

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH – COURT NO. 1
Service Tax Appeal No. 79262 of 2018**

(Arising out of Order-in-Appeal No.352/RAN/2018 dated 23.08.2018 passed by
Commissioner of CGST & Service Tax, Ranchi)

M/s Ferro Scrap Nigam Ltd. : **Appellant**
Post Bag No. 19, Inside Bokaro Steel Plant, Bokaro-827001,
Jharkhand.

VERSUS

Commissioner of CGST & Service Tax, Ranchi : **Respondent**
5A, Main Road, Ranchi-834001.

APPEARANCE:

Shri Deepro Sen & Shri Vasudev.A, Advocates for the Appellant

Shri B.K.Singh, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 77962/ 2025

DATE OF HEARING :17.12.2025

DATE OF DECISION:17.12.2025

Order : [Per Shri Ashok Jindal]

The appellant is in appeal against the impugned order wherein demand of Service Tax has been confirmed on account of inclusion of value of Oxygen supply free of cost by the service recipient in the value of taxable service for payment of Service Tax during the period October, 2010 to March, 2015 by issuance of the Show Cause Notice dated 13.04.2016 by invoking extended period of limitation.

2. The facts of the case are as under:

2.1. M/s. Ferro Scrap Nigam Limited (hereinafter referred to as 'the Appellant') is inter alia, engaged in the manufacture of activity of handling and

processing of scraps and rejecting ingots and transportation of the same melting shops within the factory premises of SAIL, Bokaro Steel Plant.

2.2. The appellant entered into a Long Term Agreement No. CC/SSD/23642/Agt/11293 dated 22.01.2010 with Steel Authority of India Limited, Bokaro Steel Plant('SAIL') for providing services such as recovery and processing of various kinds of scraps, ingots, slags, shorts, butts, and handling and transportation of the same.

2.3. In order to undertake processing of certain kinds of scraps, Oxygen is required, which have been provided in the Table Contained in Schedule I of the Agreement which is as follows:-

2.1	Recovery of Steel Scrap, Processing (including balling and lancing) into chargeable size, loading and transporting by THE SECOND PARTY'S Dumper/Tipper to SMS as per scope of work mentioned at 1.1	Service Charge of Rs. 1080 per tonne (Rupees One Thousand eighty only per tone) (Oxygen to be provided by THE SECOND PARTY)
2.4	Processing of rejected SECOND PARTY'S Dumper ingots, shorts & butts and loading the same and transporting to SMS by THE SECOND PARTY'S Dumper/Tipper as per the scope of work .	Service Charge of Rs. 492.00 per tonne . (Rupees four hundred ninety -two only per tonne). (Oxygen to be provided by the FIRST PARTY, free of cost).
2.13	Handling of	Service Charge of

	Maintenance/Wear Scrap (Iron & Steel) as per scope of work. (Oxygen will be provided by the FIRST PARTY, free of cost)	Rs. 608.00 per tonne. (Rupees six hundred eight only per tonne)
--	--	---

2.4. As evident from the above, in respect of activities mentioned at 2.4 and 2.13, Oxygen will be provided by SAIL to the Appellant, free of cost. As per the agreement, after processing of scraps, rejected ingots and butts, the same are returned to SAIL for use by them in manufacture of dutiable final products.

2.5. An Audit was conducted by the Department from 13.02.2012 to 15.02.2012 in the premises of the Appellant, and subsequently multiple correspondences were exchanged between the Appellant and the Department regarding the free of cost supply of oxygen by SAIL to the Appellant for processing of scraps.

2.6. Subsequently, after a period of 4 years, the underlying SCN dated 13.04.2016 was issued by the Ld. Additional Commissioner, Central Excise & Service Tax, Ranchi -II wherein a demand of Rs. 14,58,186/- was proposed under Section 73(1) of the Finance Act, 1994 along with interest and equivalent penalty, based on the allegation that the value of oxygen supplied by SAIL to the Appellant free of cost, is to be included in the taxable value for payment of service tax.

2.7. The Appellant duly replied to the underlying SCN vide reply dated 27.01.2017 and submitted that such supply of oxygen by SAIL free of cost to the

Appellant is not taxable since it does not amount to consideration under Section 6 of the Finance Act, 1994.

2.8. However, without considering the detailed reply filed by the Appellant, the underlying order dated 31.03.2017 was passed confirming the demand proposed vide the underlying SCN.

2.9. Aggrieved by the same, the Appellant preferred an appeal before the Ld. Commissioner (Appeals). The Ld. Commissioner (Appeals), without appreciating the submissions made by the Appellant, upheld the demand confirmed in the underlying order, vide the impugned Order.

3. Against the said order appellant is in appeal before us.

4. The Ld. Counsel for the appellant submits that issue is no longer res-integra in the light of the decision of the Hon'ble Apex Court in the case of Commissioner of Service Tax vs. M/s. Bhayana Builders (P) Ltd. -2018(2) TMI 1325-CESTAT, Kolkata. The Ld. Counsel also relied on the following decisions :

1. M/s. Mythri Infra v. Principal Commissioner of CGST & Central Excise, Bhubaneswar-2024 (6) TMI 44-CESTAT, Kolkata.

2. M/s. Novel Engineering & Technical Works Pvt. Ltd. v. Commissioner of CGST & Central Excise, Haldia-2024(5) TMI 669-CESTAT, Kolkata.

3. M/s. Vantage International Management Company v. Commissioner of CGST, Mumbai East-2021(2) TMI 564-CESTAT Mumbai.

5. On the other hand Ld. Authorized Representative reiterated the findings of the impugned order.

6. Heard the parties. Considered the submissions.

7. We find that the sole issue is to be decided in this case is whether the value of Oxygen supply free of cost by the service recipient to the appellant is to be included in the value of taxable service for payment of Service Tax or not. The said issue has been examined by the Hon'ble Apex Court in the case of M/s. Bhayana Builders (P) Ltd. (Supra) wherein the Hon'ble Apex Court held that the value of free supplies made under the contractual arrangement by the service receiver to the service provider cannot be added to the value of taxable service provided by the service provider.

8. In view of the set we hold that the value of Oxygen supply free of cost by the service recipient to the appellant is not to be included in the value of taxable service. Therefore, we do not find any merit in the impugned order. The same is set aside.

9. In result appeal is allowed with consequential relief, if any.

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

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)