CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 3

SERVICE TAX APPEAL NO. 53733 OF 2018

[Arising out of Order in Original No. 02-03/Commr/CGST/Audit-I/2018 dated 05.07.2018 passed by the Commissioner, CGST Audit-I, New Delhi]

PRINCIPAL COMMISSIONER OF CGST & CENTRAL EXCISE-DELHI SOUTH **......APPELLANT**

CGST South Commissionerate,
2nd & 3rd Floor, Bhikaji Cama Place,
New Delhi-110066

Vs.

M/S ARYAN COAL BENEFICATIONS PVT LTD ....RESPONDENT

18, Vasant Enclave,
Roa Tula Ram Marg,
New Delhi-110057

Appearance:

Present for the Appellant : Ms. Jaya Kumari, Authorised Representative
Present for the Respondent: Shri Sumit Goel and Shri Abhishek Thakural, Advocates

CORAM:
HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51268 /2026

Date of Hearing : 17/07/2026
Date of Decision : 31/07/2026

ASHOK JINDAL

1. The Revenue is in appeal against the impugned order wherein the demand raised against the respondent under the category of "Business Auxiliary Service" for the activity of beneficiation of coal has been dropped.

2. The facts of the case are that during the course of audit, it was found that the respondent has entered an agreement with Electronic Corporation of India Ltd (ECIL) for procuring orders for purchase of

coal ash, monitors, radiometric density gauge-6 etc of ECIL who agreed to pay 10% commission on sale value of such goods to the respondent. As per the agreement, the commission was to be paid at the said rate to the extent to the order booked, sales made. The respondent adopted certain practices to avoid payment of service tax. The respondent also suppressed the value of taxable services from the department by not declaring the total amount received under the head of "consultancy and professional fee" "loading/unloading of new coal" "commission income" and "provisional beneficiation receipts and bonus claim for ash". The respondent mis-stated the value of taxable services received under" contractual service" in their ST-3 returns. The respondent also did not main register for input services on which it paid service tax and availed credit. Therefore, a show cause notice was issued for demanding service tax amounting to Rs.17,50,26,820/- for the period upto 2006-07 and subsequent show cause notice issued for the period of April, 2008 to September, 2008 demanding the service tax of Rs.11,54,70,710/-. The adjudicating authority dropped the proceedings against the respondent, the Revenue is of the view that the activity of process of beneficiation of coal was taxable under the "Business Auxiliary ervice" up to May 31, 2007.

3. The case of the Revenue is that the adjudicating authority was required to confirm the said demand under the "Business Auxiliary Service" for the prior to May 31, 2007. On this sole ground, the Revenue is before us.

4. Today, when the matter was called, learned authorized representative submitted that the activity of beneficiation of washing of coal was taxable under the "Business Auxiliary Service" during the period 06.06.2005 to 01.06.2007. It is a fact that the activity carried out by the respondent does not amount to manufacture, therefore, the said process is taxable as service under the Finance Act, 1994. It is also not disputed by the respondent that the respondent did not carry out the process in relation to production of coal or for on behalf of their clients. Therefore, that activity undertaken by the respondent is liable to be taxed under the "Business Auxiliary Service". He also relied on the decision of Supreme Court in the case of **M/s Tata Iron & Steel Co. Ltd.**[1] wherein it has been held that process of washing of coal and removing of ash content would not amount to manufacture. Therefore, the activity undertaking by the respondent is liable to be taxed under the "Business Auxiliary Service".

5. In view of it is submitted that learned authorized representative that the impugned order qua dropping of demand holding that the activity undertaking by the appellant does not fall under the "business auxiliary service" is to be set aside.

6. On the other hand learned authorized representative draw our attention to the order of this Tribunal in their own case vide Final Order No. 55535 of 2024 dated 16.04.2024, wherein it has been held that the respondent is not liable to be taxed. It is his submission that from 01.06.2007 the activity undertaken by the respondent is classified under the mining service, therefore, prior to 1.06.2007 the

---

1 2003(154) ELT 343,

activity undertaken by the appellant shall not be taxable under the "Business Auxiliary Service". Therefore, learned Adjudicating Authority has rightly dropped the demand.

7. Heard the parties and considered the submissions.

8. We find that the appellant's own case vide Final Order dated 16.04.2024 this Tribunal has observed as under:

> "8. We find that the decision of the Tribunal in Aryan Energy (P)Ltd. (supra), Spectrum Coal & Power Ltd. (supra) and Aryan Coal Benefications Pvt. Ltd. (supra) have consistently held that the activity of beneficiation of coal by the assessee is part of mining activity and, therefore, would be liable to service tax only w.e.f. 1.6.2007 and once it is established that the activity is mining, it cannot be taxed under the "Business Auxiliary Service" for the period prior to 1.6.2007. The observations of the Tribunal in the earlier round of litigation of the respondent Aryan Coal Benefications (supra) observed as under:-
>
> > "2. The said appeal was heard along with the appeal of M/s. Spectrum Coal wherein an identical issue was involved in Tribunal's vide its order No.ST/A/521/12 dated 5-7-2012 [2012 (28) STR 510 (Tri.-Delh.) has referred to the earlier decision of the Tribunal in the case of Aryan Energy P.Ltd. [2009 (13) STR 42 (Tri.)] and has held that the activity of beneficiation of washery and raw coal is activity of mining which was introduced for the purpose of service tax w.e.f. 16.2007. As such, it was held that prior to the said period no service tax was leviable on beneficiation for better appreciation, we reproduce relevant para of the said decision of the Tribunal in the case of Aryan Energy P. Ltd. Following the above decision of the Tribunal in the case of Aryan Energy P.Ltd. demand of duty in the case of M/s.Spectrum Coal and Power Ltd., was set aside. Inasmuch as theperiod involved in the present appeal is prior to 1.6.2007 by following the earlier order, we hold that confirmation of service tax on the activity of benefication of coal was not liable to service tax during the relevant period. The demand accordingly, is set aside along with setting aside of penalty."
> >
> > (Emphasis Supplied)
>
> 9. Learned Counsel for the respondent has pointed out that the appeal filed by the Revenue (CAD No.37840 of 2014) against the aforesaid decision was dismissed on the ground of delay, leaving the question of law open. Learned Counsel also referred to the decision in Global Coal & Mining Pvt. Ltd. Vs. CST, Delhi – 2020 (36) GSTL 77, where the assessee had paid service tax

on the activity of washing of coal w.e.f. 1.6.2007, being a service in relation to mining under Section 65(105)(zzzy) of the Act, however, the Department have issued show cause notice on the ground that the service provided by the assessee would fall under the "Business Auxiliary Service" and, therefore, would be liable to pay service tax w.e.f. 16.06.20025. Taking note of the decision of the Bombay High Court in Indian National Shipowners Association Vs. Union of India – 2009 (14) STR 289 (Bombay), where it was held that introduction of a new entry and inclusion of certain services in that entry would presuppose that earlier there was no entry covering the said service. Accordingly, it was held:-

> "21. In the instant case, the definition of BAS did not undergo any change when a new service 'in relation to mining' was introduced with effect from 1 st June, 2007. The Department admits that with effect from 1st June, 2007, the activity carried out by the appellant is covered under the category of service in relation to mining. This activity could not, therefore, have been categorised under BAS prior to 1 st June, 2007. 22. Thus, the demand of service tax in the impugned order under BAS from 16 June, 2005 to 30 May, 2007 is not justified."

(emphasis supplied).

10. We find that it is settled by the judicial pronouncements that the activity of beneficiation/washing of coal is a taxable service in relation to mining of minerals only w.e.f. 1.6.2007 and, therefore, the Commissioner rightly decided that no demand can be made by the Department for the period prior to 01.06.2007 under the category of "Business Auxiliary Service". We find no reasons to differ from the settled law and which is squarely applicable in the facts of the present case. The impugned order is accordingly affirmed and the appeal filed by the Revenue stands dismissed."

9. We find that the case of the revenue is that prior to 01.06.2007 the activity undertaken by the appellant falls under the category of "Business Auxiliary Service". Whereas with effect from 01.06.2007 the activity undertaken by the respondent falls under the category of mining services.

10. In that circumstance, reliance has been placed in appellant's own case for the earlier case(supra), we hold that the activity of beneficiation/ washing of coal does not fall under the category of "Business Auxiliary Service" prior to 01.06.2007 as the same is classified under Mining Service w.e.f. 01.06.2007. In view of this, the

demand under the category of “Business Auxiliary Service” is not sustainable against the respondent.

11. In that view of the matter, we find no infirmity in the impugned order the same is upheld. In result, the appeal filed by the revenue is dismissed.

[Order pronounced on **31/07/2026**]

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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

Tejo