

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH - COURT NO.2**

Service Tax Appeal No.75540 of 2015

(Arising out of Order-in-Original No.01-02/S.Tax/Commr/2015 dated 26.03.2015
passed by Commissioner, Central Excise & Service Tax, Dhanbad.)

Coal Mines Provident Fund Organization

(Ms.Aparna Bhat, Advocate, 3/14-B, LGF Jangpura-B, New Delhi-110014.)

...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Dhanbad

.....Respondent

(H.E. School Road, Vistipara, Dhanbad-826001.)

WITH

(i) Service Tax Appeal No.77633 of 2018 (Coal Mines Provident Fund Organization v. Commissioner of Central Excise & Service Tax, Dhanbad); (ii) Service Tax Appeal No.79800 of 2018 (Coal Mines Provident Fund Organization v. Commissioner of Central Goods & Services Tax & Central Excise, Ranchi); (iii) Service Tax Appeal No.75213 of 2022 (Coal Mines Provident Fund Organization v. Commissioner of Central Goods & Services Tax & Central Excise, Ranchi); (iv) Service Tax Appeal No.75214 of 2022 (Coal Mines Provident Fund Organization v. Commissioner of Central Goods & Services Tax & Central Excise, Ranchi);

(i) (Arising out of Order-in-Original No.12-13/ST/Commr./2016 dated 23.08.2016
passed by Commissioner, Central Excise & Service Tax, Dhanbad.)

(ii) (Arising out of Order-in-Original No.88/S.Tax/Pr.Commr./2018 dated 21.08.2018
passed by Commissioner of CGST & CX, Ranchi.)

(iii) (Arising out of Order-in-Original No.42/S.Tax/Pr.Commr./2020 dated 30.09.2020
/ 01.10.2020 passed by Commissioner of CGST & CX, Ranchi.)

(iv) (Arising out of Order-in-Original No.13/S.Tax/Pr.Commr./2019 dated 30.12.2019
/ 31.12.2019 passed by Commissioner of CGST & CX, Ranchi.)

APPEARANCE

Shri Sanjay Dixit, Chartered Accountant for the Appellant (s)
Shri J.Chattopadhyay, Authorized Representative for the Revenue

**CORAM: HON'BLE SHRI P.K. CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)**

FINAL ORDER NO. 75605-75609/2023

DATE OF HEARING : 12 May 2023

DATE OF DECISION : 09 June 2023

Per : P.K. CHOUDHARY :

The present appeals have been filed by M/s. Coal Mines Provident Fund Organization against adjudications orders passed by the Learned Commissioner of Central Excise and Service Tax, Ranchi, confirming demand of service tax on the amount of administrative charges received by the Appellant from the coal mine companies. Since the issues to be decided in all the appeals are common in nature, the same are taken up for disposal by this common order. The details of appeals filed by the Appellant against the adjudication orders for different period are as below:

Appeal No.	Period in dispute	Order-in-Original
ST- 75540 of 2015	2011-12 & 2012-13	01-02/S. Tax/Commr/2015 dated 26.03.2015
ST- 77633 of 2018	2013-14 & 2014-15	12-13/ST/Commr/2016 dated 23.08.2016
ST- 79800 of 2018	2015-16	88/S. Tax/Pr. Commr./2018 dated 21.08.2018
ST- 75214 of 2022	2016-17	13/S. Tax/Pr. Commr./2019 dated 31.12.2019
ST- 75213 of 2022	April 2017 to June 2017	42/S. Tax/Pr. Commr./2020 dated 01.10.2020

2. Briefly stated, the facts of the case are that the Appellant is a creature of statute and is governed by the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 ("CMPF & MP Act"). The preamble of the said Act states that it is an Act to make provisions for framing a provident fund scheme, a pension scheme, a deposit link insurance scheme and a bonus scheme for persons employed in coal mines. For undertaking the various functions, the Appellant is entitled to recover administrative charges at the rate of 3% of the amount payable by the coal mine companies for managing the fund under the provisions of CMPF & MP Act. It is the contention of the Department

that by recovering the said administrative charges, the Appellant is liable to pay service tax under the category of Banking and other Financial Services during the period up to June 2012 and under the category of 'Service' from July 2012 onwards when the negative list of services were introduced under the Finance Act, 1994.

3. We find that the dispute on the identical issue during the period prior to the period of dispute herein, the Tribunal in Appellant's own case vide Misc. Order No. 75248/2022 dated 03.08.2022 passed in the M.A.(ROM) No. 75103 of 2022 in ST Appeal No. 70470 of 2013 has held that no service tax is payable by the Appellant on administrative charges received by the Appellant under the provisions of CMPF & MP Act. In the said Order dated 03.08.2022, the Tribunal relied on the decision in the case of Employees Provident Fund Organization vs. Commissioner of Service Tax, Delhi 2017 (4) GSTL 294 (Tri. Del) which has been upheld by the Hon'ble Supreme Court on merits on 05.10.2018 as reported in 2018 (18) GSTL J215(SC). In the aforesaid order dated 03.08.2022, it has been categorically held that there is no existence of any service provider-service recipient relationship. It has also been held that the administrative charges in question is received by the appellant by way of operation of law to manage the fund for the benefit of coal mine workers and, therefore, the said administrative charges cannot be construed as "consideration" in the hands of the appellant.

4. The Ld. Authorized Representative appearing for the Revenue emphasized that since there is no specific exemption prescribed in the Mega Exemption Notification No. 25/2012-ST dated 20.06.2012 and no exclusion has been made in the negative list of services, the demand is liable to be sustained during the period covered in the negative list of services. We are unable to agree with the said arguments of the Ld. DR. The term 'service' has been defined under Section 65B(44) of the Finance Act, 1994, to "mean an activity carried out by a person for another for consideration". Since there is no consideration involved in

the case of the Appellant, it cannot be said that any service has been rendered by the Appellant to the coal mine companies. The Hon'ble Supreme Court in the case of Peekay Re-Rolling Mills (P) Ltd. vs Assistant Commissioner- 2007 (219) ELT 3 (SC) has held that the question of exemption shall arise only when there is a levy and if there is no levy at all, there would be nothing to exempt. In the present case, since there is no service provider-service recipient relationship and further, in absence of 'consideration' which condition is a *sine quo non* as per the definition of service referred above, there is no case of rendition of service much less a 'taxable service'. Hence, there does not arise any further need to examine the applicability of exemption notification.

5. We also take note of the recent adjudication order No. 01/2022-23/ADC/DND dated 25.01.2023 passed in the appellant's case by the Ld. Additional Commissioner, CGST, Dhanbad, placed on record before us, wherein GST demand on the administrative charges in question has been set aside. In the said order, it has been noted that the CBIC has accepted the earlier Order dated 03.08.2022 passed by the Tribunal in the case of the Appellant as referred above and no further appeal is proposed to be filed before the Hon'ble Supreme Court.

In view of the above findings, the impugned adjudication orders cannot be sustained and hence are set aside. All the appeals are allowed with consequential relief as per law, if any.

(Order pronounced in the open court on 09 June 2023.)

Sd/

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)