

**CUSTOMS EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
NEW DELHI
PRINCIPAL BENCH-COURT NO. 1**

SERVICE TAX APPEAL NO. 50415 OF 2016

[Arising out of Order-in-Appeal No. BHO-EXCUS-002-APP-225-15-16 dated 04.11.2015 passed by the Commissioner (Appeals) Central Excise & Service Tax, Raipur]

CHHAYA MAHALLEY

Appellant

Behind Post Office,
Junardeo Road, Parasia,
District Chhindwara (MP)

Vs.

**COMMISSIONER, CUSTOMS, CENTRAL
EXCISE & CGST-BHOPAL**

Respondent

Appearance:

Present for the Appellant : Shri Bipin Garg and Ms. Kainaat,
Advocates

Present for the Respondent: Dr. Radhe Tallo, Authorised
Representative

CORAM:

HON'BLE MR JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MR P. V. SUBBA RAO, MEMBER(TECHNICAL)

FINAL ORDER NO. 51171 /2022

Date of Hearing/Decision : 02/12/2022

JUSTICE DILIP GUPTA:

1. This appeal seeks the quashing of the order dated 04.11.2015 passed by the Commissioner(Appeals) by which the order dated 17.02.2014 passed by the Joint Commissioner confirming the demand of service tax under "cargo handling service" for the period 01.04.2007 to 30.05.2007 and under "mining service" for the period 01.06.2007 onwards has been confirmed.

2. The appellant provided services to Western Coalfields Limited at different areas claiming it to be under "goods transport agency service", and claims that Western Coalfields Limited discharged the service tax liability under the reverse charge mechanism.

3. A show cause notice dated 18.02.2012 was, however, issued to the appellant on the allegation that the services provided by the appellant to Western Coalfields Limited was taxable under various services including "cargo handling services" and "mining services". As noticed above the adjudicating authority and the Commissioner (Appeals) have upheld the demand of service tax under "cargo handling services" for the period prior to 01.06.2007 and under "mining services" for the period after 01.06.2007 with penalties.

4. Shri Bipin Garg, learned counsel for the appellant assisted by Ms. Kainaat has stated that the nature of services provided by the appellant, as is clear from the order passed by the Joint Commissioner, is loading of coal into tippers by pay loaders from the mining area of Western Coalfield Limited and transportation of coal by tippers to the railway siding and unloading of coal. Learned counsel submitted that in view of decision of the Supreme Court in **Commissioner of Central Excise and Service Tax, Raipur vs. Singh Transporters**¹, the nature of service provided by the appellant would be

¹ **2017 (4) GSTL 3(SC)**

"transport of goods by road service" and not "mining" or "cargo handling service".

5. Learned authorised Representative for the Department has, however, supported the impugned order.

6. The issue involved in this appeal is as to whether the appellant had provided "cargo handling service" for the period 01.06.2007 and "mining service" for the period 01.06.2007 or had provided "transport of goods by road" service.

7. The taxable service of "mining" under section 65 (105) (zzzy) of the Finance Act means any service provided or to be provided to any person by any other person, in relation to mining of mineral, oil or gas. The Commissioner has placed reliance upon the definition of "mines" under the Mines Act, 1952 and has observed that all processing including handling and movement of coal from one point of mines to dispatch point of mines are activities carried out in relation to mining of minerals.

8. The issue as to was whether coal transported from pitheads of the mines to the railway sidings would fall within the taxable service defined under section 65 (105) (zzzy) of the Finance Act was examined by the Supreme Court in **Singh Transporters**. The Supreme Court held that the activity would appropriately be classified under the head "transport of goods by road" service and the activity does not involve any taxable service in relation to "mining of mineral" as contemplated under section 65(105) (zzzy) of the Finance

Act. The Supreme Court also held that the definition of "mines" has no apparent nexus with the activity undertaken under the service rendered. The relevant paragraphs of the judgment are reproduced as under:

"3. The issue involved in the present appeal is whether the goods i.e. coal transported by the respondent - Singh Transporters from the pit-heads to the railway sidings would fall within taxable service as defined under Section 65(105) (zzzy) of the Service Tax Act of 1994 (for short "the Act") or as defined under Section 65(105)(zzp) of the Act.

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6. Be that as it may, even if the relied upon judgment in the case of **Arjuna Carriers (supra)** is of no consequence to the present case, we are of the view that the activity undertaken by the respondent i.e. transportation of coal from the pit-heads to the railway sidings within the mining areas is more appropriately classifiable under Section 65(105)(zzp) of the Act, namely, under the head "transport of goods by road service" and does not involve any service in relation to "mining of mineral, oil or gas" as provided by Section 65(105)(zzzy) of the Act.

7. The reliance placed on the definition of the term 'mines' under Section 2(j) of the Mines Act, 1952 does not assist the Revenue inasmuch as what would be indicated by the said definition is that a mine is not to be understood necessarily in respect of pit-heads of the mining area or the excavation or drilling underground, as may be, but also to the peripheral area on the surface. The said definition has no apparent nexus with the activity undertaken and the service rendered."

9. It would be seen that the Supreme Court categorically held that the activity undertaken by the appellant would fall under the head "transportation of goods by road" service. The Commissioner (Appeals) was, therefore, not justified in holding that the appellant had undertaken the activity of mining service w.e.f. 01.06.2007.

10. It would also not possible to sustain the order passed by the Commissioner holding that these activities undertaken by the appellant prior to 01.06.2007 would fall under the category of "cargo handling service". This is for the reason that the Supreme Court categorically held that the activity undertaken by the appellant would fall under the heading "transport of goods by road" service.

11. The appellant had, therefore, not provided "cargo handling" service prior to 01.06.2007 under section 65(23) of the Finance Act and "mining" service w.e.f. 01.06.2007. The order dated 04.11.2015 passed by the Commissioner (Appeals), therefore, cannot be sustained. The appeal is, accordingly, allowed.

(Dictated and pronounced in open court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. V. SUBBA RAO)
MEMBER(TECHNICAL)