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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75902 of 2017

(Arising out of Order-in-Original No.32-34/ST/Commr/RAN-II/2016-17 dated 27.02.2017 passed by the Commissioner of Central Excise & Service Tax, Ranchi-II Commissionerate, "Grand Emerald", Between Road No. 01 and 02, Ashok Nagar, Ranchi – 834 002)

M/s. R.K. Transport Private Limited : Appellant
Main Road, Phusro,P.O. Phusro Bazar,
District – Bokaro Jharkhand – 829 144

VERSUS

Commissioner of Central Excise and Service Tax : Respondent
Ranchi-II Commissionerate
"Grand Emerald", Between Road No. 01 and 02, Ashok Nagar,
Ranchi – 834 002

WITH

Service Tax Appeal No. 79247 of 2018

(Arising out of Order-in-Original No. 89/S.Tax/Pr. Commr./2018 dated 28.08.2018 passed by the Principal Commissioner, Central Goods & Service Tax & CX, Central Revenue Building, 5A, Main Road, Ranchi – 834 001)

M/s. R.K. Transport Private Limited : Appellant
Main Road, Phusro, P.O. Phusro Bazar,
District – Bokaro, Jharkhand – 829 144

VERSUS

Principal Commissioner of C.G.S.T. and C.Ex., : Respondent
Central Revenue Building, 5A, Main Road,
Ranchi – 834 001

WITH

Service Tax Appeal No. 75903 of 2017

(Arising out of Order-in-Original No.35-37/ST/Commr/RAN-II/2016-17 dated 24.03.2017 passed by the Commissioner of Central Excise & Service Tax, Ranchi-II Commissionerate, "Grand Emerald", Between Road No. 01 and 02, Ashok Nagar, Ranchi – 834 002)

M/s. Naween Transport Company : Appellant
Ghutitand, Bermo, P.O. Bermo,
District – Bokaro, Jharkhand – 829 104

VERSUS

Commissioner of Central Excise and Service Tax : Respondent
Ranchi-II Commissionerate
"Grand Emerald", Between Road No. 01 and 02, Ashok Nagar,
Ranchi – 834 002

AND

Service Tax Appeal No. 75897 of 2018

(Arising out of Order-in-Appeal No. 222-223/RAN/2017 dated 21.12.2017 by the Commissioner of Goods & Service Tax and Central Excise (Appeals), "Grand Emerald", Between Road No. 01 and 02, Ashok Nagar, Ranchi – 834 002)

M/s. Upendra Prasad & Brothers **: Appellant**
Area No. 4, Bermo, P.O. Jaridih Bazar,
District – Bokaro, Jharkhand – 829 114

VERSUS

Commissioner of Central Excise and Service Tax **: Respondent**
Ranchi-II Commissionerate
"Grand Emerald", Between Road No. 01 and 02, Ashok Nagar,
Ranchi – 834 002

APPEARANCE:

Shri Arvind Modi, Chartered Accountant for the Appellant

Shri S.S. Chattopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 75257-75260 / 2024

DATE OF HEARING: 07.02.2024

DATE OF DECISION: 21.02.2024

Order : [Per Shri K. Anpazhakan]

Four appeals have been filed against the impugned orders. Service Tax Appeal No. 75902 of 2017 and Service Tax Appeal No. 79247 of 2018 are filed by the appellant M/s. R.K. Transport Private Limited against the impugned Order-in-Original No.32-34/ST/Commr/RAN-II/2016-17 dated 27.02.2017 passed by the Commissioner of Central Excise & Service Tax, Ranchi-II and Order-in-Original No. 89/S.Tax/Pr. Commr./2018 dated 28.08.2018 passed by the Principal Commissioner, Central Goods & Service Tax & CX respectively. The appellant has filed these appeals against the total confirmed demand of service tax of Rs. 6,39,32,967/- and Rs.2,06,37,126/- respectively along with interest and penalty.

1.1 Service Tax Appeal No. 75903 of 2017 has been filed by the appellant M/s. Naween Transport Company against the impugned Order-in-Original No.35-37/ST/Commr/RAN-II/2016-17 dt. 24.03.2017 passed by the Commissioner of Central Excise & Service Tax, Ranchi-II. The appellant has filed this appeal against the confirmed demand of service tax of Rs.5,77,42,642/- along with interest and penalty.

1.2 Service Tax Appeal No. 75897 of 2018 has been filed by the appellant M/s. Upendra Prasad & Brothers against the impugned Order-in-Appeal No. 222-223/RAN/2017 dated 21.12.2017 passed by the Commissioner of Goods & Service Tax and Central Excise (Appeals). The appellant has filed this appeal against the confirmed demand of service tax of Rs. 1,37,26,829/- along with interest and penalty.

1.3 The issue involved in all these appeals are the same. Accordingly, all the four appeals are taken up together for disposal by a common order.

2. Brief facts of the case are that M/s. Tenughat Thermal Power Station and M/s. Chandrapura Thermal Power Station are engaged in generation of electricity from coal. In the course of generation of electricity, coal is burnt and ash emerges as waste-product which is collected in ash ponds. The appellant M/s. R.K. Transport Private Limited has been engaged by the above-said power stations for "*Evacuation of Ash from*

ash ponds and nuisance-free transportation and disposal in defined area provided by the plant". The said activity of Evacuation of Ash from ash ponds and nuisance-free transportation and disposal includes services such as loading of ash into tippers/trucks, washing the outside of the tippers and unloading mechanically into abandoned mines. The Department contended that all these activities together constitute a taxable service liable for service tax under the category of "Cleaning Activity Services" and demanded service tax accordingly.

2.1 M/s. Tenughat Thermal Power Station, Lalpania, had engaged the appellants M/s. Naween Transport Company and M/s. Upendra Prasad & Brothers for rendering the same service of "*Evacuation of Ash from ash ponds and nuisance-free transportation and disposal in defined area provided by the plant."*

2.2 Notices were issued to all the three appellants demanding service tax under the category of 'Cleaning Services'. After due process, the demands were confirmed along with interest and penalties in the impugned orders. Aggrieved against the impugned orders, all the three appellants have filed these appeals.

3. In their grounds of appeal, the appellants submit that the issue is no longer *res integra* as CESTAT Kolkata has decided the issue in the case of *Purba Medinipur Jilla Parishad vs. Commissioner of Central Excise, Haldia vide Final Order No. FO/77330/2018 dated 13.12.2018 in Service Tax Appeal No. 79 of 2019* wherein it has been held that the activity of '*Evacuation of Ash from ash ponds and*

nuisance-free transportation and disposal in defined area provided by the plant' would not be liable for service tax under the category of 'Cleaning Services'. The same view has also been held by the Tribunal in the following decisions: -

(i) M/s. Calcutta Industrial Supply Corpn. v. Commissioner of S.T., Kolkata vide Final Order No. 77607/Kol/2017 dt. 30.10.2017 [2019 (31) G.S.T.L. 487 (Tri. – Kol.)]

(ii) M/s. Arun Udyog vs. Commissioner of Central Excise, Customs & Service Tax, Bhubneshwar-I [Order No. 77577/2023]

(iii) M/s. BKB Transport Pvt. Ltd. v. Commissioner of Central Excise & Service Tax, Ranchi [Final Order Nos. 77699-77700/2023 dated 19.12.2023 in Service Tax Appeal Nos. 75479 & 75521 of 2015 – CESTAT, Kolkata]

3.1 The appellants submit that the ratio of the above decisions are squarely applicable in this case. Accordingly, they prayed for setting aside the impugned orders and allowing their appeals.

4. The Ld. Departmental Representative reiterated the findings in the impugned orders.

5. Heard both sides and perused the appeal documents.

6. We observe that the appellants are rendering the services of "*Evacuation of Ash from ash ponds and nuisance-free transportation and disposal of the ash*" to Thermal Power Stations. The Department contended that the activities of removing the ash from the ash ponds would constitute a taxable service liable for service tax under the category of

"Cleaning Activity Services" and demanded service tax accordingly.

6.1 We find that the issue is no longer *res integra* as CESTAT Kolkata has decided the issue in the case of *Purba Medinipur Jilla Parishad vs. Commissioner of Central Excise, Haldia vide Final Order No. FO/77330/2018 dated 13.12.2018 in Service Tax Appeal No. 79 of 2019* wherein it has been held that the activity of '*Evacuation of Ash from ash ponds and nuisance-free transportation and disposal in defined area provided by the plant' is* not liable for service tax under the category of 'Cleaning Services'. For the sake of ready reference, the relevant part 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 Tax-Ranchi 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:*
>
> *" ....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 being 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 husbandry 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."*

6.2 We observe that the same view has been held by the Tribunal in the following decisions:

(i) M/s. Calcutta Industrial Supply Corpn. v. Commissioner of S.T., Kolkata vide Final Order No. 77607/Kol/2017 dt. 30.10.2017 [2019 (31) G.S.T.L. 487 (Tri. – Kol.)]

(ii) M/s. Arun Udyog vs. Commissioner of Central Excise, Customs & Service Tax, Bhubneshwar-I [Order No. 77577/2023]

(iii) M/s. BKB Transport Pvt. Ltd. v. Commissioner of Central Excise & Service Tax, Ranchi [Final Order Nos. 77699-77700/2023 dated 19.12.2023 in Service Tax Appeal Nos. 75479 & 75521 of 2015 – CESTAT, Kolkata]

6.3 Relying on the decisions cited above, we hold that the activities of "*Evacuation of Ash from ash ponds and nuisance-free transportation and disposal of the ash"* in Thermal Power Stations is not liable to service tax under the category of 'Cleaning Services'. Accordingly, we set aside the demands of service tax along with interest and penalty confirmed in the impugned orders.

7. In view of the above discussions, we set aside the impugned orders and allow all the four appeals filed by the appellants.

(Order pronounced in the open court on **21.02.2024**)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sdd