IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75896 of 2014

(Arising out of Order-in-Original No.01/ST/Commr/2014 dated 11.03.2014 passed by Commissioner of Central Excise & Service Tax, Jamshedpur)

M/s. P.K.Agarwalla **: Appellant**
PO-Rakha Copper Project, Dist. East Singhbhum, Jharkhand-832106

VERSUS

Commissioner of Central Excise & Service Tax, Kolkata. **: Respondent**
143, New Baradwari, Sakchi, Jamshedpur-831001.

APPEARANCE:

Mr. Arun Kumar Agarwal, CA for the Appellant

Shri Ashwini Kr. Choudhury, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 76539 / 2024

DATE OF HEARING :29.07.2024

DATE OF DECISION:29.07.2024

Order : [Per Shri Ashok Jindal]

The appellant is in appeal against the impugned order wherein demand of Service Tax has been confirmed under the category of "clearing and forwarding agents services".

2. The facts of the case are that the appellant is providing service to their client M/s. Uranium Corporation of India Limited ('UCIL' hereafter) which is a Public Sector Undertaking. They were engaged in construction of quarters, offices and similar construction works for M/s. UCIL only. They have been mainly engaged in Loading and Transporting Uranium Ores from the Ore Stack Yard of M/s. UCIL

owned Mines to the UCIL Mills through Dumpers and unloading it there, and then Loading & Transporting Tailing Sand from UCIL Mills to Sand Slowing plants through Dumpers and unloading it there. UCIL, being a limited company is the person liable to pay service tax as recipient of GTA service under Rule 2(1)(d)(v) of the Service Tax Rules, 1994.

2.1. The appellant is registered as a service provider under the taxable categories of 'Commercial & Industrial Construction Service', with the Service Tax Department.

2.2. An investigation was initiated by the Officers of DGCEI, Regional Unit, Jamshedpur, against the appellant and details of various services provided to M/s. UCIL were sought along with relevant documents and details thereof. The appellant replied and provided the documents to the authorities. Thereafter completion of investigation a Show Cause Notice was issued to the appellant requiring to the Show Cause Notice to demanding Service Tax under 'Mining of mineral oil or gas service'. Alleging that appellant has tried to mislead by mistaking their activities in goods transportation of service. The appellant contested the Show Cause Notice and Adjudicating Authority while passing the impugned order has confirmed the demand against the appellant under the category of 'Cargo Handling Service'.

3. Aggrieved from the said order appellant is before us.

4. The Ld. Consultant on behalf of the appellant submits that the impugned order is beyond the scope of the Show Cause Notice as the service classified by the Show Cause Notice is under the

category of "Mining Service" but the Adjudicating Authority held that the activity does not fall under the category of "Mining Service" but the activity undertaken by the appellant is uploading, unloading and transportation which appropriately classified as 'cargo handling service'. Therefore, the 'cargo handling service' has been confirmed which is not the subject matter of the Show Cause Notice. Therefore, Adjudicating Authority has gone beyond the scope of Show Cause Notice. In that circumstances, impugned order is to be set aside.

5. On the other hand, the Ld. Authorized Representative supported the impugned order.

6. Heard the parties.

7. We find that in the impugned order, Ld. Adjudicating Authority has recorded as under:

"*The SCN has alleged that the as per the Mines Act, 1952, the activity of transportation of minerals and other materials up to the point of despatch and gathering sand and transportation thereof to mine is part of mining operations and therefore the services provided by PKA fall under 'mining of mineral, oil or gas' service*

I find that the word "Mining Operation' has not been defined in the Mining Act, 1952. the word 'Mining Operation' has been used in the following context in the Mines Act

Quote

"2(h) a person is said to be "employed" in a mine who works as the manager or the under appointment by the owner, agent or manager of the mine or the knowledge of the manager, whether for wages or not.

(i)In any mining operation (including the concomitant operations of handling and transport of minerals upto the point of despatch and of gathering sand and transport thereof to the mine)"

To unquote

From above mentioned facts, it is clear that the word mining operation has been used in a different context in the Mining Act and therefore it cannot be generalised that transportation of minerals per se is an activity covered under mining operation. It is also pertinent to mention here that the definition of 'Mine' as contained under Mines Act, 1952 does not cover transportation of mineral from stock yard/ore-bin. PKA has also pointed out these facts in their defence reply.

In view of discussion made at paras B&C, the allegation made in the SCN that service provided by PKA fall under mining of mineral, oil or gas service as defined under Section 65(105)(zzzy) of the FA, does not get substantiated.

D. PKA has contended that dominant nature of their contract with UCIL is transportation and therefore, the proper classification of their service is under GTA. Further, they have pleaded that UCIL, being a limited company, is liable to pay service tax as service recipient for GTA service under Rule 2(1)(d)(v) of the Service Tax Rules, 1994.

In this regard, first, I would like to go through the following information provided by UCIL (enclosed as Annexure "C"):

Jadugoda Uranium Processing Plant is treating ores produced from the following mines

Name of Mines	**Distance of Jadugoda Mill**
Jadugoda Mine	00 km
Bhatin Mine	04 km
Bagiata Mine	35 km
Narwapahar Mine	11 km

Turamdih Uranium Processing Plant is treating ores produced from the following mines:

Name of the Mines	**Distance from Turamdih Mill**
Turamdih Mines	00 km

Banduhurang Mines	03 km
Mohuldih Mine	05 km
Narwapahar Mine	11 km

It has already been discussed and found in the above para that the principal work done by PKA is loading, unloading and transportation. Now, from the above mentioned chart showing distance between the Mill and the Mines, it is clear that transportation is mostly done upto the distance of 11 km and therefore it may be safely concluded that the activity of transportation is only ancillary to the main activity of loading and unloading. Under the circumstances, the service provided by PKA would fall under cargo handling service as defined under Section 65(105) (zr) of the FA and not GTA service"

8. As in this case, Show Cause Notice proposes to demand of Service Tax under the "Mining Service" which the Adjudicating Authority has held that the demand is not sustainable under Section 65105(zzzy) of the Finance Act, 1994 which means that the activity undertaken by the appellant does not fall under "Mining Services". But the Adjudicating Authority has gone beyond the scope of the Show Cause Notice by holding that the activity undertaken by the appellants falls under Section 65(105)(zr) of the FA, 1994 which is beyond the scope of the Show Cause Notice.

9. In that circumstances we hold that demand proposed in the Show Cause Notice under "Mining Service" and confirmed under "Cargo Handling Service". Therefore, the impugned order is not sustainable in the eyes of law which is beyond the scope of Show Cause Notice. Accordingly, impugned order is set aside.

10. In the result appeal is allowed with consequential relief, if any.

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

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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