

**IN THE CUSTOMS, EXCISE & SERVICE TAX  
APPELLATE TRIBUNAL, CHENNAI**

**Service Tax Appeal No.40811 of 2014**

(Arising out of Order-in-Appeal No. 36/2014 dated 28.1.2014 passed by the Commissioner of Central Excise (Appeals), Salem)

**M/s. KRSS Manpower Service**

4/165, Sengaradu, P.O.  
Thathiangarpatty, Omalur Taluk  
Salem – 636 102.

**Appellant**

Vs.

**Commissioner of GST & Central Excise**

No. 1, Foulks Compound  
Anai Road  
Salem – 636 001.

**Respondent**

**APPEARANCE:**

Ms. Nivedita Mehta and Ms. R. Rekha, Advocates for the Appellant  
Shri N. Satyanarayanan, AC (AR) for the Respondent

**CORAM**

**Hon'ble Shri P. Dinesha, Member (Judicial)**  
**Hon'ble Shri M. Ajit Kumar, Member (Technical)**

Final Order No. 40782/2023

Date of Hearing : 23.08.2023

Date of Decision: 12.09.2023

**Per M. Ajit Kumar,**

This appeal is filed by the appellant M/s. KRSS Manpower Service against Order in Appeal No. 36/2014 dated 28.1.2014 passed by Commissioner of Central Excise (Appeals), Salem.

2. Brief facts of the case are that the appellant who is registered with the Service Tax Department carried out the work of collection, cleaning, segregation and stacking of blasted raw magnesite within the mining area for M/s. Burn Standard Co. Ltd. by entering into an agreement / contract. During the period from 6.10.2006 to 11.6.2007, it was noticed by the Central Excise officers that they had received a

sum of Rs.15,22,166/- as consideration but had not paid any service tax, not filed ST-3 returns and not followed the relevant provisions of the FA. A Show Cause Notice dated 24.11.2010 was issued seeking to classify the activity under 'Business Auxiliary Service' and demanding service tax of Rs.1,86,514/- with interest and also proposed to impose penalties. After due process of law, the original authority vide Order in Original dated 29.9.2011 confirmed the demand of service tax with interest and also imposed penalty of Rs.3,73,028/- under section 78 and Rs.5,000/- under Sec. 77. Aggrieved against the Order in Original, the appellant preferred appeal before Commissioner of Central Excise (Appeals) who vide the impugned order rejected the appeal filed by the appellant and upheld the adjudication order. Hence the appellant is before the Tribunal.

3. No cross-objections have been filed by the respondent-department.

4. We have heard learned counsel Ms. Nivedita Mehta and Ms. R. Rekha for the appellant and learned AR Shri N.Satyanarayanan, Assistant Commissioner for the Revenue.

5. The learned counsel for the appellant submitted that the appellant is engaged in the business of collection, cleaning, segregation and stacking of blasted raw magnesite within the mining area on behalf of M/s. Burn Standard Ltd. Show Cause Notice dated 24.11.2010 was issued proposing to demand service tax of Rs.1,86,514/- as service tax payable on Business Auxiliary Service alleged to have been rendered during the period 6.10.2006 to 11.6.2007. The original authority confirmed the demand. The appellate Commissioner without affording a reasonable opportunity of hearing to the appellant upheld the

adjudication order. It is submitted that the issue involved in the present case is squarely covered in favour of the appellant. The Tribunal vide Final Order No. 42314 and 42315/2017 dated 26.9.2017 held that the services rendered by the appellants who were also engaged in the business of segregating, lifting and stacking raw materials would fall under the category of 'Mining Services' and not under 'Business Auxiliary Service'. Reliance was also placed on the following judgments:-

- a. M/s. Aryan Energy Pvt. Ltd. Vs. CCE, Hyderabad – 2009 (13) STR 42 (Tri. Bang.)
- b. Union of India Vs. Spectrum Coal Power Ltd. – 2016 (41) STR 592 (Chhattisgarh)
- c. CCE, Salem Vs. Thriveni Earth Movers Ltd. – 2015 (39) STR 749

The learned counsel submitted that the issue stands covered in favour of the appellant and the appeal is therefore liable to be allowed with consequential relief.

6. The learned AR Shri N. Satyanarayanan reiterated the findings in the impugned order.

7. We have heard both sides and perused the records and the case laws cited. The issue to be decided is whether the service of "segregation of magnesite" is classifiable under 'business auxiliary service' under section 65(105)(zzb) of the Finance Act, 1994 or under 'mining service' classifiable under section 65(105)(zzzy) of the Finance Act, 1994. We find that the impugned order had found that the activity is equally classifiable under both the services and as per section 65A of the Finance act 1994, the activity under the sub-clauses which occurs first among the sub-clauses is preferable. The learned

Commissioner (Appeals) has hence chosen to accept the classification of the service as 'Business Auxiliary Service' as in the Order in Original and rejected the appeal.

7.1 We find that the activity of collection, cleaning, segregation and stacking of blasted raw magnesite is provided in relation to mining. The activities undertaken by the appellant are a part of the mining operations and are more appropriately classified as a 'Mining Service'. Mining activity has been made taxable by legislation with effect from 1.6.2007 only. Prior to this date, such activities, being part of mining operations, were not subjected to service tax. The period of demand in this case is from 6.10.2006 to 11.6.2007, therefore, no service tax is leviable on such activities for a major part of the impugned period. We find that a similar issue was examined by a Coordinate Bench of this Tribunal vide Final Order No. 42314 and 42315/2017 dated 26.9.2017 in the case of **Commissioner of Central Excise Salem Vs R Suresh Kumar**. Relevant portion of the said order s reproduced below:

*"3. The learned counsel Ms. Nivedita Mehta appeared on behalf of the respondent and submitted that the respondents were primarily engaged in cleaning, segregation and stacking of blasted raw magnesite and, therefore, Commissioner (Appeals) has rightly held that the said services would fall within the meaning of mining activities. In this regard, she submitted that Commissioner (Appeals) rightly relied upon the decision in the case of M/s. Aryan Energy Pvt. Ltd. Vs Commissioner of Customs & Central Excise, Hyderabad-I repo in 2009 (13) S.T.R.42 (Tri.-Bang.) Learned counsel also relies on the decision in the case of Union of India Vs M/s. Spectrum Coal Power Ltd., reported in 2016 (41) S.T.R.592 (Chattisgarh).*

*4. Heard both sides and we have gone through the records.*

*5. The issue whether the activities of cleaning, segregation and stacking of blasted raw magnesite would fall within the meaning of service or "Business Auxiliary Services" during the disputed period has been analysed in the decisions relied upon by the learned counsel for the respondents. The Commissioner (Appeals) has applied the decision in the case of M/s. Aryan Energy Pvt. Ltd. (supra), which we feel squarely covers the issue. The Hon'ble High Court in the case of CCE, Salem Vs. Thriveni Earth Movers Ltd.*

*reported in 2015 (39) STR 749 had an occasion to discuss similar issue and the same has been decided in favour of the assessee.”*

We find concurrence with the above order.

7.2 Having regard to the facts as discussed above we hold that the activity of collection, cleaning, segregation and stacking of blasted raw magnesite is classifiable under the category 'Mining Services' classifiable under section 65(105)(zzzy) of the Finance Act, 1994 and the demand is restricted to the period from 01/06/2007 onwards. We order that duty and interest may be worked out accordingly. Since duty was payable only from 01/06/2007 late fee and penalties are set aside.

8. Based on the discussions above the appeal is disposed of accordingly. The appellant is eligible for consequential relief, if any, as per law.

(Pronounced in open court on 12.09.2023)

**(M. AJIT KUMAR)**  
Member (Technical)

**(P. DINESHA)**  
Member (Judicial)

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