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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 76421 of 2016

(Arising out of Order-in-Appeal No. 44/ST/B-II/2016 dated 28.04.2016 passed by the Commissioner (Appeals) Central Excise, Customs & Service Tax Central Revenue Buldign, Rajaswa vihar, Bhubaneswar-7)

M/s. Sarosh Yazdani (S.A. Mining) **: Appellant**
At- Joda, Bamebari Road (B. Plot)
P.O. Balda, Via-Joda, Dist, Keonjhar (Odisah)

VERSUS

Commissioner of Central Excise, Service Tax **: Respondent**
Bhubaneswar-II Commissionerate
C.R. Building, Rajaswa Vihar,
Bhubaneswar-751007 (Odisha)

APPEARANCE:

Shri N. K. Chowdhury, Advocate for the Appellant
Shri S. K. Jha, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO.76008/ 2025

DATE OF HEARING: 22.04.2025
DATE OF PRONOUNCEMENT: 28.04.2025

ORDER: [PER SHRI ASHOK JINDAL]

The appellant is in appeal against the impugned order wherein Service Tax has been demanded from the appellant under the category of 'business auxiliary service'.

2. The facts of the case are that appellant was engaged for recovery of embedded iron ore and transporting the same to the screening point for

screening by machines installed by principal mine owners and managed by them. After screening, the appellant made weighment of the goods and raising bills for payment for such quantity at the screening point.

3. A Show Cause Notice was issued to the appellant on 30th July, 2012 for the period from April, 2007 to May, 2007, on the basis of an audit, alleging that the appellant, during the impugned period, has provided business auxiliary services.

4. The ld. adjudicating authority, in the impugned order, has held that the activity of the appellant is classifiable under the category of "business auxiliary service" under Section 65(19) (v) of the Finance Act, 1994, which prescribes that the business auxiliary service means any service in relation to production or processing of goods for, or on behalf of, the client and accordingly, confirmed the demand against the appellant, along with interest; penalties were also imposed.

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

6. The contention of the appellant is that they were engaged as a contractor by the mine owners in terms of agreement(s) for recovery of iron ore from dumps and transportation of the same to the screening points, which does not involve undertaking any processing. Accordingly, it is contended that the activity of the appellant cannot be classified as "business auxiliary service".

7. The appellant submits that the activity was undertaken by the appellant within the mining area and the same is classifiable as "mining service"

w.e.f. 01.06.2007; and the period in this case is from April, 2007 to May, 2007. Therefore, it is submitted that no tax is payable by the appellant in this case.

8. Apart from this, it is the appellant's contention that recovery of iron ore from dumps cannot be considered to amount to undertaking of any 'process'; appellant was also not undertaking the screening job since the screening machines were installed by the mine owners and managed by them.

9. Further, the appellant submits that the mining operations also amount to 'manufacture', which is outside the scope of business auxiliary service.

10. In view of these submissions, the appellant prayed that the impugned order be set aside.

11. On the other hand, the Ld. Authorized Representative of the Revenue supported the impugned order.

12. Heard the parties.

13. We find that the activity undertaken by the appellant is 'recovery of embedded iron ore and transporting the same to screening point for screening by machines installed by the mine owner and managed by them' and after screening, the appellant was making weighment of the goods and raising invoices on such quantity at the screening point. If the Revenue is of the view that the appellant has undertaken any process and the goods became of a different name and identity, then the said activity amounts to 'manufacture'.

14. Further, we find that a similar issue was dealt with by this Tribunal in the case of *Commissioner of Customs, Central Excise & Service Tax, Bbsr-II v. Ores India (P) Ltd. reported in 2012 (27) S.T.R. 188 (Tri.-Kol.)* wherein the facts of the case were as under: -

> *"2. Brief facts of the case are that it was alleged that M/s. Ores India Pvt. Ltd. is rendering services under the category of Business Auxiliary Service to their clients i.e. M/s. Steel Authority of India (M/s. SAIL). The activity undertaken by the respondents is excavation, picking, sorting, breaking, sizing and stacking, loading of iron ore into trucks, transporting to screening plant or railway siding, loading of ore into BG wagons at railway sidings and removal of rejects etc. As the respondent were appointed as a contractor by M/s. SAIL through contract/agreement and have undertaken the activities as stated hereinabove and received job charges against the bills raised at the contracted rate but have not discharged their service tax liability on the above said activities. Therefore, a show-cause notice was issued for demand of service tax under the category of Business Auxiliary Service along with interest for the period August 2005 to 30th September, 2006. Penalty was also proposed under Sections 76, 77 and 78 of the Finance Act, 1994. The respondents contested the show-cause notice before the adjudicating authority and the adjudicating authority after considering the submissions made by the respondents held that the activity undertaken by the respondents more appropriate is classifiable under the category of mining services and during the relevant time, mining services were not liable for service tax, therefore, he dropped the proceedings. Against that order, the Revenue is in appeal."*

and this Tribunal held as under: -

> *"6. On careful consideration of the submissions of both sides, we find that in the show-cause notice or during investigation, it is alleged against the respondents that they are engaged in the activities mentioned above under a composite contract and the contract is not divisible and in the facts and circumstances of the case, the respondents activity is classified under Business Auxiliary Service. We have gone through the activities undertaken by the respondents and from no corner of the stretch, this activity falls under the category of Business Auxiliary Service. The more appropriate entry is mining service. For classification of service, the Board has clarified vide its Circular No. 334/1/2008-TRU, dated*

29th Feb-2008 and has given certain guidelines which are reproduced herein under:

"3. Classification of taxable services:

3.1 Taxable services are defined separately under Clause (105) of Section 65 of the Finance Act, 1994. Services are supplied as a single composite service by bundling number of different services or disaggregating a single supply into different components. Tax liability may vary depending upon the treatment of the transaction either as a single composite service or multiple supply of service. For the purpose of levy of service tax, a single composite service is to be classified under any one of the specified taxable services.

3.2 For the purpose of classification of a service covering number of separate services, a view has to be taken as to whether an individual service is merely a component of the overall supply or is itself a distinct and independent supply i.e. whether the component is merely ancillary to the principal supply or the component can be considered as separate taxable service in its own right. A service, which does not constitute for a customer an aim in itself but a means of better enjoying the principal supply, is considered as a supply ancillary to the principal supply.

3.3 Section 65A states the principles for classification of taxable services. Classification of a composite service is based on that component of the service which gives the essential character. There is a need to determine whether a given transaction is the one containing major and ancillary elements or the one containing multiple and separate major elements. In the case of a transaction containing a major and ancillary elements, classification is to be determined based on the essential features or the dominant element of the transaction. A supply which comprises a single supply from an economic point of view should not be artificially split. The method of charging or invoicing does not in itself determine whether the service provided is a single service or multiple services. Single price normally suggests a single supply thougn not decisive. The real nature and substance of the transaction and not merely the form of the transaction should be the guiding factor for deciding the classification.

3.4 Seven services are being separately defined as taxable services. Specifying a service separately as a taxable service does not necessarily mean or suggest that services falling within the scope of newly specified service were not earlier classifiable under any one of the existing taxable services Grouping of services under a specific taxable service may change. The scope and coverage of a taxable service are to be determined

> *strictly in accordance with the language of the relevant statutory provision existing during the material period."*
>
> *7. Section 65A of the Finance Act also deals with the situation for classification of taxable services which are also reproduced below:*
>
> ***"Classification of taxable services***
>
> *(1) For the purposes of this Chapter, classification of taxable services shall be determined according to the terms of the sub-clauses of clause (105) of Section 65.*
>
> *(2) When for any reason, a taxable service is, prima facie, classifiable under two in terms of sub-clauses of clause (105) of Section 65, classification shall be effected as follows:*
>
> > *(a) the sub-clause which provides the most specific description shall be preferred to sub-clauses providing a more general description;*
> >
> > *(b) composite services consisting of a combination of different services which cannot be classified in the manner specified in clause (a), shall be classified as if they consisted of a service which gives them the essential character, insofar as this criterion is applicable:"*
>
> *8. From the above, guideline laid down by the Board's Circular and as per the provision of Section 65A, the classification of service under composite contract is appropriately classifiable under mining service. The said mining services were not taxable services during the relevant period. By way of this, the Revenue is trying to divide the contract which is not the case in the show-cause notice. Therefore, division contract cannot be permitted at this stage and the grounds taken by the Revenue in their appeal are beyond the purview of show-cause notice. In view of the above observations, we do not find any infirmity in the impugned order and the same is upheld by dismissing the appeal filed by the Revenue. Cross objection is also disposed of in the above manner."*

15. We find that if any activity undertaken by the appellant is liable to be taxed, the same is provided by the appellant within the mining area and is appropriately classifiable as 'mining service'. However, during the impugned period, mining services were not taxable. In these circumstances,

we hold that no demand of Service Tax can be raised against the appellant.

16. Further, we take note of the fact that whole of the demand is barred by the extended period of limitation i.e., for the period from April, 2007 to May, 2007, the Show Cause Notice has been issued on 30th July, 2012, which is beyond the period of five years. Therefore, the impugned order deserves no merits.

17. Accordingly, the appellant succeeds on merits as well as on limitation.

18. In the result, the appeal is allowed with consequential relief, if any, as per law.

(Order Pronounced in Open court on 28.04.2025)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP