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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75772 of 2014

(Arising out of Order-in-Appeal No. 10/RAN/2014 dated 20.02.2014 passed by the Commissioner (Appeals), Central Excise and Service Tax, 605, Mahabir Tower, Main Road, Ranchi - 834 001)

M/s. Central Coalfields Limited **: Appellant**
P.O.: Kathara, District: Bokaro,
Jharkhand – 829 116

VERSUS

Commissioner of Central Excise and Service Tax **: Respondent**
Ranchi Commissionerate,
Central Revenue Building, 5A, Main Road, Ranchi

APPEARANCE:

Shri Rajeev Agarwal, Advocate, for the Appellant

Shri S.K. Dikshit, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 76056 / 2025

DATE OF HEARING: 24.04.2025

DATE OF DECISION: 30.04.2025

ORDER: [PER SHRI ASHOK JINDAL]

The appellant is in appeal against the impugned order wherein the refund claim of Service Tax filed by the appellant has been rejected by holding that the appellant is liable to pay Service Tax under the category of 'renting of immovable property service'.

2. The facts of the case are that the appellant, which is engaged in coal mining, had entered into an agreement dated 14.10.2005 for a period of twenty

years by which the Thermal Power Station of 2x10 MW capacity at Kathara, Jharkhand, with land, building, plant and machinery, was let-out on lease at a monthly rent of Rs.32,00,000/- per month on the basis of the terms and conditions stated in the said agreement. The other conditions of the agreement are as under: -

> *"1.4 SCOPE OF WORK*
>
> *The lessee shall operate and maintain the station and carry out works including but not limited to the following:*
>
> *1.4.1 Operation of the power plant at its maximum rated capacity and guaranteed plant load factor with minimum interruptions so that all loads connected to station get uninterrupted power supply.*
>
> *1.4.2 Maintenance of the plant & equipment of various systems and buildings within plant boundary, raw water pumping and piping system, ash pond and ash disposal system, effluent neutralization and disposal system, transmission lines for power evacuation system and lessor's residential buildings used by lessee outside the plant boundary.*
>
> *1.4.3 Carrying out all repair works including capital repairs and statutory inspection/overhauling/repair of boilers.*
>
> *1.4.4 ……..*
>
> *1.4.8 Transportation of fuel (washery reject) from washery/reject dump to power plant site.*
>
> *1.4.9 Disposal of ash from ash pod to other land filling sites offered by CCL. from time to time when the existing ash pond gets filled up*
>
> *4.0 LEASE RENT*
>
> *4.1 The lessee to pay the rent of Rs.32 Lakhs per month from 14.4.2006 on delay, default, deduction or abatement or any increase on any account irrespective whether the station is in operation or*

not or is under repair or maintenance or replacement for any period whatsoever.

5.0 GUARANTEED SUPPLY OF POWER

5.1 The lessee shall be bound to make available to the lessor's mines in and around Kathara power plant the electricity as per para 5.2 at a voltage of 33 KV (+6%,-9%) and frequency of 50 Hz (+/ (-3)%) and at a rate mentioned in para 7.0.

5.2 Kathara power plant: The lessee shall guarantee net energy availability of 6 million KWH per month and 72 million KWH per year. The station shall be able to meet the maximum power requirement of linked installations equivalent to rated capacity of the power plants.

7.0 TARIFF PAYABLE BY LESSOR

The charges payable to lessee by lessor for supply of energy to lessor from the said station shall be as under:

7.1 TO = Tariff exclusive of fuel cost in Rs/KWH

7.1.1 Tariff variation on account of escalation in O & M Component of Tariff:

From the date of expiry of one year from the commencement of contract, the following formula shall be used for revising the component of tariff:

$T_1 = (T_0) \times (0.7 + 0.2L_1 / L0 + 0.1L_1 / L0)$

T_1 *= Revised tariff exclusive of fuel component*

T_0 *= Original tariff quoted by bidder exclusive of fuel component*

L_1 *= Consumer price index numbers for industrial workers as published by RBI prevailing on 31st March every financial year.*

L_0 *= Consumer price index numbers for industrial workers as published by RBI prevailing on base date*

L_1 = Iron/Steel and allow price Index number as per RBI bulletin prevailing on 31st March every financial year

L_0 = Iron/Steel and allow price Index number as per RBI bulletin. prevailing on base date

7.1.2 Tariff Variation on Account on Taxes/Levies applicable on Power Generation/Sales etc.

All taxes, cesses and levies payable on power generation/sales etc. by lessee shall be refunded by lessor on actuals.

7.2 Electricity duty payable, if any shall be reimbursed to lessee on actual.

8.0 FUEL

8.1 The proposed power plant is essentially based on washery reject excluding middling and slurry as fuel and the same will be supplied from reject bunker/stock pile of the washery on date at the prevailing revised price which at present is Rs.389 per tonne.

Lessee will make its own arrangement for loading/ unloading/transportation/storage of rejects from source at nearby washery head/stockyard to power plant at its own cost.

8.2 Tariff variation on account of variation of cost of washery rejects, transportation cost and statutory taxes and levies on fuel.

The following formula shall be used for revising the fuel cost element of tariff for escalation in fuel cost element:

Tfen = Tfco (C_1/C_0)

Where,

Tfen = New tariff for fuel cost element

Tfco = Original tariff for fuel cost element quoted by the bidder

C_1 = New cost of fuel per tonne on account of revision of prices by CIL/CCL and/or payment of any statutory taxes and levies by bidder on purchase of rejects and escalated cost of transportation of washery rejects.

C_0 = Original base cost of rejects @Rs.389 per tonne (excluding statutory taxes and levies) for range of GVC specified and transportation cost of reject quoted by bidder.

14.0 OPERATION AND MAINTENANCE

14.1 The lessee shall maintain in proper manner the scheduled building in wind and water tight condition and lessor shall not be liable to pay any amount for the maintenance of the building or any account whatsoever.

14.2 The lessee shall use and operate machinery carefully and maintain the same in good working condition in accordance with accepted good engineering practice and repair at its own cost and expenses in conformity with the instructions of operational manuals given by the manufacturer and comply with all statutory and other requirements of law, rules, regulations and directions applicable to the storage of fuel, oil and machinery or installation or governing use and operation of the Power Station and ensure that the machinery are operated by suitably trained and qualified personnel for the purpose for which it is designed and shall not do or omit any act or thing by which the warranties and performance guarantees given by the manufacturer and described in fifth schedule would be invalidated or become unenforceable wholly or partly.

14.3 …………

17.0 EVENTS OF DEFAULT AND TERMINATION

17.1 EVENTS OF DEFAULT

17.1.1 The occurrence of any of the following events at any time during the terms of Contract shall constitute an Event of Default by lessee:

17.1.1.1 Failure to pay to the lessor any amount payable and due under this contract within sixty (60) calendar days after receipt of invoice/claims;

17.1.1.2 Failure on the part of the lessee to use reasonable diligence in operating, maintaining or repairing lessor's facility, such that the safety of persons & property of lessor is adversely affected or

17.1.1.3 Failure or refusal by lessee to perform its material obligations under the Contract or

17.1.1.4 Failure to commence production of 50% of guaranteed electrical energy as per para 5.2 within six months and 100% within one year from the date of signing of the agreement. Initial production of electrical energy may be extended by an event of Force Majeure up to a maximum of twelve months.

17.1.1.5 If the lessee fails to obtain approval as required under Indian Electricity Act, 1910 and/or Electricity (supply) Act, 1948 and/or DVC Act 1948 as amended from time to time.

17.1.1.6 ......

17.2 TERMINATION

17.2.1 If lessee fails or neglects to observe or perform or commits or allows to be committed a breach of any of the terms, conditions, provisions or stipulations of the agreement on its part to be observed and performed and if such breach is remediable, fails to remedy the same within 6 months of notice by lessor specifying such default and requiring such default to be remedied then lessor shall be entitled to terminate the agreement and the investor shall be bound to deliver vacant possession of station to lessor without any hindrance and if the lessee fails to handover the vacant possession of the land and station thereon, the subject matter of this agreement, within the stipulated period, the lessor shall take possession of the land and Station thereon and in that case, the lessee shall not be entitled to any claim or objection to such taking over of the possession of the land and Station and further on that event al the losses and damages caused to the lessor in taking possession of the land and station thereon shall be

> *compensated by the lessee in accordance with law. It is further clarified that the lessor shall always be entitled for all the benefits to impose its rights conferred in it out of their clauses of this agreement.*
>
> *17.2.2 The agreement will also come to an end on the happening of the following events:-*
>
> > *a) If lessee goes into liquidation*
> >
> > *b) If the license of the lessee under Indian Electricity Act, 1910 is determined or not renewed on expiry of the term."*

3. The appellant paid Service Tax amounting to Rs.2,44,40,939/- during the period from 19.07.2012 to 07.02.2013 on the amount received from the lessee for the period from June, 2007 to January, 2013 on the basis that the lease rent received by the appellant does qualify as 'renting of immovable property service'.

4. However, later on, on the presumption that the said transactions with the lessee do not constitute leasing of immovable property and that no Service Tax was payable thereon, the appellant filed an application dated 20.05.2013 for refund of the said amount

5. Thereafter, a Show Cause Notice dated 23.07.2013 was issued to the appellant proposing to deny the refund of Service Tax claimed by the appellant.

6. The matter was adjudicated by the ld. adjudicating authority, wherein the said refund claim was rejected vide Order-in-Original dated 20.09.2013.

6.1. On appeal, the Ld. Commissioner (Appeals), vide the impugned order, has upheld the rejection of the refund claim filed by the appellant.

7. Against the said order, the appellant is before us.

8. The Ld. Counsel appearing on behalf of the appellant submits that in terms of the "Scope of Work" mentioned in the subject agreement, the lessee is mandatorily required to operate the plant at the maximum rated capacity as specifically stated in the scope of work. Further, he submits that the lessee is required to maintain, run and operate the said power plant strictly on the basis of the terms and conditions stated in the agreement; that the lessee is mandatorily required to make available guaranteed supply of power in terms of Clause 5.0 of the agreement. Further, it is contended by the Ld. Counsel for the appellant that in the event the lessee fails to commence production or produce guaranteed electrical energy, the same shall amount to 'default' in terms of Clause 17.1 of the agreement and the subject agreement shall be liable for termination as per Clause 17.2 therein. It is his contention that on perusal of the said clauses of the agreement, it will be apparent that the very purpose and objective for entering into the agreement was to ensure that the appellant receives supply of power for use within the coal mines operated by the appellant-coal mine; the mere existence of a clause mandating that the lessee to pay a fixed lease rent of Rs.32,00,000/- cannot be assumed to be an arrangement for providing renting of immovable property service. In view of these submissions, the Ld. Counsel for the appellant contends that the appellant is not liable to pay Service

Tax under the category of 'renting of immovable property' service.

8.1. To support this contention, the appellant has relied on the decision of the Hon'ble Supreme Court in the case of *C. Cheriathan v. P. Narayanan [AIR 2009 SC 1502].* The appellant has also relied on the decision of the Hon'ble Supreme Court in the case of *Ishikawajima-Harima Heavy Industries Ltd. v. Dir. of Income Tax, Mumbai [2007 (6) S.T.R. 3 (S.C.)],* to say that a contract is to be seen as a whole, to demand Service tax and thus, the appellant is not liable to pay Service Tax in this case.

8.2. Accordingly, it is contended by the appellant that the impugned order is to be set aside and their refund claim is to be sanctioned.

9. On the other hand, the Ld. Authorized Representative appearing on behalf of the Revenue submits that in this case, as per the agreement entered into, the lessee is required to pay an amount of Rs.32,00,000/- as lease rent to the appellant and for such lease rent received by the appellant, the appellant are liable to pay Service Tax under the category of 'renting of immovable property' service within the meaning of Section 65(105)(zzzz) of the Finance Act, 1994. He submits that the appellant has taken lease rent from the lessee, apart from other conditions of the agreement, which are between the appellant and the lessee and the Revenue is concerned only with the lease rent, on which the appellant is liable to pay Service Tax.

10. Heard the parties and considered their submissions.

11. On going through the agreement placed on record by the appellant, it is an admitted fact that the appellant is receiving a lease rent of Rs.32,00,000/- per month from the lessee. Section 65(105)(zzzz) of the Finance Act,1994 mandates that any service provided or to be provided to any person, by any other person, in relation to renting of immovable property, for use in the course of furtherance of business or commerce, comes under this category. Admittedly, the appellant does qualify under the above definition of 'renting of immovable property' service

11.1. Similarly, as per clause 90(a) of Section 65 of the Act, renting of immovable property includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course or furtherance of business or commerce. Admittedly, the appellant does qualify under the above categories of 'renting of immovable property' service, for leasing out their plant along with immovable property to the lessee against a consideration of Rs.32,00,000/- per month.

12. In these circumstances, we find that the appellant is liable to pay Service Tax under the category of 'renting of immovable property' service.

13. We also observe that the Ld. Counsel for the appellant has relied on the decision in the case of *P. Narayanan (supra)*. The said decision is not applicable to the facts of this case as, in that case, it was a case under the Transfer of Property Act, wherein it was to be seen whether the property had been mortgaged as per the conditions of the said agreement or not, which is not the case in hand. In

fact, in this case, it is the taxability of the lease rent received by the appellant which is being disputed.

14.1. Further, reliance has also been placed by the Ld. Counsel for the appellant on the decision in the case of *Ishikawajima-Harima Heavy Industries Ltd. (supra)* to say that an agreement is to be seen as a whole for demanding Service Tax. Admittedly, it is not a case where the appellant is to refund the amount of lease rent received by them on failure of the conditions of the agreement entered into between the appellant and the lessee. The appellant has also admitted that they were receiving lease rent of Rs.32,00,000/- per month from the lessee, as per the terms and conditions of the agreement. Therefore, from the said agreement, it is evident that the appellant is liable to pay Service Tax under the category of renting of immovable property service.

15. In view of the above, we hold that the authorities below have rightly rejected the refund claim of the appellant. Consequently, we uphold the impugned order.

16. In these terms, we do not see any merit in the appeal and accordingly, the same is dismissed.

(Order pronounced in the open court on **30.04.2025**)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

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

Sdd