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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75013 of 2016

(Arising out of Order-in-Appeal No. 01/ST/B-II/2015 dated 29.09.2015 passed by the Commissioner (Appeals), Central Excise, Customs and Service Tax, Central Revenue Building, Rajaswa Vihar, Bhubaneswar – 751 007, Odisha)

M/s. Shyam Sundar Sharma **: Appellant**
AT – Kalinga Road, Sundra Basti, Barbil,
District: Keonjhar (Odisha)

VERSUS

Commissioner of Central Excise, Customs and Service Tax **: Respondent**
Bhubaneswar-II Commissionerate,
C.R. Building, Rajaswa Vihar,
Bhubaneswar – 751 007 (Odisha)

APPEARANCE:

Shri Kartik Kurmy, Advocate for the Appellant

Shri Debapriya Sue, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 75875 / 2025

DATE OF HEARING / DECISION: 20.03.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against the Order-in-Appeal No. 01/ST/B-II/2015 dated 29.09.2015 passed by the Ld. Commissioner (Appeals), Central Excise, Customs and Service Tax, Bhubaneswar, wherein the Ld. Commissioner (Appeals) has upheld the Service Tax demand of Rs.18,68,331/- under section 73(2) of the Finance Act, 1994 on the ground that the activity of "transportation of mining rejects within the mines" is taxable under the category of Mining Services during the periods 2006-07 to 2007-08 (up to 30-05-2007).

2. The facts of the case are that M/s. Shyam Sundar Sharma (hereinafter referred to as the "Appellant") is a proprietorship concern engaged in transportation of mining rejects, etc., within the mines of their clients. The Appellant is registered under the Finance Act, 1994 vide Registration bearing No. AAACO2108CST001. They were awarded Work Order for *"Transportation of Mining Rejects within the Mines"* by their client, namely, M/s Bonai Industrial Company Ltd., for raising, picking and sorting of Run of Mines (ROM) Lumps and ROM Fines.

2.1. The Appellant has paid service tax on the activities such as raising, picking and sorting of ROM Lumps and ROM Fines under the category of 'Business Auxiliary Services as defined under Section 65(19) of the Finance Act, 1994, which fact is not in dispute in the instant case.

2.2. The appellant received the following work orders for "Transportation of Mining Rejects within the Mines", which the Department alleges are liable to service tax under the category of "Mining Service":

Sl. No.	**Work Order No. & Date**	**Awarded by**	**Scope of Work**
1.	BICO/CGM/HM/ 06-07/387 dated 31-05-2006	M/s BICL	Transportation of mining rejects from Mines to dumping yard
2.	BIC/CGM/07-08/WO/2348 Dated 17-12-2007	M/s FGCPL	Transportation / Shifting of Screening Plant Horizon 4
3.	RS/ED/KM-HM/ 07-08/3080 dated 19-02-2008	M/s RSPL	Transportation (lifting) of Mining Rejects from Kaatasai Manganese Mines (using Tipper / Excavator)

2.3. On the basis of the above said allegation, a Show Cause Notice dated 17.10.2011 was issued to the appellant demanding service tax of Rs.39,44,658/- under the category of 'Mining Services' for the periods 2006-07, 2007-08 and 2008-09.

2.4. On adjudication, the ld. adjudicating authority confirmed the demand of service tax of Rs.39,44,658/- along with interest and imposed equal amount of tax as penalty, under Section 78 of the Finance Act, 1994, besides imposition of penalty under Section 77 of the Act.

2.5. On appeal, the Ld. Commissioner (Appeals) reduced the demand of Service Tax to Rs.18,68,331/-, along with applicable interest and penalties.

2.6. Aggrieved by the confirmation of the above demand of Service Tax, along with interest, and penalties, the appellant has filed the present appeal before the Tribunal.

3. The Ld. Counsel appearing on behalf of the appellant submits that the Ld. Commissioner (Appeals), in the impugned Order, has held that the activities of 'transportation' within the mines are 'indirectly' connected with the mining activities. In this regard, it is contended that the activity of Transportation/Shifting/Lifting (Handling) at Mines cannot have any nexus with the Mining activities and therefore cannot be "in relation to" mining and hence, cannot be taxed under the category of Mining Services. In this regard, the appellant also submits that the activity of transportation carried out by them is 'post mining' which is clear from the Circular No.F.No.232/2/2006-CX.4 dated 12-11-2007 issued by Board. Thus, the appellant contended that the

demand of service tax confirmed under the category of 'Mining Services' is not sustainable.

3.2. The appellant further submits that the entire demand is barred by normal period of limitation; the dispute in the instant case relates to the period 2007-08 to 2008-09 whereas the Show Cause Notice was issued on 17.10.2011. Hence, it is submitted by the appellant that the entire demand in the instant case is barred by normal period of limitation of one year provided under section 73(1) of the Finance Act, 1994. The appellant also states that the dispute in the instant case relates to pure interpretation of statute and classification of service and hence, extended period of limitation cannot be invoked, and no penalty can be imposed.

3.3. In support of their contention, the appellant relied on the decision in the case of *International Merchandising Company, LLC, Vs. CST [2022 (12) TMI 556 – SC].*

3.4. In view of the above submissions, the appellant has prayed for setting aside the impugned order and allowing their appeal.

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. From the Work Orders listed under paragraph 2.2 of this Order (supra), we observe that the activities undertaken by the appellant as per the said work orders are related to “Transportation of Mining Rejects within the Mines”. We find that transportation of mining rejects is a ‘post mining’ activity which is not liable to service tax under the category of 'Mining

Services' as clarified by Board vide Circular No.F.No.232/2/2006-CX.4 Dated 12-11-2007. The relevant part of the said clarification is reproduced below:

> *"5. **Handling and transporting** of coal/mineral from pithead to a specific location within the mine/factory or for transportation outside the mine:*
>
> *These activities are **post-mining activities** and are chargeable to service tax under the relevant taxable services, i.e. "Cargo Handling Service" and "Goods Transport by Road"……*

(Emphasis supplied)

6.1. In view of the above clarifications, we hold that the demand of service tax confirmed in the impugned order under the category of 'Mining Service' is not sustainable.

6.2. Since the demand of service tax is not sustainable, the question of demanding interest and imposing penalty does not arise.

7. In view of the above discussions, we set aside the impugned order and allow the appeal filed by the appellant, with consequential relief, if any, as per law.

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

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

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

Sdd