

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA
REGIONAL BENCH – COURT NO.1**

Service Tax Appeal No.76551 of 2018

(Arising out of Order-in-Original No.32/S.Tax/Pr.Commr./2018 dated 12.02.2018 passed by Principal Commissioner of CGST & Central Excise, Ranchi)

M/s International Commerce Limited

(Qr.No.316, Sector III/C, Bokaro Steel City, Bokaro-827003)

Appellant

VERSUS

Principal Commissioner of CGST & Central Excise, Ranchi

(C.R.Building, 5A, Main Road, Ranchi-834001)

Respondent

APPEARANCE :

S/Shri Nitin Kumar Pasari, Anand Kumar Pasari, Akshat Agarwal, Shubham Choudhary & Ms.Doyel Dey, all Advocates for the Appellant

Shri D.Sue & Shri P.Das, Authorized Representatives for the Respondent

CORAM:

HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75502/2026

DATE OF HEARING : 11 MARCH 2026

DATE OF PRONOUNCEMENT : 16 APRIL 2026

Per Ashok Jindal :

The appellant is in appeal against the impugned order wherein the demand of service tax has been confirmed along with interest and an equivalent amount of penalty under Section 78 of the Finance Act, 1994, has been imposed on the appellant.

2. The facts of the case in brief are that the appellant is engaged in the business of ferrous recycling industry and the domestic ferrous scrap processing sector. The appellant has specialized expertise in recycling and processing of ferrous scrap as well as trading of the iron and steel scrap.

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2.1 On 04.07.2012, the Steel Authority of India Limited (SAIL) issued a tender Notice on 04.07.2012 (No.BSL/MKTG/SD/01/12-13/), for recovery of Ferrous Scrap and sale of processed ferrous scrap (70-150mm) through magnetic separator and recovered, processed ferrous scrap of chargeable size (150mm to one tone) and recovered iron slag boulders from the earmarked dead Blast Furnace (BF) and slag dump sidings of Bokaro Steel Plant (BSL), Bokaro Steel City.

2.2 The scope of work given by SAIL was to excavate the allocated BF and to transport the excavated material to the processing site for recovery of scrap through various scientific techniques into various fractions of size 10-70mm, 70-150mm and above 150 mm to one tone, and also to recover iron slag boulder and deliver to the designated department of SAIL.

2.3 As per the tender, the appellant was required to recover and process 4 lakh tonnes of Ferrous Scrap for and on behalf of SAIL. Essentially, the appellant carried out job work of excavation of the material dumped by SAIL. The appellant was eligible for purchase of 1 lakh tonnes of processed ferrous scrap which was available for lifting to outside parties. The entire process was through a online bidding process and the rates fixed are driven by the market forces. The appellant may also have to remove more than 64 Lakh Tonnes of work through slag (WTS- an output of magnetic separator only) from separator, unusable wastes & debris. It is submitted that the numbers were only indicative as per the tender notice and the actual numbers may vary based on the actual equipment deployed, area of excavation and efficiency of magnetic separation operations. As per the tender notice, the appellant

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was required to hand over the site immediately on expiry of the sale order or in its premature termination.

2.4 As per the tender notice, the appellant had to pay service charges of Rs.1708 per tonne (excluding service tax and education cess) for recovery, processing, transportation, enroute weighment and delivery of ferrous scrap to SMS/BF.

2.5 On 23.10.2012, the appellant having participated in the bid was declared successful and work having been awarded, the appellant was given a Sale Offer Letter on 23.10.2012, being the highest bidder for purchase of approximately 1 lakh ton of processed ferrous scrap at pre-decided rate in terms of offer letter.

2.6 Undisputedly and undeniably, in discharge of the works, the appellant carried out the excavation of slag dumps and also carried out the processing of the slag dumps through various means as enumerated in the scope of work at clause 2 of the bid document.

2.7 For the works carried out by the appellant, the appellant raised the service tax invoices and levied service tax and deposited the same with the government treasury.

2.8 The aforesaid modality was carried out for the entire excavation, however, out of 4 lakh tonnes, which was excavated and processed, a total quantity of 86524 MT of processed material was purchased from SAIL, Bokaro, not by the appellant, but by the name of appellant's sister concern.

2.9 The Steel Authority, while raising tax invoice for the aforesaid sale of processed material to appellant's sister concern, central excise duty was charged and paid by the appellant's sister concern.

2.10 The dispute pertains to the period 2010-11 to 2013-14, when the appellant was registered as service provider under the category of "Business Auxiliary Services".

2.11 The appellant subcontracted the work to M/s.Bhagwati Sponge Pvt. Ltd., Kolkata, who was having better infrastructural facilities as compared to the appellant and the modus operandi was such that M/s Bhagwati Sponge Pvt. Ltd. (sub-contractor) would bill the appellant and the appellant in turn would bill the steel authority.

2.11 On 12.05.2015, an audit was carried on the basis of the returns filed by the assessee in terms of Excise Audit 2000 and based upon the audit, the audit report was prepared, inter-alia, alleging therein :

"the material being processed by the said service provider for M/s. SAIL has not been cleared by M/s. SAIL, Bokaro, to other independent buyer or in the open market except to the service provider i.e. M/s. International Commerce Ltd. Therefore, it appears that this practice, i.e. selling/clearing of processed scrap (processed by the said service provider for M/s. SAIL) to the said service provider is going on only as per terms and condition of Work Order(s) awarded to the said service provider by M/s. SAIL Bokaro and M/s. SAIL Bokaro, are bound to do so as per sale clause offered to the said service provider which appears nothing but extra consideration to the said service provider which is being availed by the said service provider during/after provision of services".

2.12 On the basis of said allegation, the income earned by the sister concern of the appellant from trading activity, is sought to be added to the taxable amount, on which the service provider was required to

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discharge service tax liability and liability of service tax of Rs.2,23,74,960/- was fastened, taking aid of section 67(1)(2)(3) under Service Tax (Determination of Value) Rules 2006.

2.13 Based upon the allegations made in the show cause notice dated 12.10.2015, the demand of service tax along with interest was confirmed by the adjudicating authority and an equivalent amount of penalty was also imposed on the appellant.

2.14. Being aggrieved with the said order, the appellant is before us.

3. The Id.Counsel appearing on behalf of the appellant, submits that there is no dispute about the factual matrix that the total quantity for which the appellant had submitted its bid was for 4 lakh tonnes of excavation of slag dumps and further processing and for which a fixed rate of Rs.1708 per MT + service tax was awarded, the appellant has deposited the service tax levied and collected from SAIL, with the Government Treasury.

3.1 He further submits that it is also not in dispute that approximately 86524 MT of processed material was purchased by the sister concern of the appellant on the basis of excise invoices raised by the Steel Authority of India and the same has been paid by the sister concern of the appellant itself.

3.2 It is his further contention that the only question therefore is, if at all there is any violation of clauses of tender or work order between the appellant and Steel Authority of India ?

3.3 He contends that if at all, the income earned by the sister concern of the appellant can be added to the valuation of service charges paid

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by Steel Authority to the appellant, because of further sale of processed material by SAIL to the sister concern ?

3.4 He further submits that if the allegation is that of violation of tender conditions by the appellant, during the continuation of the contract is concerned, it is for the Steel Authority of India Limited to take action against the appellant for breach of contract and it is not required to lookout the Service Tax Department to look into the aforesaid violation.

3.5 It is further submitted that the question as to addition of income to the valuation of service charges paid by Steel Authority of India Limited is dehorn the provision of the Finance Act, 1994 inasmuch as undisputedly, the purchases carried out by the sister concern of the appellant was after payment of excise duty and on the pre-fixed rates as was prevalent in the open market, which cannot be questioned in the present proceeding from the appellant, since the entire transaction is carried out between Steel Authority of India Limited and the sister concern of the appellant.

3.6 He further submits that there is no provision under the Finance Act to add the income of a 3rd party for the purpose of valuation of service charges that too, when there is no material at all with the department to hold the appellant and Steel Authority which is a public sector undertaking to have connived with each other to suppress the value of service charges.

3.7 It is further submitted that otherwise also, if the department's contention is accepted, in that eventuality also, the liability to service tax was that of Steel Authority of India Limited and in such a situation

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the proceedings if any could have been initiated as against the Steel Authority of India Limited only and not the appellant, since admittedly the quantum of money sought to be added as extra consideration over and above Rs.1708 per MT, would yet again be recoverable from the service recipient, i.e., the Steel Authority of India Limited and not this appellant.

3.8 Finally he submits that the entire proceeding is even vitiated, since the show cause notice has been issued beyond the normal period of limitation of 18 months, since, there was no suppression or willful misrepresentation or misstatement on the part of the appellant herein much less, any allegation of fraud attributable to it, hence the extended period of limitation could not have been invoked.

2.9 He, therefore, prays, that after setting aside the impugned order, the appeal be allowed.

3. The Id.A.R. for the Revenue, has justified the impugned order.

4. Heard both the parties and considered the submissions.

5. We find that in this case, it is admitted facts that the total quantity for which the appellant had submitted its bid was for 4 lakh tonnes of excavation of slag dumps and further processing and for which a fixed rate of Rs.1708 per MT + service tax was awarded, the appellant has deposited the service tax and collected from SAIL, with the Government Treasury. Further, it is also not in dispute that approximately 86524 MT of processed material was purchased by the sister concern of the appellant on payment of excise duty on the excise invoices raised by the Steel Authority of India. Therefore, the only

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question arises that the goods cleared to sister concern, whether the appellant is liable to pay service tax or not ?

6. We find that if there is any violation of clauses of tender or work order, only Steel Authority of India can take action against the appellant for non-compliance of the condition of tender or work order. But for clearing of the goods by the Steel Authority of India, the appellant cannot be liable for service tax as the same would amount to double taxation and the payment of excise duty and service tax are both exclusive. We also observe that the excise duty paid by the Steel Authority of India on such goods, have been accepted by the Revenue.

7. In that circumstances, the demand of service tax against the appellant is not sustainable.

8. In view of this, we do not find any merit in the impugned order and the same is set aside.

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

(Pronounced in the open court on **16.04.2026**)

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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