IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.75592 of 2024

(Arising out of Order-in-Appeal No.60/ST/BBSR-GST/2023 dated 13.04.2023 passed by Commissioner (Appeals) of CGST & Excise, Bhubaneswar)

M/s Paradeep Phosphates Limited
Navaratna Building,PPL Township,Jagatsinghpur-763008

Appellant

VERSUS

Commissioner of CGST & Excise, Bhubaneswar I
C.R.Building, Rajaswa Vihar, Bhubaneswar-751007

Respondent

APPERANCE :

Shri Jnanesh Mohanty & Ms.Shreya Mundhra, both Advocates for the Appellant
Shri S.Mukhopadhyay, Authorized Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.76069/2024

DATE OF HEARING : 07 .06.2024
DATE OF DECISION : 07.06.2024

Per Ashok Jindal :

In this appeal, the appellant has challenged the service tax on the water charges paid by the appellant to the Government of Odisha for supply of water against the charges in terms of the Agreement dated 25.11.2014.

2. The facts of the case are that the Appellant is engaged in the manufacture of fertilizers at its factory located in Jagatsinghpur district of Odisha.

2.1 The dispute in the present case relates to levy of Service tax on Water charges paid by the Appellant to the Government of Odisha for supply of water against charges/consideration at a specified rate stipulated in the Agreement.

2.2 On the basis of audit, it was observed that the supply of water to the Government from natural water sources, i.e. Taladanda Canal to the Appellant falls under the category of "allocation/auction of natural resources" which are liable to service tax w.e.f. 01.04.2016. The respondent observed that in terms of Sl. 59 of Notification No. 25/2012-ST dated 20.06.2012 as amended by Notification No. 22/2016-ST dated 13.04.2016 read with Circular no. 192/02/2016-ST dated 13.04.2016, a Show Cause Notice was issued to the appellant on 08.04.2019, proposing demand of service tax for the period 1st April, 2016 to 30th June, 2017 by invoking extended period of limitation.

2.3 The appellant contested the show-cause notice, but the adjudicating authority confirmed the demand against the appellant.

2.4 Aggrieved from the said order, the appellant is before us.

3. The ld.Counsel for the appellant submits that the issue involved in this case stands settled by this Tribunal in the case of Sasan Power Limited Vs. Commissioner of CGST & Excise, Jabbalpur vide Final Order No.55672/2024 dated 30.04.2024. Therefore, the impugned order is to be set aside.

4. On the other hand, the ld.A.R. for the Revenue, reiterated the findings of the adjudicating authority.

5. Heard both the parties and considered the submissions.

6. We find that the issue involved in this matter is whether the appellant is liable to pay service tax in terms of Section 65B (44) of the Finance Act, 1994 under the category of "allocation/auction of natural resources" or not ? The said issue has been examined by this Tribunal

in the case of Sasan Power Limited (supra), wherein this Tribunal has observed as under :

"16. Section 40 of the Madhya Pradesh Irrigation Act, as noticed above, deals with supply of water for industrial, urban or other purposes and it provides that the charges shall be as agreed upon between the State government and the company and fixed in accordance with the rules made under the Act. Rule 71A also provides that water may be supplied with the prior permission of the State government for any industrial purpose to a private person at the rates not less than the rates specified in Column (3) of the Table.

17. The Title of the Agreement also shows that it was for supply of water to the industrial power plant. The appellant was required to pay water charges to the government for the water drawn by it from the government water source at the rates fixed by the Water Department which would be Rs.5.50/- per cubic meter. In addition, the appellant was also required to pay local fund cess or any other tax as may be fixed by the government. The appellant was required to make its own arrangement at its own cost for drawl of water from the water resource of the government to the plant. The Agreement also specifically provided that the government has not given any guarantee for the uninterrupted supply of water during and the government also would not be responsible for non supply or inadequate supply of water as a result of any event of Force Majeure. The appellant has to pay water rates/water charges depending on the quantity of water drawn by the appellant. The Agreement also deals with a situation where there can be reduction or shortage in the water supply. This clearly means that the Agreement is for supply of water and not mere access to water source.

18. It is, therefore, more than apparent that the Agreement is for supply of water by the government to the appellant and is not for assignment of any right to the appellant to use the natural resources of the government.

> *19. The appellant is, therefore, justified in asserting that the Agreement executed between the appellant and the government is for supply of water for which charges are paid by the appellant on the basis of volume of water drawn and it is not a case of assignment of right to use natural resources of the government.*
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> *20. In this view of the matter no service was provided by the government to the appellant. The impugned order, therefore, deserves to be set aside on this ground alone."*

7. As the issue in this case has been examined by this Tribunal in the case of Sasan Power Limited (supra), we hold that the payment made by the appellant for water charges, is not liable to be service tax during the impugned period for allocation/auction of natural resources. We, therefore, hold that the appellant is not liable to pay the service tax on water charges paid by them.

8. In view of the above observations, we set aside the impugned order and allow the appeal with consequential relief, if any.

(Operative part of the order was pronounced in the open court)

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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