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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75127 of 2017

(Arising out of Order-in-Original No. 06-09/Commrs/ST/BOL/16 dated 19.10.2016 passed by the Commissioner of Central Excise Adjudication Cell, Sian, Bolpur, Birbhum, West Bengal 731204)

M/s. Steel Authority of India Ltd. **: Appellant**
IISCO Steel Plant,
Burnpur, Asansol, Dist Bardhaman
West Bengal-713 325

VERSUS

Commissioner of Central Excise & Service Tax **: Respondent**
Bolpur Sian, Birbhum
West Bengal-731204

APPEARANCE:

Shri Rahul Tangri, Advocate
MS. Ekta Jhunjhunwala, Advocate for the Appellant

Shri P. Das, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO.77030/2025

DATE OF HEARING / DECISION: 22.07.2025

Order: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against the Order-in-Original No. 06-09/Commrs/ST/BOL/16 dated 19.10.2016 passed by the Commissioner of Central Excise Adjudication Cell, Sian, Bolpur, Birbhum, West Bengal 731204, wherein the demand of Service Tax of Rs. 13,91,48,210/- has been confirmed along with interest. Penalty of Rs. 12,20,22,525/-has been imposed under section 78 of the Finance Act, 1994. Penalty under Section 76 has also been imposed @ Rs.200/- per day upto 09.05.2008.

2. The facts of the case are that M/s. Steel Authority of India Limited, IISCO Steel Plant (hereinafter referred to as 'the Appellant') is *inter alia* engaged in the manufacture of Iron and Steel Products falling under Chapter 72 and 73 of the First Schedule to the Central Excise Tariff Act, 1985. The Appellant is also registered under the Service Tax laws bearing Registration No. AAACS7062FST046 for discharging service tax under the categories of rent-a-cab service, consulting engineering service, manpower recruitment supply agency service, maintenance or repair service, transportation of goods by road, renting of immovable property service, works contract service and accommodation service.

2.1. During the relevant period, the Appellant entered into agreement with Ferro Scrap Nigam Limited ('FSNL') under which FSNL was engaged for recovery of scrap from slag, iron skulls, blast furnace, etc. For this purpose, FSNL has been allocated an area within the factory premises of the Appellant wherein FSNL carries out the job of recovery of scrap from slag. As per the terms of the agreement, the Appellant was to provide certain facilities to FSNL in the form of supply of electricity, water, residential accommodation to the employees of FSNL and supply of stores for carrying out the work, against consideration.

2.2. The Appellant also entered into an agreement with Goyal MG Gases Pvt. Ltd. ('GMGL'), under which GMGL was to supply of oxygen and other gases to the Appellant for use in the blast furnace, Steel

Melting Shops, etc. for steel making. Under the agreement, the Appellant was to provide electricity and water to GMGL.

2.3. The Appellant was periodically issuing invoices to recover the agreed amounts for providing water and electricity from FSNL and GMGL. The Department was of the view that the supply of electricity, water, etc. is liable to service tax under the category of 'Business Support Service'. The appellant submitted that they were not providing any service under the taxable category of business support services and provision of electricity and water are supply of goods and therefore cannot be subjected to service tax. The Appellant also informed the Department that with effect from 01.07.2012, service tax on provision of electricity was discharged under the head of 'Other Taxable Services'.

2.4. The Department issued four SCNs to the Appellant demanding service tax under the category of business support service. The details of the notices are summarizecd below:

SL. No.	**SCN No. and Date**	**Period**	**Amount (Rs.)**
1.	51/Commr/ST/BOL/12dated 26.09.2012	2007-08 to 2011-12	7,73,65,649/-
2.	41/Commr/ST/Bol/14 dated 07.05.2014	2012-13	1,71,74,879/-
3.	10/COMMR/ST/BOL/2015 dated 01.04.2015	2013-14	2,86,35,714/-
4.	40/COMMR/ST/BOL/2016 dated 09.03.2016	2014-15	1,60,21,162/-
	TOTAL		**13,91,97,404/-**

2.5. The said notices were adjudicated and demand of service tax 13,91,48,210/-.raised in the SCNs were confirmed and Rs. 49,194/- which pertained to medical expenses received by the Appellant from FSNL and GMGL was dropped vide the impugned order.

2.6. Aggrieved against the confirmation of the demands along with interest and penalty, the appellant has filed this appeal.

3. The Appellant submits that the transaction of supply of electricity and water to FSNL and GMGL amounts to sale of goods, viz. electricity and water. Hence, construing the same as being exigible to service tax holding the same to be a service is grossly incorrect. In support of this view, the appellant cited the decision in the case of *Kumbakonam Electric Supply Corporation Ltd. Versus Joint Commercial Tax Officer, Esplanade Division Madras, 1963 (9) TMI 43 - Madras High Court, affirmed by Hon'ble Supreme Court in the case of Commissioner of Sales Tax, Madhya Pradesh, Indore Vs. Madhya Pradesh Electricity Board, Jabalpur, 1968 (11) TMI 85 - Supreme Court,* wherein electricity has categorically been held to be goods. Similar proposition has been upheld in the case of *State of AP & Others versus National Thermal Power Corporation Ltd. And Others, 2002 (4) TMI 694 - Supreme Court,* which has inter alia relied upon the Hon'ble Apex Court judgment pronounced in the case of Madhya Pradesh Electricity Board *(supra),* to hold electricity as goods.

3.1. Further, even water has been held to be goods in the case of *Radius Water Ltd. v. Commissioner of Central Excise, & S.T., Raipur – 2017 (51) S.T.R. 11 (Tri. – Del.) affirmed byHon'ble*

Supreme Court in Commissioner v. Radius Water Ltd. – 2018 (16) G.S.T.L. J80 (S.C.). Similar proposition has been upheld in the following cases as well:

- *M/s. Indian Oil Corporation Limited versus Commissioner of GST & Central Excise, Bhubaneswar [2024 (10) TMI 1129 - CESTAT Kolkata]*
- *M/s. Steel Authority of India Limited v. Commissioner of GST & Central Excise, Rourkela – Final Order No. 76955/2024 dated 05.09.2024 in ST/75291/2021*

3.2. Hence, once both electricity and water have been held to be goods and the entire transaction is that of sale of goods, the question of charging service tax on the same, treating it as provision of service, is incorrect and unwarranted.

3.3. In this regard, it is pertinent to note that the definition of service coined under the negative list regime under Section 65B(44) of the Finance Act specifically excludes transfer of title in goods by way of sale from its ambit. Further, even during the positive list regime, the list of taxable services prescribed under Section 65(105) of the Finance Act did not include the transaction of sale of goods as a taxable service. Hence, demand of service tax on a transaction of sale of goods is untenable. Reliance in this regard is placed on the judgment of *GMK Concrete Mixing Pvt. Ltd. Versus Commissioner Of Service Tax, Delhi, 2012 (25) S.T.R. 357 (Tri. - Del.) affirmed by Hon'ble Apex Court in Commissioner v. GMK Concrete Mixing Pvt. Ltd., 2015 (38) S.T.R. J113 (S.C.),* wherein it has been held that service tax is not applicable on a contract for sale of goods. Hence, the appellant submits that service tax is not chargeable on the instant transaction and the entire demand ought to be set aside on this ground alone.

3.4. The Appellant humbly submits that the underlying SCN as well as the impugned order has confirmed demand on the Appellant holding that the subject transaction qualifies as infrastructural support service as defined under Explanation to Section 65(104c) and is therefore taxable under the category of 'Business Support Service' under Section 65(105)(zzzq) of the Finance Act, 1994. In this regard, the definition of business support service coined under Section 65(104c) of the Finance Act is relevant to be noted. The department has brought the activity undertaken by them under the term 'Infrstructure support' available in the definition of 'Business support service'. In this regard, the appellant relied on the decision in the case of *Dish TV India Ltd. Versus Commissioner Of Customs, C. Ex. & S.T., Noida [2020 (41) G.S.T.L. 633 (Tri. - All.)],* wherein it has been held that while interpreting the scope of the expression "Support Service of Business & Commerce" under [Section 65(104c)] and also of the term "Infrastructural Support Service" in Explanation to Section 65(104c), the principle of *noscitur-a-sociis* would be applicable and accordingly the expression "Support Service of Business or Commerce" as defined under Section 65(104c) would cover only the service which are of supporting nature to the main business, like services relating to customer relationship, evaluation of prospective customers, tele-marketing, distribution and logistics, transaction, processing, office infrastructure etc. and would not cover the services of renting of machinery and equipment for production or manufacture which is an activity relating to conduct of the main business. The Hon'ble Tribunal while passing the said judgment relied upon the judgment of *Air Liquide North India Pvt. Ltd. v. Commissioner* — *2017 (4) G.S.T.L. 230* affirmed by Hon'ble Rajasthan High Court in *Commission of Central Excise & Service Tax v. Air Liquide North India Pvt. Ltd. reported in 2019 (27) G.S.T.L. 194 (Rajasthan) and Srinivasa Transports v. Commissioner of Central Excise & Service Tax, Visakhapatnam-I reported at 2014 (34) S.T.R. 765 (Tri. - Bang.).*

3.5. In the instant case, electricity and water supplied to FSNL and GMGL are essential for running the main activities of FSNL and GMGL while operating within the premises of the Appellant. Without supply of electricity and water to them, FSNL and GMGL would not be able to perform the activity of separation ofscrap from slag and supply of oxygen/ other gases to the Appellant respectively. Hence, the subject activity cannot be said to fall within the meaning of infrastructural support service or business support service as attempted by the Department.

3.6. Without prejudice to the above submissions, the Appellant submits that the demand is also liable to be set aside on the ground of revenue neutrality *inasmuch* as the service tax if charged would have been available as credit in the hands of FSNL and GMGL. Further, whatever service tax is charged by FSNL and GMGL on their invoices to the Appellant, is available as credit to the Appellant. Hence, demand is liable to be set aside on the ground of revenue neutrality. Reliance in this regard is placed on the judgment of *Dhana Singh Synthetics Pvt. Ltd. Versus Commr. Of C. Ex., Cus. & S.T., Vapi [2015 (326)*

E.L.T. 609 (Tri. - Ahmd.)], wherein the demand was held to be unsustainable even when the transaction was held between unrelated persons on the ground of being revenue neutral.

3.7. Hence, the appellant submits that the demand of service tax under the category of business support service is completely incorrect and erroneous.

3.8. With effect from 01.07.2012, service tax on provision of electricity was discharged by the appellant under the head of 'Other Taxable Services'. In this regard, the appellant submits that confirmation of demand to the extent it stands paid under the category of 'other taxable services' merely on the ground of payment made under an incorrect service category, is not sustainable. The appellant also submits that the demand confirmed in the impugned order for the period post 01.07.2012 on the basis of deleted provisions is not sustainable.

4. The Ld. A.R. reiterated the findings in the impugned order.

5. Heard both sides and perused the appeal records.

6. We observe that the appellant has supplied water and electricity to FSNL and GMGL under agreement and collected consideration towards sale of such goods. The Department considered that the supply of electricity, water, etc. are liable to service tax under the 'Business Support Service'. For ready reference, the definition of business support service as defined under Section 65(104c) of the Finance Act is extracted as below:

> ***65. Definition.-***
>
> *In this Chapter, unless the context otherwise requires,*

> ***(104c) "support services of business or commerce"*** *means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfilment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational or administrative assistance in any manner, formulation of customer service and pricing policies, infrastructural support services and other transaction processing.*
>
> ***Explanation.-For the purposes of this clause, the expression "infrastructural support services" includes providing office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security;***

[Emphasis Supplied

6.1. From the definition of business support service reproduced above, we observe that the said service primarily covers services which are in the nature of outsourced activity. A business entity is said to have outsourced certain activities, if such activities are otherwise normally performed by that entity and is assigned to a third party contractor either for reducing cost or for achieving better quality and efficiency, or for any other such reason. A perusal of the services specifically included in the definition of Business Support Service also suggests that these are in the nature of activities normally outsourced by a business entity to outside service providers.

6.2. In this regard, we rely on the judgment of *Reliance ADA Group Pvt. Ltd. Versus Commissioner Of S.T., Mumbai-IV [2016 (43) S.T.R. 372 (Tri. - Mumbai)],* wherein it has been held that the definition of business support services would cover specific activities as enumerated under the definition and hence, cost of shared services cannot be brought under the ambit of business support services. The relevant extract of the judgment is given below, for ease of reference:

> ***"5.10*** *We find that the definition of 'Business Support Services' covers only specific activities in its inclusive part of the definition. Only if such specific activities are carried out, it would be classifiable as 'Business Support Services'. The Appellant per se in its own capacity has not provided any of the specified services to the Participating Group Companies. The attempt of the adjudicating authority to link all the activities of the Appellant with the marketing policies, customer evaluation procurement policies, distribution policies, customer relation policies, taxation policies, etc., and also considering the appellant as a Service Provider, appears to be for anyhow bringing the same in the definition of 'taxable serves', which exercise is only on assumptions, without any documentary evidence, and contrary to the findings recorded in earlier part of the same impugned Order (in Para 4.3 thereof).*
>
> ***5.11*** *We find that the activity of incurring cost as service is not in the nature of outsourced activity as contemplated in the definition of Business Support Services and therefore would not be taxable under the category of 'Business Support Services'."*

6.3. In this regard, it is also pertinent to refer the **Circular No. 157/8/2012-ST dated 27.4.2012,** issued by Board wherein it is reiterated that the nature of services covered under 'business support services' are in the nature of 'outsourcing services'. In the present case, we find that the activities assigned by the appellant to FSNL and GMGL are mainly to ensure smooth working within the premises of the Appellant and the same cannot be said to be in the nature of an outsourced activity. Thus, we hold that the subject transaction under discussion cannot be said to fall within the ambit of business support service.

6.4. In the present case, we find that the transaction of supply of electricity and water to FSNL and GMGL amounts to sale of goods, viz. electricity and water. Hence, construing the same as being exigible to service tax holding the same to be a service is grossly incorrect. In this regard, we observe that the demand confirmed in the impugned order pertains to the period 2007-08 to 2014-15. Thus, it covers the period prior to 01.07.2012 as well as after 01.07.2012.

6.5. For the period after 01.07.2012, we find that the definition of 'Service' as defined under the negative list regime under Section 65B(44) of the Finance Act specifically excludes transfer of title in goods by way of sale from its ambit. The relevant extract of the definition of service is given below, for ease of reference:

> *"(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include-*
>
> *(a) an activity which constitutes merely,--*

> ***(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or***
>
> *(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the Constitution; or*
>
> *(iii) a transaction in money or actionable claim;"*

[Emphasis Supplied]

6.6. Even during the positive list regime, the list of taxable services prescribed under Section 65(105) of the Finance Act did not include the transaction of sale of goods as a taxable service. Hence, we hold that the demand of service tax on a transaction of sale of goods is untenable. Reliance in this regard is placed on the judgment of *GMK Concrete Mixing Pvt. Ltd. Versus Commissioner Of Service Tax, Delhi, 2012 (25) S.T.R. 357 (Tri. - Del.) affirmed by Hon'ble Apex Court in Commissioner v. GMK Concrete Mixing Pvt. Ltd., 2015 (38) S.T.R. J113 (S.C.),* wherein it has been held that service tax is not applicable on a contract for sale of goods.

6.7. In view of the above, we hold that service tax is not chargeable on the instant transaction which is a sale of goods. Accordingly, we hold that the entire demand confirmed in the impugned order is liable to be set aside.

6.8. The Appellant also submitted that the demand is liable to be set aside on the ground of revenue neutrality *inasmuch* as the service tax if charged would be available as credit in the hands of FSNL and GMGL. We agree with the submission of the appellant. Whatever service tax is charged by FSNL and GMGL on their invoices to the Appellant, is available as credit to the Appellant. Hence, we hold that the demand is liable to be set aside on the ground of revenue neutrality also. In support of this view, we rely upon the decision in the case of *Dhana Singh Synthetics Pvt. Ltd. Versus Commr. Of C. Ex., Cus. & S.T., Vapi [2015 (326) E.L.T. 609 (Tri. - Ahmd.)],* wherein it has been held that the demand was unsustainable even when the transaction was held between unrelated persons on the ground of being revenue neutral.

6.9. With effect from 01.07.2012, we observe that the appellant has discharged service tax on the above said activities under the head of 'Other Taxable Services'. In this regard, we observe that confirmation of demand merely on the ground that payment has been made under an incorrect service category is not sustainable. We also observe that the demand has been confirmed in the impugned order for the period post 01.07.2012 on the basis of deleted provisions. The show cause notice has invoked the provisions that existed prior to 01.07.2012, to demand service tax for the period post 01.07.2012, which is legally not sustainable. Thus, we hold that the demand confirmed on the basis of deleted provisions is legally not sustainable.

6.10. In view of the above discussions, we hold that the transaction of supply of electricity and water to FSNL and GMGL amounts to sale of goods, viz. electricity and water. Hence, we hold that the said supply of water and electricity are not exigible to service tax. We further hold that the subject transaction would not fall within the ambit of business support service. Accordingly, we set aside the demand of service tax confirmed in the impugned order under the category of business support service. As the demand itself is not sustainable, the question of demanding interest and imposing penalty does not arise.

7. In view of the above findings, 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 Order was pronounced in Open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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