmity in the impugned order on this count of dropping of demand. Thus, the appeal filed by the department against dropping of the demand is devoid of any merit and accordingly, we reject the same.

11. In view of the above discussion, we allow the appeal filed by the appellant and reject the appeal filed by the department.

(Dictated and pronounced in the open Court)

Sd/-

(R. Muralidhar)
Member (Judicial)

Sd/-

(K. Anpazhakan)
Member (Technical)

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