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

REGIONAL BENCH - COURT NO.1

Service Tax Appeal No.76368 of 2014

(Arising out of Order-in-Appeal No.84/RAN/2014 dated 18.07.2014 passed by Commissioner(Appeals), Central Excise & Service Tax, Ranchi.)

M/s. Monnet Daniels Coal Washeries Pvt.Ltd.
(Near K.D.H. Mines, N.K. Area, P.O. Dakra, Dist.-Ranchi)

...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Ranchi

.....Respondent

(5A, Main Road, Ranchi, Jharkhand.)

<u>APPEARANCE</u>

S/Shri B.L. Narsimhan, Rahul Tangri, Deepro Sen & Shovit Betal, all Advocates for the Appellant (s)
Shri S.Dikshit, Authorized Representative for the Revenue

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

<u>FINAL ORDER NO. 77290/2024</u>

DATE OF HEARING : 11.11.2024
DATE OF DECISION : 11.11.2024

Per : ASHOK JINDAL :

The appellant is in appeal against the impugned order wherein the refund claim was rejected by the Ld.Commissioner(Appeals) holding that the refund claim is barred by limitation.

2. The facts of the case are that the appellant was engaged in the activity of beneficiation of coal with an agreement with Punjab State Electricity Board and such consideration rate was fixed @ 112.50 per M.T. of run of mine/raw coal processed plus escalations calculated from time to time. While undertaking the process of coal washing, coal rejects is generated. As per the terms of the agreement, the appellant

is allowed to retain such coal rejects and is responsible for disposal of it following the CPCB/SPCB environment norms. The appellant used to sell this coal rejects in the market @ 1,000/- per M.T. For the service of coal washing, the appellant received consideration both in cash (beneficiation charges) as well as in kind (coal rejects). The appellant on interpretation of Section 67(1)(ii) of the Finance Act, 1994, which governs valuation of services, was under the impression that for the service of coal washing, both cash and kind component has to be taken into account to determine the value and accordingly, service tax needs to be discharged on it. Accordingly, the appellant added the actual sale value of coal rejects over and above the beneficiation charges and paid service tax on it by classifying the service as 'Business Auxiliary Service'. In that circumstances, the appellant inadvertently paid the service tax on sale value of coal rejects during the period April to June 2012. Later on, on realization that appellant was not required to pay service tax on value of coal rejects as same has already been included in the value of beneficiation, therefore, they filed refund claim on 21.05.2013 seeking refund of excess service tax paid on the service of coal washing due to overvaluation. The matter was entertained by the adjudicating authority, who held that the refund claim is barred by limitation and bar of unjust enrichment is applicable to the facts of the present case and rejected the refund claim. On appeal, the Ld.Commissioner(Appeals) held that the refund claim filed by the appellant is barred by limitation. Against the said order, the appellant is before us.

3. The Ld.Counsel for the appellant submitted that the issue has already been settled by this Tribunal in the case of Earth Minerals Company Limited vs. Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-II vide Final Order No.76351/2024 dated 09.05.2024, wherein it has been held that on the sale of coal rejects the appellant is not liable to pay service tax. Admittedly, the value of sale rejects recovered by the appellant are not liable to be taxed, therefore, they are not liable to pay service tax, hence, the refund

claim filed by the appellant is to be entertained which has been paid by them inadvertently. Therefore, if any refund claim filed inadvertently, period of limitation is not applicable as held by this Tribunal in the case of Electrosteel Castings Limited vs. Commissioner of Service Tax, Kolkata [2024 (8) TMI 660 – CESTAT-KOLKATA], therefore, the impugned order be set aside.

4. On the other hand, the Ld.Authorized Representative for the department supported the impugned order.

5. On merit, we find that as on the value of sale rejects, the appellant is not liable to pay service tax. The said view has been taken by this Tribunal in the case of Earth Minerals Company Limited (supra), wherein this Tribunal has observed as under:-

> *"10.2 As per clause 8 of the agreement between the appellant and service recipient, the coal rejects shall be the property of the appellant and he is entitled to dispose of the said coal rejects and the value of the said coal rejects has been added in the taxable charges for the beneficiation of the raw coal. In these circumstances, when the value of coal rejects has already been included in the taxable value, on which the appellant has already discharged service tax, therefore, Service Tax cannot be demanded from the appellant twice. Further, the sale of coal rejects as an independent activity and has no nexus with the service of the beneficiation of coal."*

Therefore, on the value of coal rejects, the appellant is not liable to pay service tax.

6. Now, we come to the issue of limitation.

7. We find that in this case for the period April 2012 to June 2012 the appellant filed refund claim on 21.05.2013. It means that except April, 2012, the refund claim filed by the appellant is within time. The Ld.Counsel conceded the refund claim for April, 2012 at this stage, therefore, we hold that the appellant is not entitled for refund for the period April, 2012. Therefore, for the period May 2012 to June 2012 the refund claim was required to be entertained by both the authorities and cannot be rejected as barred by limitation.

10. In view of the above, we set aside the impugned order and remand the matter back to the Ld.Commissioner(Appeals) to deal with the issue of unjust enrichment and pass an appropriate order in accordance with law within 60(sixty) days from the date of receipt of this order.

Appeal allowed by way of remand.

(Dictated and pronounced in the open Court.)

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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