

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

REGIONAL BENCH – COURT NO. 2

Service Tax Appeal No. 75313 of 2016

(Arising out of Order-in-Original No. 27/COMMR/ST/BOL/15 dated 17.11.2015 passed by the Commissioner of Central Excise, Bolpur, Adjudication Cell, Sian, Bolpur, Birbhum, West Bengal – 731 204)

M/s. BLA INFRA-GKMWPL (J.V)

: Appellant

31/1, N.S. Bose Road,
P.O: Raniganj, District: Burdwan

VERSUS

Commissioner of Service Tax

: Respondent

Bolpur Commissionerate,
Sian, Bolpur, District: Birbhum,
West Bengal, PIN – 731 204

APPEARANCE:

Shri Kartik Kurmy, Advocate for the Appellant

Shri Prasenjit Das, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)

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

FINAL ORDER NO. 75495 / 2025

DATE OF HEARING / DECISION: 20.02.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

The present Appeal has been filed by M/s. BLA Infra BKMWPL J.V, Burdwan, West Bengal (hereinafter referred to as the "appellant") against the Order-in-Original No. 27/COMMR/ST/BOL/15 dated 17.11.2015 passed by the Ld. Commissioner of Service Tax, Bolpur. In the impugned Order, the Ld. Commissioner has confirmed the demand of Service Tax of Rs.51,72,152/- on "Transportation of Coal" with incidental loading within the mining area under the category of "Mining of Mineral, Oil or Gas Service".

2. Brief facts of the case are that during the period under dispute, the Appellant has executed a Work Order dated 04.02.2011 and a Work Order dated 22.10.2012 for "Transportation of Coal within the Mines of BCCL from Muradih OCP coal face to the Feeder Breaker and PG-III dump, with incidental loading at coal face at Barora Area of BCCL" awarded by Bharat Coking Coal Ltd (BCCL).

2.1. The Ld. Commissioner issued a Show Cause Notice dated 13.03.2014 alleging that the Appellant is liable to pay Service Tax of Rs.51,27,152/ on Transportation of Coal within the mining area with incidental loading, which is taxable under "Mining of Mineral, Oil or Gas Service" as defined under Section 65(105)(zzzy) of the Finance Act, 1994.

2.2. The said notice was adjudicated by the Ld. Commissioner by the impugned Order, wherein he has confirmed demand of Service Tax along with interest under the category of "Mining Services". He has also imposed equal amount of tax as penalty under Section 78 of the Finance Act, 1994.

2.3. Aggrieved against the confirmation of the demands, the Appellant has filed this appeal before the Tribunal.

3. The appellant submits that the activities of "Transportation within the mines" cannot be classified under the category of "Mining Services". It is their submission that demand of Service Tax on transport services with incidental loading has been confirmed under the category of "Mining Services" on the ground that the said services are provided within the Mines.

3.1. The appellant submits that going by the scope of works under the contract and applying the principles of classification set out under sections 65A and 66F of the Finance Act, 1994, it is evident that the said service cannot be taxed under "Mining Services"; the said services are appropriately classifiable under the category of "Transportation Services" on which the Appellant is not liable to pay Service Tax. In support of their contention, the appellant relies on the following judgments: -

(i) *Commissioner of C.Ex. & S.Tax, Raipur Vs. Singh Transporters reported in 2017 (4) G.S.T.L. 3 (S.C.)*

(ii) *Ambey Mining Pvt. Ltd. Vs. Commissioner of S.Tax reported in 2024 (3) TMI 1106-CESTAT-Kolkata*

3.2. The appellant submits that the transport services are logistic services which are not understood as a mining activity in the common parlance. They also submit that the activity of transportation is not understood as an activity in relation to mining of mineral, oil or gas; transport services are 'post mining activity' and hence, the transport services provided by the appellant cannot be classified under "Mining Services".

3.3. In this regard, the appellant refers to the decision of the Hon'ble Bombay High Court in the case of *Indian National Shipowners Association Vs. Union of India reported in 2009 (14) S.T.R. 289 (Bom.)* as upheld by the Hon'ble Apex Court in the case of *Union of India Vs. Indian Shipowners Association reported in 2011 (21) S.T.R. 3 (S.C.)*, wherein it is held under Paragraphs 47 and 48 that Logistic Services provided in the mines cannot be treated as Mining Services as

it has no direct and proximate relation to mining; the Hon'ble Court further held that the logistics services rendered in mines, like the one in hand, are either "pre mining" or "post mining" activities and not in relation to mining.

3.4. The appellant further contends that the "Transportation Services" provided by the appellant are most specifically taxable under the "Goods Transport Agency Services" and in terms of Rule 2(1)(d)(v) of the Service Tax Rules, 1994 (up to 30-06-2012) and Rule 2(1)(d)(B) (w.e.f. 01-07-2012] and the liability to pay Service Tax in such cases lies upon the service recipient or it falls in the negative list under Section 66D(P); hence, in any case, the appellant is not liable to pay Service Tax.

3.5. Alternatively, it is their submission that the Negative List under section 66D, Clause (p) provides that all transport activities except "Goods Transport Agency Services", as defined under section 65B(26), are in the Negative List and outside the scope of levy.

3.6. The appellant also submits that major portion of the demand in the instant case is barred by normal period of limitation; the dispute in the instant case relates to the period from 2010-11 to 2012-13 whereas the Show Cause Notice was issued on 13.03.2014. The appellant points out that none of the ingredients necessary for invoking extended period of limitation exists in the instant case. Accordingly, the appellant contends that the demands confirmed by invoking the extended period of limitation is not sustainable.

4. The Ld. Authorized Representative of the Revenue reiterated the findings in the impugned order.

5. Heard both sides and perused the appeal documents.

6. We observe that the appellant has rendered the activities of "Transportation within the mines" and the said services cannot be classified under the category of "Mining Services". We observe that the Id. adjudicating authority has classified the said transportation services with incidental loading, and confirmed the demand, under the category of "Mining Services" on the ground that the said services are provided within the Mines. However, going by the scope of works under the contract and applying the principles of classification set out under sections 65A and 66F of the Finance Act, 1994, we observe that the said services cannot be taxed under the category of "Mining Services". It is clear that the services are appropriately classifiable under the category of "Transportation Services" on which the Appellant is not liable to pay Service Tax.

6.1. We observe that this view has been held by the Hon'ble Apex Court in the case of *Commissioner of C.Ex. & S.Tax, Raipur Vs. Singh Transporters reported in 2017 (4) G.S.T.L. 3 (S.C.)*. The relevant part of the said decision is reproduced below:

"3. The issue involved in the present appeal is whether the goods i.e. coal transported by the respondent - Singh Transporters from the pit-heads to the railway sidings would fall within taxable service as defined under Section 65(105)(zzzy) of the Service Tax Act of 1994 [for short "the Act"] or as defined under Section 65(105)(zzp) of the Act.

4. The aforesaid two provisions of the Act are in the following terms.

"65. Definitions :

.....

(105) "taxable service" means any service provided or to be provided, -

.....

(zzp) to any person, by a goods transport agency, in relation to transport of goods by road in a goods carriage;

.....

.....

(zzzy) to any person, by any other person in relation to mining of mineral, oil or gas;"

5. Though the learned Customs, Excise & Service Tax Appellate Tribunal, New Delhi ("Tribunal" for short) in answering the issue in favour of the respondent leading to the present proceedings has relied upon its earlier judgment in the case of M/s. V.N. Transport v. CCE, Raipur [2016-TIOL-1510-CESTAT-DEL], Arjuna Carriers Pvt. Ltd. v. Commissioner of Service Tax [2016 (41) S.T.R. 632 (Tri.-Del.)] it is argued that the said decisions may not be relevant to the present case inasmuch as the same pertains to a period prior to 1st June, 2007 and the present case pertains to the post 1st June, 2007 period. The difference in time is relevant in view of the insertion of Section 65(105)(zzzy), extracted above, effective from 1st June, 2007.

6. Be that as it may, even if the relied upon judgment in the case of Arjuna Carriers (supra) is of no consequence to the present case, we are of the view that the activity undertaken by the respondent i.e. transportation of coal from the pit-heads to the railway sidings within the mining areas is more appropriately classifiable under Section 65(105)(zzp) of the Act, namely, under the head "transport of goods by road service" and does not involve any service in relation to "mining of mineral, oil or gas" as provided by Section 65(105)(zzzy) of the Act.

7. The reliance placed on the definition of the term "mines" under Section 2(j) of the Mines Act, 1952 does not assist the Revenue inasmuch as what would be indicated by the said definition is that a mine is not to be understood necessarily in respect of pit-heads of the mining area or the excavation or drilling underground, as may be, but also to the peripheral area on the surface. The said definition has no apparent nexus with the activity undertaken and the service rendered."

6.2. We observe that the same view has been held by this Tribunal in the case of *M/s. Ambey Mining Pvt. Ltd. Vs. CST* reported in 2024(3) TMI 1106-CESTAT-Kolkata [Final Order No. 75611 of 2024 dated 22.03.2024 in Service Tax Appeal No. 75830 of 2015 – CESTAT, Kolkata]. The relevant paragraph of the said decision is reproduced below:

"6.3. Regarding the demand of service tax under 'Mining Services', the Appellant submits that the Service Tax demand has been raised by merely comparing ST-3 returns with Balance Sheet/Profit & Loss A/c without any investigation. They further submit that the activity of transportation of Coal outside the mines and also within the mines cannot be classified under the categories of Mining Services, as defined under Section 65(105)(zzzy) of the Finance Act, 1994. We also observe that the activities of the Appellant "Shifting and Feeding of Coal into the Hoppers" round the clock inside the Power Plants, were also categorized under 'Mining Service". We have perused the scope of works under all these contracts. We observe that the activity undertaken by the Appellant is mainly transportation of Coal, within the mining area and outside the mining area. The activity of transportation is most appropriately classifiable under "Goods Transport Agency Services" and the liability to pay Service Tax on the transportation service lies on the service receiver under the reverse charge mechanism. Accordingly, we hold that the transport services provided by the Appellant cannot be classified under the category of "Mining Services". We observe that this view has been taken by the Hon'ble Supreme Court in the

*case of **CCE Vs. Singh Transporters reported in 2017 (4) G.S.T.L. 3 (S.C.)**. Relying on the said decision, this tribunal has taken the same view in the case of **MaaKalika Transport Pvt. Ltd. Vs. Commissioner of CGST & CE reported in (2023) 8 Centax 273 (Tri.-Cal)** wherein it has been held that transportation of coal within the mines is liable for service tax under the category of "Goods Transport Agency Services" and therefore the liability to pay service tax under the reverse charge mechanism lies on the service receivers.. Accordingly, we hold that the transportation service rendered by the Appellant within the mines and outside the mines are not chargeable to service tax under the category of 'Mining Services'. Similarly, the activities of Shifting and Feeding of Coal into the Hoppers" has been carried out in the Power Plants and hence the same cannot be categorized as 'Mining Service'. Accordingly, we set aside the demand of service tax confirmed in the impugned order on this count."*

6.3. We observe that transport services are logistic services which are not understood as a mining activity in the common parlance. The activity of transportation is not understood as an activity in relation to mining of mineral, oil or gas. Transport services are 'post mining activity' and hence, the transport services provided by the appellant cannot be classified under "Mining Services". Thus, by relying on the decisions cited supra, we hold that the demand of Service Tax under the category of 'Mining Services' is not sustainable and hence we set aside the same. As the demand itself is not sustained, the question of demanding interest or imposing penalties does not arise. Accordingly, we also set aside the demands of interest and penalties confirmed in the impugned order.

7. In view of the above discussions, we set aside the impugned order and allow the appeal filed by the appellant.

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

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd