CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

Service Tax Appeal No. 85525 of 2020

(Arising out of Order-in-Appeal No. NGP/EXCUS/000/APPL/138/19-20/665 dated 02.12.2019 passed by the Commissioner of CGST, Central Excise & Customs (Appeals), Nagpur.)

M/s. Western Coalfields Limited ....Appellant
Head Quarter, V Floor, Coal Estate,
Civil Lines, Finance Deptt. Tax Cell,
Nagpur, Maharashtra – 440 001

VERSUS

Commissioner of Central Excise, Nagpur ....Respondent
GST Bhavan, Civil Lines, Telangkhedi Road,
Nagpur, Maharashtra – 440 001

WITH

Service Tax Appeal No. 85346 of 2021

(Arising out of Order-in-Appeal No. NGP/EXCUS/000/APPL/78/2020-21/356 dated 05.11.2020 passed by the Commissioner of CGST, Central Excise & Customs (Appeals), Nagpur.)

M/s. Western Coalfields Limited ....Appellant
Coal Estate, Civil Lines,
Finance Deptt. Tax Cell,
Nagpur, Maharashtra – 440 001

VERSUS

Commissioner of Central Excise, Nagpur ....Respondent
GST Bhavan, Civil Lines, Telangkhedi Road,
Nagpur, Maharashtra – 440 001

AND

Service Tax Appeal No. 85248 of 2022

(Arising out of Order-in-Appeal No. SD/257/ST/NGP/2021-22/774 dated 20.10.2021 passed by the Commissioner of CGST, Central Excise & Customs (Appeals), Nagpur.)

M/s. Western Coalfields Limited ....Appellant
Umrer Area, P O Umred Collieries,
Umrer, Dist.- Nagpur, Maharashtra

VERSUS

Commissioner of Central Excise, Nagpur ....Respondent
GST Bhavan, Civil Lines, Telangkhedi Road,
Nagpur, Maharashtra – 440 001

APPERANCE:

Shri Rajeev Agarwal, Advocate alongwith
Shri Sanjay Dixit, Chartered Accountant for the Appellant

Shri Nitin Ranjan, Dy. Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 85974-85976/2023

Date of Hearing: 08.06.2023
Date of Decision: 08.06.2023

PER: DR. SUVENDU KUMAR PATI

Legality of the orders passed in respect of three units of the Appellant by the Commissioner of CGST, Central Excise & Customs (Appeals), Nagpur holding confirmation of duty demand of Rs.79,19,098/-, Rs.10,70,840/- and Rs.5,91,129/- for the period between April, 2016 and June, 2017 under Section 73(1A) of the Finance Act alongwith interest and penalty under Section 75 & 77 of the Finance Act, 1994 respectively as legal is assailed in these three appeals.

2. Facts of the Appellant's case, in a nutshell, is that Appellant, having several area offices with local Service Tax Registration, is engaged in production and clearance of coal falling under Tariff Item No. 27011200 of the First Schedule of the Central Excise Tariff Act, 1985. Intelligence gathered by the DGCEI indicated that Appellant

was charging and collecting amount in the name of compensation, penalty etc. for short lifting of coal from the buyers and forfeiting their Security Deposit (SD)/ Earnest Money Deposit (EMD) for breaching terms and conditions of the fuel supply agreement, which activity was equated with the provision specified in Section 66E(e) of the Finance Act, 1994 that makes it dutiable for agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act, since the same is considered as declare service. Appellant was put to show-cause, contested the same unsuccessfully at the first adjudication stage and also at the first Appellate forum. Now it is before the Tribunal for necessary relief.

3. We have heard submissions from both the sides and perused the case record. As could be noticed Appellant had succeeded to get relief in an appeal filed by it on the same issue but for the prior period between July, 2012 and March, 2016. In filing copy of the order passed by this Tribunal on dated 12.08.2022 in respect of the present Appellant alongwith copy of the Circular No. 214/1/2023-Service Tax dated 28.02.2023, in which at para 5 of the CBIC Board it has been categorically noted that Board has decided not to file appeal against the order of CESTAT passed on 12.08.2022 and on 20.09.2022 on the same issue.

4. We have gone through the order passed by this Tribunal specifically on dated 12.08.2022 in respect of the present Appellant and it is noticed that by following the decision of the Principle Bench

of this Tribunal at Delhi in the case of *M/s. South Eastern Coalfields Ltd. Vs. Commissioner of Central Excise & Service Tax, Raipur* reported in *2021 (55) GSTL 549 (Tri.- Del.),* this order dated 12.08.2022 is passed by CESTAT, Mumbai in the Appellant's own case. This being the facts, record and judicial precedent set by this Tribunal that has been accepted by the CBIC Board, the following order is passed.

THE ORDER

5. All these three appeals of Appellant for the period between April, 2016 and June, 2017 are allowed and the orders passed by the Commissioner of CGST, Central Excise & Customs (Appeals), Nagpur *vide* Order-in-Appeal Nos. NGP/EXCUS/000/APPL/138/19-20/665 dated 02.12.2019, NGP/EXCUS/000/APPL/78/ 2020-21/356 dated 05.11.2020 and SD/257/ST/NGP/2021-22/774 dated 20.10.2021 respectively are hereby set aside with consequential relief, if any.

(Operative portion of the order pronounced in open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

Prasad