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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75602 of 2025

(Arising out of Order-in-Original No. 03/S.Tax/Commissioner/2025 dated 28.01.2025 passed by the Commissioner of C.G.S.T. & C.X., Jamshedpur, Outer Circle Road, Bistupur, Jamshedpur – 831 001)

M/s. Usha Martin Limited **: Appellant**
"Mangal Kalash",
2A, Shakespeare Sarani,
Kolkata – 700 071

VERSUS

Commissioner of C.G.S.T. and C.X. **: Respondent**
Jamshedpur Commissionerate,
Outer Circle Road, Bistupur,
Jamshedpur – 831 001

APPEARANCE:

Shri Arvind Baheti, Chartered Accountant, for the Appellant

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

CORAM:

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

FINAL ORDER NO. 76109 / 2026

DATE OF HEARING / DECISION: 20.08.2026

ORDER: [PER SHRI ASHOK JINDAL]

The appellant is in appeal against the impugned order wherein demand of Service Tax amounting to Rs.7,14,46,604/-, along with interest and penalty, has been confirmed against them.

2. The facts of the case are that the appellant is engaged inter alia in the business of production and clearance of iron and steel products from its manufacturing facility located at Adityapur Industrial Area, Jharkhand which were subject duty of excise. The Appellant entered into a mining lease agreement

dated 16 August 2005 (Pg. 37/C) with the State of Jharkhand for the allocation of iron ore mines at Badajamda Iron Ore Mines, Jharkhand as per the Mines and Mineral (Development and Regulation) Act, 1957 ("MMDR Act") for captive consumption in its manufacturing facility. In terms of Section 9 of the MMDR Act, the Appellant made periodical royalty payments to the State Government in respect of the iron ore extracted from the said mines.

3. Prior to 1 April 2016, only "support services" provided by Government or a Local Authority was taxable in terms of Section 66D(a)(iv) of the Finance Act, 1994 ("Finance Act") However, with effect from 1 April 2016, all services provided by the Government were brought under the Service Tax net by virtue of amendment to the said provision.

4. Pursuant to an investigation, a Show Cause Notice dated 24.01.2019 was issued to the Appellant demanding service tax on reverse charge basis in terms of Notification 30/2012 ST dated 20 June 2012 (as amended), on the periodical payments (royalty) made to the Government for the period April 2016 to June 2017. It is the case of the Revenue that the said payments were towards the service of assignment by the government of the right to use natural resources which were taxable with effect from 01 April 2016 in the light of the amendment in Section 66D(a)(iv).

4.1. The matter was adjudicated vide the impugned Order-in-Original No. 03/S.Tax/Commissioner/2025 dated 28.01.2025 whereby the of Service Tax, along with interest and penalty, as proposed in the impugned notice has been confirmed.

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

5. The Ld. Counsel appearing on behalf of the appellant advanced the following submissions in support of his contentions: -

A. Issue involved herein as regards taxability of amounts paid under mining lease agreement executed prior to the introduction of levy with effect from 01 April 2016 is no more res integra and stands concluded in favor of the Appellant

(i) In terms of Section 66B of the Finance Act 1994, service tax is leviable on the services which are provided or agreed to be provided. Service means any activity carried out by a person for consideration. In order to determine the taxable event, it is necessary to determine when such activity/service is provided or agreed to be provided. In the instance, it is not in dispute that the taxable event of assignment of mining rights by the Government of Jharkhand with respect to mining of iron ore took place pursuant to a mining lease date 16 August 2005. Therefore, the taxable in the instant case took place prior to the introduction of levy vide amendment in Section 66D(a)(iv). A subsequent levy could not affect the taxability of an activity that took place prior in time so as to demand tax under the reverse charge provisions on the periodic payments (royalty) paid thereafter.

(ii) The Appellant submits that the issue as regards the taxability of amounts paid under the agreements for assignment of right to use natural resources, executed prior to the introduction of levy with effect from 1 April 2016 is no more res integra and stands decided in the favor of the Appellant. Reliance is being placed on the judgement of *Principal Commissioner of CGST and Central Excise Vs S.R. Traders ((2023) 9 Centax 407 (Tri. Delhi)]* whereby held that amount paid to Government towards periodical charges for assignment of right to use of natural resource would not be liable to service tax even after 01/04/2016 if the agreements were entered prior to 01 April 2016. The said decision has been affirmed by the Hon'ble Supreme Court by dismissal of Departmental SLP *[(2023) 9 Centax 408 (SC)].*

(iii) Similar view has been taken in the judgement rendered by this Tribunal in the case of *CESC Limited Vs. Commissioner of Central Tax, CGST & Central Excise, Kolkata (2025 (7) TMI 928 (Tri. Kol)]* which has also been accepted by the Department [Refer - Pg. 30/C). Further, similar views have also been taken in the following judgements:

   a. *The Madhya Pradesh State Mining Corporation Limited Vs Principal Commissioner, CGST & Central Excise [2023 (4) TMI 1075 (Tri. New Delhi)]*
   b. *Cement Corporation of India Vs Commissioner of CGST, Central Excise, Guwahati [2024 (6) TMI 192 (Tri. - Kolkata)]*

(iv) The Ld. Adjudicating Authority has relied upon the Point of Taxation Rules in order to determine the applicability of service tax. In this regard, the Hon'ble Tribunal Delhi, in the case of *SR Traders (supra)* has categorically held that the Point of Taxation Rules deal with the date on which payment of service tax has to be made and do not determine whether the service is taxable or not]. In any event, the Tribunal at Delhi in the case of Madhya Pradesh State Mining Corporation Limited (supra) has held that for the purpose of levying service tax, the taxable event is construed as the time when the services are provided or agreed to be provided i.e., the date on which the agreement for grant of mining right was executed, which, in the instant case predates the introduction of levy.

B. Without prejudice, the assignment by the Government of the right to use natural resources by way of mining lease is a statutory function under the MMDR Act and not a service

(i) Regulation of mines and minerals is a sovereign function of the State Government (Entry 23 of List II-7th Schedule) under the Constitution of India. Therefore, the allocation and grant of iron ore mines in exercise of powers conferred under the MMDR Act is a statutory function which does not constitute a taxable service and as such no service tax is leviable. Reliance in this regard is being placed on Circular No. 89/7/2006-ST dated 18 December 2006.

(ii) The Hon'ble Apex Court in the case of *Krishi Upaj Mandi Samiti Vs [2022 (58) GSTL 129 (SC)]* held that statutory functions which are not mandatory in nature and where the fees collected is not deposited into the Government treasury, are not covered by the scope of Circular so as to seek immunity from payment of tax. Conversely, it would imply that if the function is a statutorily mandated function and the charges goes to the Government treasury, the benefit of the Circular dated 18 December 2006 is available.

C. Allegation of suppression of facts in order to impose penalty under Section 78 is wholly unsustainable

(i) Suppression and/or intention to evade, which is an essential ingredient for imposition of penalty under Section 78 cannot be alleged in the instant case. The Appellant has consistently complied with its statutory obligations by maintaining statutory records and regularly filing monthly online "Mining Returns" with the Department of Mines, Government of Jharkhand and the Indian Bureau of Mines, disclosing complete month-wise royalty details. Further, the Company is a public listed company, and the financial statements of the Appellant are publicly available and therefore the question of suppression of any fact does not arise.

(ii) In any event the entire exercise is revenue neutral as the entire iron ore extracted was utilized in the manufacturing facility of the Appellant as inputs for the production of iron and steel products. As such service tax would have been available as CENVAT Credit to the Appellant. Suppression and/or intention to evade cannot be alleged when the entire exercise is revenue neutral. Reference is drawn to the decision in *M/s. Intellect Design Arena Limited Versus Commissioner of GST and Central Excise, Chennai.*

5.1. Accordingly, the Ld. Counsel for the appellant prays for setting aside the impugned order and allowing the appeal, with consequential reliefs.

6. On the other hand, the Ld. Authorized Representative of the Revenue reiterates the findings in the impugned order.

7. Heard the parties and considered their submissions.

8. After considering the submissions made by both the sides, we find that the only issue to be decided in this appeal is: whether periodic royalty payments made to the Government of Jharkhand after 01 April 2016 could be taxed under reverse charge provisions, when the underlying service/activity of assignment of right to use natural resources (in the instant case, iron ore) was rendered prior to the introduction of the levy with effect from 01 April 2016, or not.

9. We find that the issue is no longer res integra as the same has already been settled by way of a catena of decisions on the issue. The said issue was considered by the Tribunal in the case of *Principal Commissioner of CGST and Central Excise Vs S.R. Traders ((2023) 9 Centax 407 (Tri. Delhi)]* wherein it was held that amounts paid to the Government towards periodical charges for assignment of the right to use natural resources would not be exigible to Service Tax even after 01.04.2016, where the agreements conferring such rights had been entered into prior thereto. The relevant portion of the said order is reproduced below: -

> *"2. The issue involved in this appeal is regarding non-payment of service tax on the amount paid to the Government or a local authority towards periodical charges for assignment of right to use of natural resource or quarry sand from the allotted mines. The Commissioner dropped the demand for the following reason:*

> *"51. Also, as per the terms and condition of the relevant agreements, the amount of the thekadhan including royalty, rent etc. payable by the notice to the Govt. of M.P. were predetermined and the quantum and pattern of such payments was well defined by way of distributed installments in closed manner and their due dates. Since, the terms and condition of the relevant agreements qualify both the conditions of the Notification No. 22/2016 Service Tax dated April 13, 2016 (entry 61), by virtue of the dates of the agreements and the pre-determined nature of the taxable amount, therefore, the impugned activity and amount of the thekadhan cannot be brought under the ambit of Service tax net, holding immunity provided by the said notification."*

3. Section 66D of the Finance Act, 19942 which contains the list of negative services, includes services by Government and local authority excluding services mentioned in clauses (i), (ii), (iii) and (iv). It needs to be noted that prior to April 01, 2016, under clause (iv) only 'support service', other than services covered under clauses (i) to (iii) provided to business entities was mentioned, but 'support service' from April 01, 2016 was substituted by 'any service'. Thus, w.e.f. April 01, 2016, the service provided to the appellant became taxable.

4. Though the agreements were entered prior to April 01, 2016 in the present case, the contention of the Department is that since the payment under the agreements were to be made after April 01, 2016, the appellant would be liable to pay service tax.

5. This precise issue came up before a Bench of the Tribunal in M/s. Madhya Pradesh State Mining, Corporation Limited v. Principal Commissioner, CGST & Central Excise, Bhopal (M.P.) 2023 (4) TMI 1075-CESTAT New Delhi (2023) 10 Centax 253 (Tri. Del.). In regard to short payment of service tax on dead rent paid by the appellant to the State Government, which was taxable on a reverse charge basis against the receipt of services concerning grant of mining rights, the Bench held that for the purposes of levying service tax, the taxable event is construed at the time the service is provided or agreed to be provided. Therefore, in order to determine whether levy of services tax is applicable *on a particular activity, it is necessary to determine the point of time when such activity is provided or agreed to be provided and since the agreements between the appellant and the State Government regarding grant of mining right were executed prior to April 01, 2016, on which date the transaction in mining of right to use natural resources became taxable, the appellant would not be liable to pay the service tax. The relevant portions of the decision are reproduced below:*

> *"13. The second category of demand pertains to the alleged short-payment of tax to the extent of dead rent surface rent paid by the appellant to the State Government, which has been held to be taxable on reverse charge basis against the receipt of service concerning grant of mining rights.*
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> *14. The contention of the learned counsel for the appellant is that the demand is not sustainable as the service was received prior to 1-4-2016, when such services from the Government were not subject to tax.*
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> *15. The charging provision prescribing levy of tax is section 66B of the Finance Act and it is as follows:*
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> *"66B. There shall be levied a tax (hereinafter referred to as the service tax at the rate of fourteen per cent on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed."*
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> *16. Thus, for the purpose of levying service tax, the taxable event is construed as the time when the service is provided or agreed to be provided. Thus, in order to determine whether levy of tax is applicable on a particular activity, it is necessary to determine the point of time when such activity is provided or agreed to be provided. In the present case, the agreement between the appellant and State Government for grant of mining rights was executed on 2-1-2016 and on this date, the transactions involving) assignment of right to use natural resource was not taxable.*

17. In this connection section 66D of the Finance Act, as it existed prior to 1-4-2016, can be referred to and it is as follows:

"66D The negative list shall comprise of the following services, namely:-

(a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere-

(i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;

(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;

(iii) transport of goods or passengers; or

18. Thus, prior to 1-4-2016, barring a few exceptions, all services provided by the Government were covered under the negative list and accordingly, not subjected to service tax.

19. With effect from 1-4-2016, however, section 66D (a)(iv) of the Finance Act was amended and 'all services provided by the government to a business entity were excluded from the negative list of services. Thus, services rendered by the government to a business entity became chargeable to service tax with effect from 1-4-2016.

20. In the present case, the appellant received services in relation to assignment of right to use natural resources from the State Government by virtue of the agreement dated 2-1-2016 and, therefore, the provisions of service tax, as were in force prior to 1-4-2016, would be applicable. Grant of natural resources was not excluded from the scope of negative list prior to 1-4-2016 and so no tax implication can be fastened on the appellant for such period."

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> *8. The Point of Taxation Rules deal with the date on which payment of service tax has to be made and do not determine whether the service is taxable or not. These Rules, therefore, would not be applicable in the present case. In any view of the matter, the issue is covered by the decision of the Division Bench of the Tribunal in Madhya Pradesh State Mining Corporation.*
>
> *9. It has, therefore, to be held that the order passed by the Commissioner does not suffer from any illegality so as to call for any interference in this appeal. The appeal is, therefore, liable to be dismissed and is dismissed."*

9.1. The above decision has been affirmed by the Hon'ble Supreme Court vide its judgement reported in *(2023) 9 Centax 408 (S.C.).*

9.2. Further, the same view has also been taken by this Tribunal in the case of *CESC Limited Vs. Commissioner of Central Tax, CGST & Central Excise, Kolkata (2025 (7) TMI 928 (Tri. Kol)]* wherein, under similar facts and circumstances, this Bench has set aside the demand of Service Tax and allowed the appeal filed by the assessee, which has also been accepted by the Department.

10. We find that the factual matrix of the present case is substantially identical to that considered in the aforesaid decisions relied upon by the appellant and, therefore, the ratio laid down therein is squarely applicable to the facts and circumstances of the present case. The Revenue has not brought on record any contrary decision to persuade us to take a view different than what has been consistently taken in the said decisions.

11. Admittedly, in this case, the lease agreement was entered on 16.08.2005, for a period of 20 years. Therefore, following the above cited decisions, we hold that during the impugned period, the demand against the appellant is not sustainable.

12. Further, we also find that the entire issue is revenue neutral. The entire quantity of iron ore extracted was admittedly utilized in the appellant's own manufacturing facility as an input in the production of iron and steel products. Any Service Tax liability, had it been discharged, would consequently have been available to the appellant by way of CENVAT credit, thereby rendering the entire exercise revenue neutral. In such circumstances, the allegation of suppression of facts or any intent to evade payment of Service Tax cannot be readily sustained.

13. In these circumstances, by following the ratio laid down in the decisions cited supra, we hold that the demand of Service Tax, along with interest, confirmed vide the impugned order is not sustainable and consequently, the same stands set aside. Accordingly, we hold that no penalty is imposable on the appellant.

14. In the result, we set aside the impugned order and allow the appeal, with consequential relief, if any.

(Dictated and pronounced in the open court)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

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

Sdd