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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 76665 of 2017

(Arising out of Order-in-Appeal No. 63/DNB/2017 dated 29.03.2017 passed by the Commissioner (Appeals), Central Excise & Service Tax 605, Mahabir Tower, Main Road, Ranchi-834001)

M/s. Devendra Nath Mahato & Sons **: Appellant**
Proprietor Smt. Meena Devi
Upper Dungri Basti, P. O.-Jamadoba
P.S. Jorapokhar, Dist-Dhanbad-828112

VERSUS

The Commissioner of Central Excise & Service Tax Dhanbad(HQ) **: Respondent**
Dhanbad Commissionerate,
H. E. School Road, Visti Para, Hirapur
At & Post-Dhanbad, ps. Dhanbad-826001 Jharkhand

APPEARANCE:

Shri Aditya Dutta, 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.75644/2026

DATE OF HEARING / DECISION: 21.05.2026

Order: [PER SHRI K. ANPAZHAKAN]

M/s. Devendra Nath Mahato & Sons (Prop. Meena Devi) (herein after referred as the appellant) is a resident of Upper Dungri Basti, P.O. Jamadoba, Dhanbad- 828 112. The appellant are engaged in providing transportation service by way of transporting 'raw coal' from 2 incline (Pithhead) within the mines of Bharat Coking Coal Limited to Jamadoba Coal Washery of M/s. Tata Steel Limited located at a distance of approximately 5 kilometres. The appellant was also transporting washery rejected from different mines to Ground Hopper of Power Plant of M/s. Tata Seel Limited situated at Jamadoba. The appellant has been registered with the service tax department under Registration No. AETPD2327NSD001.

2. The appellant's concern was primarily run by the husband of the present proprietor, Devendra Nath Mahato who expired on 09.03.2009 and from then on, the present proprietor Meena Devi, who is a housewife has been running the said business.

3. On the basis of the allegation that the appellant has not paid appropriate service tax, investigation was initiated against the appellant vide letter dated 26.02.2013, followed by several summons on subsequent dates and recording of statements from the authorised person of the proprietor. Statement was also obtained from accountant of M/s. Tata Steel.

4. Further, scrutiny of the audited Balance Sheet and Profit and Loss Account of the appellant was also undertaken by the Department. Ultimately **SCN dated 21.01.2013** was issued for the **FY 2008-09 to 2012-13**, demanding service tax amounting to **Rs. 42,09,713/-** (including Cess) classifying the service rendered by the appellant under the category of 'mining service'. The notice also demanded interest and proposed for imposition of penalties under Section 76, 77 and 78 of the FA, 1994.

4.1. The demand in the Notice was made on the following grounds:-

(a) Since no consignment notes could be provided by the Noticee, therefore, the service provided by them could not be classified under the category of 'Transport of Goods by Road Service'.

(b) Perusal of the Work Orders shows that the services rendered by the appellant are akin to Mining Service chargeable to service tax w.e.f 01.06.2007.

(c) W.e.f 01.06.2007, all services provided or to be provided in relation to mining of minerals have been comprehensively covered under the category of 'Mining of Mineral, Oil or Gas Service'. Accordingly, the activities carried out by the appellant are appropriately classifiable under 'Mining Service'.

5. The SCN was adjudicated by the Additional Commissioner Central Excise & Service Tax(H), Dhanbad vide his **Order-in-Original No. 11/2015/S.Tax/DNM/ADC/DNB (H) dated 03.08.2015,** wherein he has set aside the service tax demand of Rs. 16,70,218/- attributable to the period 2008-09 since the earlier proprietor Devendra Nath Mahato has expired on 07.03.2009. However, he has upheld the demand of the balance amount of service tax amounting to **Rs. 25,39,495/-** for the period **April, 2009 to March, 2013** along with interest. The Ld. Adjudicating authority has also imposed penalties of **Rs. 10,000/-** u/s 77 of the Finance Act, 1994 and **Rs. 25,39,495/-** u/s 78 of the Finance Act, 1994.

6. On appeal, the Commissioner (Appeals) Central Excise & Service Tax, Ranchi vide his **Order-in-Appeal No. 63/DNB/2017 dated 29.03.2017** upheld the OIO in full with the following observations:-

……… I hold that the said services of movement of coal/coal rejects by the appellant was mere shifting of the same within the mining area and correct nature of the said services of the appellant were covered under the taxable category of 'Mining of Mineral, Oil or Gas Service'. Further, the appellant has failed to substantiate the claim that the subject services were Goods Transport Agency services.

7. Being aggrieved, the appellant filed the instant appeal.

8. The appellant submits that the services rendered by them are not covered under the category of 'mining service', due to the reason that the contract copies clearly show that that services rendered by them are 'transportation of goods by road'. Such transported coal was subsequently used in the power plant of Tata Steel. Thus, the gist of the activities undertaken by them in the instant case was only 'transportation of coal from mine to the power plant of TATA steel. Such transportation activities undertaken by them was not confined within a particular mining area for shifting/transporting coal and coal rejects to another area within the mine. Hence, the activity undertaken by them does not fall within the ambit of the definition of 'mining service'.

9. The appellant also pointed out that the department while issuing the SCN at Para 18 had rightly observed that the services provided by them are not covered under Goods Transport Agency service since no consignments note was issued by them. But simultaneously, had wrongly charged service tax against rendering of 'mining service'.

10. Accordingly, the appellant submits that the demand of service tax confirmed in the impugned

order under the category of 'Mining Service' is not sustainable and prayed for setting aside the same.

11. The Ld. A.R. submits that all activities undertaken by the appellant are within the mining area and hence the services rendered by them are appropriately classifiable under the category of 'Mining Service' and hence the appellant is liable to pay service tax.

12. Heard both sides and perused the appeal documents.

13. The issue involved in the instant appeal is whether the activities undertaken by the appellant are appropriately classifiable under the category of 'Mining Service' as claimed by the department or 'Transportation of goods by road service', as claimed by the appellant.

13.1. In this regard, we have perused the copy of the Work Order. As per the contract, the appellant is liable to perform the following activities:

> (a) *transporting raw coal from 2 incline (Pithhead) within the mines of Bharat Coking Coal Limited and transportation of the same to Jamadoba Coal Washery of M/s. Tata Steel Limited through public road transversing a distance of almost 5 kilometers*
>
> (b) *transporting washery rejected from different mines to Ground Hopper of Power Plant of M/s. Tata Seel Limited situated at Jamadoba.*

13.2. From the above, we observe that the appellant has performed the service of transportation of goods by road service. In this regard, we find that the activities undertaken by the appellant during the material period were limited to 'transportation of coal'. But, since no consignment note was issued for such transportation, we hold that the activities undertaken by the appellant did not attract service tax during the material period being covered under the 'Negative List' Entry as Section 66D(P)(i)(A) of Finance Act, 1994. We find that this view is supported by the judgment of the Hon'ble Tribunal Ahmedabad in the case of *Chartered Logistics Ltd. v Commissioner of Central Excise [(2024) 16 Centax 473 (Tri-Ahmd)]* upheld by the Hon'ble Apex court in vide *[(2024) 16 Centac 474 (SC)]*. For ready reference, the relevant part of the said judgement is reproduced below:

> *6.5 Accordingly, a person can be said to be Goods Transport Agency, if the person provides services in relation to the transportation of goods by road and issues the consignment note. From the above legal position, it is clear that not all persons who transport of goods by road are qualified as Goods Transport Agency. To qualify as services of GTA, GTA should issue necessarily a consignment note then only service provided by GTA are taxable under Finance Act, 1994.*

13.3. The same view has also been held by this Tribunal in the case of *Tabassum Enterprises v Commissioner of CGST &CX [Final Order No. 77452/2025].* The relevant part of the said decision is reproduced below:

> *6. Regarding the merits of the case, I find that the appellant were rendering the service of arranging transportation of goods. They did not*

> *issue any consignment note. I observe that the service of transportation of goods by road is liable to service tax under the category of GTA service, only when the service provider issues 'consignment notes'. As the appellant have not issued any 'consignment note, I hold that' the service rendered by them were clearly excluded, as the said services were covered in the 'Negative List' Entry under Section 66D(P)(i)(A) of Finance Act, 1994.*

13.4. Thus, by relying on the ratio of the decisions cited supra, we hold that the demand of service tax confirmed in the impugned order under the category of 'Mining Service' is not sustainable and hence we set aside the same. As the demand itself is not sustainable, the question of demanding interest or imposing penalties does not arise and hence we set aside the same.

14. In the result, 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)

rkp