CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH

SERVICE TAX APPEAL NO. 50773 OF 2017

(Arising out of Order-in-Original No. ALW-EXCUS-OIO-COM-89-16-17 dated 01.02.2017 passed by The Commissioner, Central Excise Commissionerate, Alwar)

M/s. Rashleela Enterprises Pvt. Ltd. **...Appellant**
C-5, Krishna Balaram, Opp. St. Anslem School,
Malviya Nagar, Jaipur (Rajasthan)

versus

The Commissioner, **...Respondent**
Central Excise Commissionerate, Alwar,
Office of the Commissioner, Central Excise
& Service Tax 'A' Block, Surya Nagar, Alwar
(Rajasthan) - 302005

APPEARANCE:

Shri B.L. Narasimhan and Ms. Purvi Asati, Advocates for the Appellant
Shri Harsh Vardhan, Authorized Representative for the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing: 12.04.2023
Date of Decision: 03.07.2023

FINAL ORDER NO. 50809/2023

Justice Dilip Gupta:

M/s. Rashleela Enterprises Pvt. Ltd.[1] has filed this appeal to assail the order dated 01.02.2017 passed by the Commissioner, Central Excise Commissionerate, Alwar[2]. The Commissioner has held that the activities undertaken by the appellant in respect of the material/goods mentioned in the agreement would be leviable to

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1. **the appellant**
2. **the Commissioner**

service tax under 'mining of minerals, oil or gas' service under section 65(105)(zzzy) of the Finance Act, 1994[3].

2. The issue involved in this appeal is about demand of service tax on the activity of transportation of limestone and reject undertaken by the appellant under the category of mining service and the period involved is from July 2013 to December 2014.

3. The appellant is engaged in the provision of services of mining, transportation of the mined goods from mining sites to other places and transportation of other goods to various principals/ mine owners. In this regard, the appellant entered into contracts with various principals for the provision of the requisite services by it. According to the appellant, in each of these contracts executed between the appellant and the principals, separate rates have been mentioned for the services of mining and for the services of transportation and the appellant has charged as per the services availed by the principals. The appellant contends that mining work was carried out independently by the principals as well as by the appellant or sometimes by both. Further, the goods mined by the principals have been transported by the appellant and vice-versa. The appellant provided services as desired by the principals and charged for the same accordingly. With respect to the provision of mining services, the appellant acted as a contractor for carrying out the activities of overburden removal, mining the ore from the bottom of mine, cutting the rocks by drilling/blasting and raising of ore and the appellant charged for such services as per the rates given under the respective contracts. The appellant also charged separate amount for the

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3. the Finance Act

services rendered towards transportation of mined material to respective plants, crushers or other designated places and transportation of reject stones to dump sites at a place distant from the mines. To substantiate this plea, the appellant placed reliance on the invoices raised by the appellant for the services provided by it. The appellant further contends the mining activity provided by the appellant ceased as soon as the mineral was excavated. Thereafter 'transit slips' were prepared by the appellant and the goods were transported to plants, crushers or other designated places, located at a place distant from the mines. This activity of transportation, according to the appellant took place on public road and specific mention of the vehicle number and weight has also been mentioned in the transit slip issued by the appellant.

4. With effect from 01.06.2007 (i.e. after the introduction of service of 'mining of minerals, oil or gas' under the ambit of service tax), the appellant obtained service tax registration and started paying the applicable service tax on the invoices raised for the services of mining provided by it. There is no dispute on this aspect in the present appeal. Regular audits of the records of the appellant were conducted and no dispute was ever raised by the department in this regard.

5. However, with respect to the transportation activity undertaken by the appellant, the appellant contends that the same was in the nature of service of 'goods transport agency'[4] and service tax was liable to be discharged by the service recipients i.e. principals and it was duly discharged by the principals.

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4. GTA

6. An audit of the appellant was conducted. This culminated into issuance of the show cause notice dated 13.10.2014 demanding service tax of Rs. 7,54,48,175/- for the period April 2009 to June 2013 on the transportation activity carried out by the appellant under the category of 'mining services'. This show cause notice issued to the appellant was adjudicated by order dated 30.6.2015 and the entire demand was confirmed. The appellant filed an appeal against the said order before the Tribunal, which appeal was allowed, and the order dated 30.6.2015 was set aside. The said decision is **Rashleela Enterprises Pvt. Ltd.** vs. **CCE, Jaipur-I**[5].

7. The present show cause notice dated 17.04.2015 has been issued for the subsequent period from July 2013 to December 2014, proposing a demand of Rs. 4,61,51,720/- with interest and penalty. The appellant filed a detailed reply to the show cause notice denying the allegation. The Commissioner, by order dated 01.02.2017, confirmed the entire demand of Rs. 4,61,51,720/- with interest and penalty. It is this order that has been assailed in this appeal.

8. For the purpose of present appeal, the following six contracts entered by the appellant are in dispute:

Particulars of the Contract	**Scope of work**	**Taxable value (in Rs.)**	**ST payable (in Rs.)**	**ST already paid (in Rs.)**	**ST demand proposed and confirmed (in Rs.)**
DALLA Contract dated 05.11.2008	Scope of work includes both mining and transportation activity. Separate rates have been mentioned in the contract for the two	403584323	49883022		

5. 2019 (2) TMI 675 – CESTAT NEW DELHI

	activities.				
TANDA Clinker contract dated 09.05.2008	Scope of work includes only unloading from wagons and reloading into trucks and then transportation from railway siding to grinding unit. Rates for unloading from wagons and reloading into trucks and rates for transportation are separately given in the contract.	60246926	7446520		
SIDHI Cement contract dated 22.02.2009	Scope of work includes both mining and transportation activity. Separate rates have been mentioned in the contract for the two activities.	110390589	13644277	29526041	46151720
NIGRIE contract dated 14.03.2011	Scope of work includes both mining and transportation activity. Separate rates have been mentioned in the contract for the two activities.	450000	55620		
BEOHARI contract dated 06.09.2011	Scope of work includes only unloading, loading & transportation from Beohari railway siding to JSCP.	34700445	4288975		
BOKARO contract dated 13.04.2011	The scope of work is only for transportation of Slag from SGP Plant of BSL to the site of Jaypee Cement Plant.	2907333	359346		
	Grand-total	**61,22,79,616**	**7,56,77,761**	**2,95,26,041**	**4,61,51,720**

9. The show cause notice dated 17.04.2015 issued to the appellant suggests that the activity of transportation undertaken by the appellant would fall under mining services for the reason that the appellant had to execute the entire work from reject removal, ore drilling, blasting and raising and transportation of limestone from the mines to the designated area but the appellant did not discharge service tax liability on transportation of rejects believing that the said activity would come under GTA and service tax liability would have to be discharges by the service recipients. The show cause notice, further mentions that from the scrutiny of invoices raised from July, 2013 to December, 2014 and the respective ledger accounts, the appellant had received Rs. 61,22,79,616/-on which the service tax liability would come to Rs. 7,56,77,761/- but on examination of ST-3 returns and copy of the GAR-7 with challans for the respective period, the appellant had deposited service tax of Rs. 2,95,26,041/- only. Thus, the appellant was called upon the deposit the balance amount of service tax with interest and penalty.

10. The appellant filed a detailed reply to the show cause notice enclosing a chart showing details of the site-wise assessable value as shown in the show cause notice together with that part of such value on which service tax was paid. After pointing out the details, the appellant stated that it was not disputing the leviability of service tax on Rs. 38,11,00,584/- on which service tax was Rs. 4,71,04,032/-, which tax had already been paid by the appellant. The chart enclosed by the appellant in the reply to the show cause notice is reproduced below:

Name of the site	As per Show cause notice				As per appellant					Breakup of demand in contest	
	Taxable value	ST payable	ST considered as paid	ST demand	Taxable value	ST payable	ST paid details			Difference in St paid as per noticees/ department	Difference in St paid as per noticees/ department
							Cash	Credit	Total		
a	b	c	d	e=d-c	f	g	h	i	j	K=j-h	
Dalla	403584323	49883022	..	..	207763768	25679602 3076212	..	..	25679602	..	24203420
Tanda	60246926	7446520	..	..	24888449	28755814	..	..	3076212	..	4370308
Sub-total A	463831249	57329542	..	..	232652217	13644277	..	..	28755814	..	28573728
Sidhi	110390589	13644277	..	..	110390589	55620	..	..	13644277	..	-Nil-
Nigrie	450000	55620	..	..	450000	4288975	..	..	55620	..	-Nil-
Beohari	34700445	4288975	..	..	34700445	359346	..	..	1288975	..	-Nil-
Bokaro	2907333	359346	..	..	2907333	18348218	..	..	359346	..	-Nil-
Sub-total	148448367	18348218	..	..	148448367	47104032	..	..	18348218	..	-Nil-
Grand Total (A+B)	612279616	7567760	29526041	46151720	381100584	47104032	29526044	17577988	47104032	17577988	28573728

11. It transpires from the details of site-wise assessable value on which demand was proposed in the show cause notice with the value on which service tax was paid the appellant that with respect to the above-mentioned six contracts, the appellant had discharged service tax liability of Rs. 4,71,04,032/- out of which Rs. 2,95,26,041/- was deposited in cash and Rs. 1,75,77,991/- through CENVAT Credit.

12. It has been pointed out by Shri B.L. Narasimhan, learned counsel for the appellant assisted by Ms. Purvi Asati, that while proposing the demand of service tax, the department only considered the payment of Rs. 2,95,26,041/- made in cash, as is evident from the above table, and service tax of Rs. 1,75,77,991/- paid through CENVAT credit was not considered. Thus, out of the total demand of Rs. 4,61,51,720/- proposed and confirmed in the impugned order, service tax of Rs. 1,75,77,991/- having been paid through CENVAT credit has to be deducted and the demand has to be limited only to the extent of Rs. 2,85,73,729/-. This aspect was not considered in

the impugned order though it was pointed out by the appellant in the reply filed to the show cause notice.

13. It has also been pointed out by the learned counsel for the appellant that out of the total taxable value of Rs. 61,22,79,616/- on the above six contracts, the appellant had already paid service tax of Rs. 4,71,04,032/- on the taxable value of Rs. 38,11,00,584/-. Further, such taxable value of Rs. 38,11,00,584/- pertains to the values taken with respect to Sidhi, Nilgrie, Beohari and Bokaro site contracts. Therefore, according to the appellant service tax has duly been discharged with respect to Sidhi, Nilgrie, Beohari and Bokaro site contracts and no demand was sustainable. This submission deserves to be accepted.

14. Thus, out of the total taxable value taken for the purpose of proposing the demand, taxable value of Rs. 23,26,52,217/- (Rs. 61,22,79,616 - Rs. 38,11,00,584) is the value which pertains to the remaining two sites i.e. Dalla and Tanda contracts. With respect to these two sites, the appellant gave activity-wise bifurcation in its reply and it is reproduced below:

Particulars/ Name of the site		**Dalla**	**Tanda**	**Total**
A		**B**	**C**	**D = (B + C)**
Total receipts i.e. value as per the SCN		40,35,84,323	6,02,46,926	**46,38,31,249**
ST on such value (@ 12.36%)		4,98,83,022	74,46,520	**5,73,29,542**
of which				
Receipts on which ST payable and paid by the Appellant	Under Mining Services	20,77,63,768	-	20,77,63,768
	Under Cargo Handling Services	-	2,48,88,449	2,48,88,449
	Sub-total of receipts on which ST	20,77,63,768	2,48,88,449	**23,26,52,217**

	payable and paid			
	Value of ST payable and paid	2,56,79,602	30,76,212	**2,87,55,814**
Receipts on which ST not payable by the Appellant	Transportation of material mined by the service recipients (i,e. mine owners)	7,89,37,255	-	7,89,37,255
	Transportation of material mined by the Appellant	11,68,83,300	-	11,68,83,300
	Transportation from railway siding to plant etc. having no relation to mining	-	3,53,58,477	3,53,58,477
	Sub-total of receipts on which ST not payable	19,58,20,555	3,53,58,477	**23,11,79,032**
	Value of ST not payable and contested	2,42,03,420	43,70,309	**2,85,73,729**

15. It is clear from the above table that with respect to Dalla site contract, out of the total receipts of Rs. 40,35,84,323/-, receipts of Rs. 20,77,63,768/- pertain to mining activity on which service tax has already been discharged by the appellant under mining services. The balance receipts of Rs. 19,58,20,555/- pertains to the transportation activity.

16. Similarly, with respect to Tanda site contract, out of the total receipts of Rs. 6,02,46,926/-, receipts of Rs. 2,48,88,449/- pertain to loading/unloading charges, on which service tax has already discharged by the appellant under cargo handling services. The balance receipts of Rs. 3,53,58,477/- pertain to the transportation activity.

17. With respect to the balance receipts pertaining to transportation activity, the bifurcation is as under:

Nature of the transportation activity	**Dalla**	**Tanda**	**Total Receipts**	**ST payable**
Transportation of material mined by the service recipients (i,e. mine owners)	7,89,37,255	-	7,89,37,255	97,56,645
Transportation of material mined by the Appellant	11,68,83,300	-	11,68,83,300	1,44,46,775
Transportation from railway siding to plant etc. having no relation to mining	-	3,53,58,477	3,53,58,477	43,70,308
Total	**19,58,20,555**	**3,53,58,477**	**23,11,79,032**	**2,85,73,729**

18. Even if it is assumed that the contention of the department is correct that the appellant had undertaken the transportation activity as a part of mining activity undertaken by it and the receipts with respect to the same would be taxable under mining services, then too the transportation undertaken by the appellant in isolation or in the absence of any mining activity undertaken by it, cannot be considered as part of mining activity and thus, would not be taxable under the mining services. Thus, receipts of Rs. 7,89,37,255/- and Rs. 3,53,58,477/- pertaining to transportation of materials wherein no mining activity had been undertaken by the appellant would not be susceptible to service tax and the demand would have to be restricted to Rs. 1,44,46,775/- only.

19. The contracts in question entered by the appellant with the mine owners are not composite in nature as the same provide for separates activities to be undertaken by the appellant at separate

rates. A perusal of the contracts leaves no manner of doubt that the appellant had undertaken the activity of mining and transportation separately, for which separate charges were paid to the appellant by separate invoices. Thus, when the contracts categorise the activity of mining and transportation as two separate activates having no nexus with each other, then these two activities have to be treated as two separate services. In this connection, reference can be made to the judgment of the Supreme Court in **State of Madras** vs. **Gannon Dunkerley & Co. (Madras) Ltd**[6], wherein this Supreme Court emphasised the nature of an indivisible works contract. The relevant portion of the judgment is reproduced below:

> "To avoid misconception, it must be stated that the above conclusion has reference to works contracts, which are entire and indivisible, as the contracts of the respondents have been held by the learned Judges of the Court below to be. The several forms which such kinds of contracts can assume are set out in Hudson on Building Contracts, at page 165. It is possible that the parties might enter into distinct and separate contracts, one for the transfer of materials for money consideration, and the other for payment of remuneration for services and for work done. In such a case, there are really two agreements, though there is a single instrument embodying them, and the power of the State to separate the agreement to sell from the agreement to do work and render service and to impose a tax thereon cannot be questioned and will stand untouched by the present judgment."

20. It is clear from the aforesaid observation of the Supreme Court that in a case when two separate activities are undertaken even though the same may be provided under a single contract, they

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6. 1959 SCR 379

would have to be treated as two separate activities and taxed accordingly.

21. This is what was also observed by the Tribunal in the case of the appellant in **Rashleela Enterprises Pvt. Ltd.** vs. **CCE, Jaipur - I**[7], wherein on the issue of taxability of transportation activity undertaken by the appellant under the category of mining service for the previous period from 2009 to June 2013, it was held that the same is taxable under the category of GTA service and not under mining service. The relevant portion of the decision is reproduced:

> "14. Having considered the rival contentions, we find that the appellant has got separate registration for both the categories of service that is mining service and GTA service along with other services. Further in the agreement, separate rates were mentioned for the mining activity and for the transportation activity. Further, it is admitted fact that the appellants have also transported the mineral mined by other entities also. Further, we find that the issue involved is covered in favour of the appellant by ruling of the Hon'ble Supreme Court in the case of CCE & ST, Raipur Vs. Singh Transporters – 2017 (7) TMI 494 (SC), wherein under the similar facts and circumstances, the issue before the Apex Court is whether the goods i.e. coal transported by the Singh Transporters from the pit-heads to the railway sidings would fall within the taxable service as defined under Section 65(105)(zzzy) of the Service Tax Act, 1994 i.e. mining service or as defined under Section 65(105) (zzp) of the Finance Act. The Hon'ble Supreme Court opined that the activity undertaken by Singh Transporters i.e. transportation of coal from pit –heads to the railway sidings within the mining areas is more appropriately classifiable under Section 65(105) (zzp) i.e. GTA service and it is not involved in the service in relation to the "mining of mineral", oil or gas" as provided by Section 65(105) (zzzy) of the Act.

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7. 2019 (2) TMI 675 - CESTAT New Delhi

> 15. Further, so far the argument of the Revenue is concerned that a contract under which all the activity of mining and transportation is undertaken service, the said service is a composite service and the essential character being that of mining classification should have been made under the head classification mining services and accordingly there is no fault on the order of the learned Commissioner, we find that the services are separately defined in the contract and further separate bills have been raised for the mining activity and for the transportation activity. Further we have already noted herein above that appellant have transported more mineral than what they have mined.
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> 16. In this view of the matter, we hold that the concept of composite service is not applicable and our findings are also fortified by the precedent ruling of this Tribunal in the case of M/s. Jain Carrying Corporation - 2014 – TIOL-3069-CESTAT-DELHI, which has been affirmed by the Apex Court reported at 2015 (39) STR J 370 (SC).
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> 17. Accordingly, we allow the appeal and set aside the impugned order. The appellants are entitled to consequential l benefits, in accordance with law."

22. It has been pointed out by learned counsel for the appellant that the aforesaid decision has attained finality as no appeal was filed by the department. This fact has not been refuted by the learned authorised representative appearing for the department.

23. Reference can also be made to the Circular dated 12.11.2007 issued by the Central Board of Indirect Taxes and Customs after the introduction of 'mining service' under the Finance Act, w.e.f. 01.06.2007. The said Circular clarifies that services such as handling and transportation of mineral from pithead to specific locations would be a post-mining activity and would be taxable under 'cargo handling service' or 'GTA service' as the case may be. The relevant portion of the Circular is reproduced:

> "2. The mining sector (such as the coal mines, mining of ores, etc.) mainly receive the following types of services, mostly on contract basis :-
>
> (i) Excavation/drilling and removal of the overburdens (i.e. stratum, layer of mud, boulders, etc, that needs to be removed during or prior to extraction of coal/minerals).
>
> (ii) Coal cutting or mineral extraction and lifting them up to the pithead.
>
> (iii) Handling and transportation of coal/mineral from pithead to a specified location within the mine/factory or for transportation outside the mines.
>
> …
>
> 5. Handling and transportation of coal/mineral from pithead to a specified location within the mine/factory or for transportation outside the mine:
>
> These activities are post-mining activities and are chargeable to service tax under the relevant taxable services, i.e., "Cargo Handling service" and "Goods Transport by Road". However, in case, such transportation is undertaken by mechanical systems, such as conveyor belt system, ropeway system, merry-go-round systems etc., and the same is not transported by road, no service tax would be chargeable. Service tax is, however, chargeable under cargo handling service, even if the loading, unloading and similar activities are done using mechanical systems."

24. The decisions relied upon by Shri Harshvardhan, learned authorised representative appearing for the department do not help the department. In **M Ramakrishna Reddy** vs. **Commr. of C. Ex. & Cus., Tirupathi**[8] the dispute was whether the activity of removal of overburden and excavation of Barytes ore would be classifiable as 'site formation services' or 'mining services'. The Tribunal held that the site formation activity undertaken would be incidental to the

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8. 2008 (10) TMI 115- CESTAT, Bangalore

mining activity and thus, would be covered within the purview of 'mining services'.

25. In **Prahlad Rai & Company** vs. **CCE, Jaipur**[9] the dispute was whether the activity of mobilizing of equipment, removing of top vegetation, over burden, drilling, blasting, excavating boulders, sorting and sizing of boulders, crushing and further transportation would be classifiable as 'site formation services' or 'mining services'. The Tribunal held that where there is excavation or raising of ore, the same would not be classifiable under site formation service. The activity of excavation of boulders would also not be a service simpliciter, as it includes further processes involved to make the boulders fit for client usage. Thus, the same would be classifiable under 'business auxiliary service' and not under 'mining service'.

26. The other decisions relied upon by the learned authorised representative by the department have been considered in **Prahlad Rai & Company.**

27. The impugned order dated 01.02.2017 passed by the Commissioner, therefore, cannot be sustained and is set aside. The appeal is, accordingly, allowed.

(Order pronounced on **03.07.2023**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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9. 2017 (12) TMI 1380 – CESTAT New Delhi