CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>NEW DELHI</u>

PRINCIPAL BENCH – COURT NO. III

SERVICE TAX APPEAL NO. 50873 OF 2021

[Arising out of Order-in-Appeal No. 97 (SM)/ST/JPR/2021 dated 25.02.2021 passed by the Commissioner (Appeals), Central Excise and CGST, Jaipur]

M/s. Northern Core Drilling Pvt. Ltd. ……... Appellant
112, Geetanjali Tower, Ajmer Road
Sodala, Jaipur–302006

vs.

The Commissioner, ...Respondent
O/o the Commissioner
CGST & Central Excise Commissionerate
NCR Building, Statue Circle
C–Scheme, Jaipur (Rajasthan)

AND

SERVICE TAX APPEAL NO. 51536 OF 2023

[Arising out of Order-in-Appeal No. 210(BSM)/ST/JPR/2022 dated 30.08.2022 passed by the Commissioner (Appeals), Central Excise and CGST, Jaipur]

M/s. Northern Core Drilling Pvt. Ltd. ……... Appellant
112, Geetanjali Tower, Ajmer Road
Sodala, Jaipur–302006

vs.

The Commissioner, ...Respondent
O/o the Commissioner
CGST & Central Excise Commissionerate
NCR Building, Statue Circle
C–Scheme, Jaipur (Rajasthan)

<u>APPEARANCE</u>:

Mr. B. L. Narasimhan and Ms. Shreya Khunteta, Advocates for the Appellant
Mr. S. K. Meena, Authorized Representative for the Revenue

CORAM: HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing :22.06.2026
Date of Pronouncement :20.08.2026

FINAL ORDER NO. 51350–51351/2026

PER: MS. BINU TAMTA

M/s. Northern Core Drilling Pvt. Ltd.[1] has filed the above two appeals challenging the impugned orders[2] confirming the demand of service tax on royalty and permit fees paid to the Government of Rajasthan for lifting of overburden and also on the amount received against sale of overburden and service tax on amount received against disposal of overburden in terms of Section 66E(e) of the Finance Act, 1994[3].

2. The appellant is engaged in providing "cargo handling service" and "supply of taxable goods and service" and is paying service tax thereon. During the course of audit, it was observed that the appellant is receiving the services of the Government on account of using natural resources and is paying royalty thereon to the Government. It was also observed that the appellant had shown an income on account of boulder sales of Rs. 3,28,25,525/- during the period 2015–16 by virtue of an agreement dated 19.12.2014 with M/s. Jindal Saw Ltd.[4] for disposal of the boulder from the mining lease area leased to JSL by Government of Rajasthan. It was also revealed that JSL had intimated the Department of Mining and Geology, Bhilwara for consent of Short Term Permit[5] in favour of the appellant to carry out the disposal of overburden stacked at Tiranga Hill Area on payment of applicable royalty which was to be paid by the

[1] the appellant
[2] Order–in–Appeal No. 97(SM)/ST/JPR/2021 dated 25.02.2021 and Order–in–Appeal No. 210–BSM/ST/JPR/2022 dated 30.08.2022
[3] the Act
[4] JSL
[5] STP

appellant. It was also evident that for disposal of overburden by the appellant, JSL has not paid any amount to them. As the appellant had short paid service tax, show cause notice dated 30.11.2018 for the period 2015–16 to 2016–17 and for the further period of April 2017 to June 2017 show cause notice dated 23.10.2019 was issued. On adjudication the demand was confirmed by separate Order–in–Original No. 06/ST/JP/BLM/2019–20/JC dated 08.08.2019 and Order–in–Original No. 245/ST/Dem./2020–21 dated 10.03.2020 and the appeal filed against it had been rejected by the impugned orders. Hence, two separate appeals have been filed before this Tribunal.

3. Mr. B. L. Narasimhan, Ld. Counsel appearing for the appellant submitted that the present case is not one of rendering any 'service' to JSL. According to him, such overburden is sold by JSL to the appellant at such dumps by issuing proper invoices and the appellant thereafter pays the applicable royalty on STP and takes it away. In other words, the appellant is purchasing boulders and further selling to their customers and hence there is no service involved. The removal of such overburden is an activity which is done after the issuance of the invoices by JSL. He further submitted that no amount is charged by JSL in the sale invoices but that does not mean that no sale is involved and claimed it to be only a commercial matter and the transaction at arm's length. On the second issue, he submitted that service tax is payable on the amount of royalty and permit fee paid to the government as the service, if any, was received prior to 01.04.2016 when such services from the government were not subject to tax. Referring to the provisions of Section 66D of the Act as it

existed with effect from 01.04.2016, he submitted that prior to 01.04.2016, barring a few exceptions all services provided by the government were covered under the negative list and since the service tax on services provided by the government were brought into force only with effect from 01.04.2016, the appellant is not liable to pay the same as JSL entered into mining lease agreement with the government of Rajasthan in the year 2005 and the consent letter dated 19.12.014 issued by JSL permitting the appellant to dispose of the overburden are prior to 01.04.2016. The liability to pay royalty and special permit fee on disposal of overburden being integrally linked to and arose from the contractual arrangements executed prior to 01.04.2016, no liability would accrue and the same cannot be subject to service tax. The Ld. Counsel has emphasized that extended period of limitation cannot be invoked as there is not suppression of facts on the part of the appellant. He further, pleaded that the appellant was under *bonafide* belief that sale proceeds received from the customers is not against any service rendered by JSL as no amount was being charged by JSL. According to him, the issue of service tax on royalty payments is an interpretational issue and, therefore, invocation of extended period is not justified.

4. Mr. Sangeet Meena, Ld. Authorised Representative for the Revenue has reiterated the findings of the authorities below and has also pointed out the recent decision of the Apex Court in **Mineral Ore Development Authority** *vs.* **Steel Authority of India**[6] holding that royalty paid in respect of mining is a contractual consideration paid by mining lessee to

---

[6] 2024 (21) CENTAX 378 (SC)

lessor for enjoyment of mineral rights and, therefore, the royalty paid in respect of any mineral removal or consumed from the leased areas is not a tax. On the issue of extended period of limitation, he submitted that the appellant had never disclosed the facts to the Department and they were revealed only pursuant to the audit. He further submitted that the appellant did not assess the correct amount of service tax and have also not shown the actual amount in the relevant ST–3 Returns and thereby violated the provisions of Section 70 of the Act. Since, the appellant had willfully suppressed the facts from the Department with intention to evade the payment of service tax, the extended period has been rightly invoked.

5. Having heard both the parties and perused the records of the case, we find that the basic issue to be considered is whether the transaction of removing the overburden is by way of sale by JSL or amounts to rendering of 'service' by the appellant in terms of Section 66E(e) of the Act.

6. The admitted facts are that JSL was granted mining lease by the Government of Rajasthan for excavation of mineral, iron ore, and other associated minerals subject to the provisions of Mines and Minerals (Development & Regulation) Act, 1957 and Rajasthan Minor Mineral Concession Rules, 1986. JSL being the mining lease holder has to comply with the conditions ensuring proper removal of overburden lying in the lease permit area as specified under Rule 18 of Rajasthan Mining Rules, which reads as:

> "**Rule 18: Conditions**
>
> The following conditions shall be included in every mining lease and if they are not so included shall be deemed to

have been included therein:-...

(8) The lessee shall commence mining operations within, six months from the date of execution of the lease and thereafter **carry on such operations effectively in a manner which will ensure** safety of laborers, conservation of mineral, **removal of sufficient over burden**, careful storage, removal and drainage of waste and removal of all valuable minerals **from the mines in accordance with lease**;"

7. In terms of Rule 18, it is evident that, the removal of overburden, which is generated during the process of extraction of iron ore was the responsibility of JSL. However, taking recourse to the provisions of Rule 63A of Rajasthan Mining Rules, JSL executed the consent letter in favour of the appellant authorizing him to dispose of the overburden lying in the mining area. Here starts the entire controversy, so we would like to produce the consent letter dated 19.12.2014 as under:

"**Consent Letter**

I, Mr. Rajendra Gaur Sto Mr. G.P. Gaur, age 52 Years, resident Hall Bhilwara, through power of attorney holder M/s Jindal Saw Ltd., Sushila Bhavan, Mahaveer Colony, Near Krishi Vigyan Kendra, Gandhi Nagar. Bhilwara, Raj.-

1. That, M/s Jindal Saw Ltd. has been allotted Mining lease No. 631/05 for the execution of mining work as per the order of State Government.

2. That, the overburden generated from the mining operation has been collected in the factory of M/s Jindal Saw Ltd located near Tiranga Pahadi

3. That, the company through its consent has authorized Mis Northern Core Drilling Pvt. Ltd., Jaipur for the disposal of the above accumulated overburden.

4. That, M/s Northern Core Drilling Pvt. Ltd., Jaipur has been authorized to comply and fulfill all legal procedures of Mining Department for the disposal of overburden collected in Tiranha Pahadi area.

5. That, M/s Jindal Saw Ltd. hereby gives consent that M/s Northern Core Drilling Pvt. Ltd., Jaipur shall obtain

STP (Short Term Permit) from Mining department for the disposal of overburden.

6. That, the royalty for disposal of overburden shall be borne and paid by M/s Northern Core Drilling Pvt. Ltd, Jaipur.

Date: 19.12.2014

For M/s Jindal Saw Ltd.
Rajendra Gaur

For Northern Core Drilling (P) Ltd.
Ronak Singh
Director"

8. Reading clause 3 of the letter, we find that JSL authorised the appellant for the disposal of the accumulated overburden and for that purpose authorised them to obtain the STP from the mining department. The activity of disposal is strictly a service 'to do an act'. However, the appellant is relying on the various invoices issued by JSL claiming it to be sale of overburden. Peculiarly, none of the invoices have mentioned the sale price. The column of 'rate' and 'value' in the invoices are blank, which implies that there is no sale price for the **sale/transfer** of overburden in favour of the appellant. In fact, the appellant has itself admitted that there is no sale price. To quote from the written submissions by the appellant. "In fact, the invoices raised by Jindal Saw to the Appellant are NIL rated which indicate that the overburden were provided free of cost to the Appellant and that no amount was paid or payable by the Appellant to Jindal Saw". However, the appellant has gone a step further to say that in the absence of consideration, the activity undertaken by the appellant for Jindal Saw would not qualify as a 'service' in terms of Section 65B(44) of the Act. If that be the case, it also cannot be treated as 'sale' as claimed

by the appellant. The meaning of 'sale' as given in the various dictionaries emphasizes on the money being paid for the exchange of goods, which means that there cannot be sale without price/cost. In other words, 'sale' cannot exist without compensation. We may refer to some definitions of 'sale' as under:

> "**Sale according to Merriam-Webster**:
> the act of selling
> *specifically* **:** the transfer of ownership of and title to property from one person to another for a price
>
> **Sale according to Cambridge Dictionary**:
> an act of exchanging something for money
>
> **Sale according to Economic Times**:
> A transaction between the buyer and the seller in which the seller sells intangible or tangible goods, assets, or services against money is known as a sale. Sale is done between two or more parties. In broader terms, a sale can be is understood as a contract between two or more parties i.e., the buyer and the seller. A sale can also be defined as an agreement between the two parties in the financial market, where the buyer and seller agree upon a definite price of a security."

9. We are, therefore of the view that the transaction between JSL and the appellant is not one of 'sale' and the invoices issued are nothing, but as known under the Income Tax law, an accounting jugglery. The invoices are merely a camouflage to hide the activity of 'service'. The lifting and disposal of overburden by the appellant is a commercial transaction and in the normal routine there cannot be any dealing without any price/consideration. In the commercial world, the say is, nothing is free. We may look it otherwise, under the Mining laws, it was the responsibility of JSL being the mining owner to have the overburden removed and if he had hired the appellant to do so, he would have paid the service charges. There is no justification why the appellant would lift and remove the overburden without charging any amount. It is nothing but an

understanding between the two so as to evade the liability of service tax, which is leviable on such transaction. We therefore, do not agree with the contention of Mr. B. L. Narasimhan, that they transported their own boulders after issue of sale invoices by JSL.

10. The period involved in the present dispute falls under the post negative era. Section 65B(44) defines 'service' to mean any activity carried out by a person for another for consideration. In that context, the contention of Mr. B. L. Narasimhan is that since no consideration is involved and JSL had no obligation to pay any amount to the appellant for disposal of overburden, the activity undertaken by the appellant for JSL does not qualify as service in terms of Section 65B(44) of the Act. To deal with this issue it is necessary to quote the definition of 'service' as:

> 65B – In this Chapter, unless the context otherwise requires, --
> '(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service,
> (a) – (k) xxx
> (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or'

11. There is no quarrel with the proposition that to be classified as 'service', it is necessary that:

a. there should be an activity.

b. such activity should be carried out by one person for another; and

c. there must be a consideration paid for such activity.

On the first two elements, there is no dispute, however, the issue is only of consideration. It is a very strange situation where JSL sells the overburden to the appellant at no consideration/value and as per the invoices, is given free of cost, but the same thing when it is disposed of by the appellant to their customers, they charge the sale price. We are unable to reconcile this situation and, therefore, if we apply the principle to lift the veil to ascertain the true status, we find that the Revenue is not wrong in treating the amount received by the appellant towards further sale by them to their customers as consideration received by the appellant for rendering the service to JSL for disposal of overburden. Consequently, the amount charged by the appellant from its customers is actually the amount which the appellant should have received from JSL for providing the service and the same should therefore form the gross amount as per Section 67 of the Act. Relevant extract of Section 67 reads as:

> "67. Valuation of taxable services for charging service tax
>
> (1)Subject to the provisions of this Chapter, where service tax is chargeable on any taxable service with reference to its value, then such value shall,-
>
> (i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;"

12. In support of his arguments, Mr. B. L. Narasimhan has tried to equate the disposal of overburden with the disposal of fly ash, where this Tribunal in the case of **Tamil Nadu Generation and Distribution Corporation Limited** vs. **Commissioner of Service Tax, Chennai**[7] held that consideration received was for sale of fly ash and not for any services and therefore demand of service tax under Business Support Services was not sustainable. However, the concept of disposal of fly ash was under different and peculiar circumstances which cannot be accepted in the present context. As noticed in the said decision, the Government of

---

[7] (2023) 6 CENTAX 107 (Tri.–Mad.)/2023 (385) ELT 144 (Tri.-Chennai)

India, Ministry of Environment and Forest issued Notification dated 14.09.1999 to the effect that fly ash should be supplied free of cost but subsequently by Notification dated 06.11.2008, the Ministry of Environment permitted sale of fly ash to the user agencies. Therefore, the consideration received from the cement and Vito sheet companies for supply of fly ash was for supply/sale of fly ash. The appellant therein as per the order of Government of Tamil Nadu removed the fly ash from the site and collected rate as prescribed therein from the said companies. The said decision has been followed in the subsequent decision of the Tribunal in the case of **Mettur Thermal Power Station** vs. **Commissioner of Central Excise (ST), Salem**[8] as well as in the case of **Commissioner of Central Excise, Tirunelveli** vs. **Tuticorin Thermal Power Station**[9] and **M/s. Panipat Thermal Power Station** vs. **Commissioner of Central Excise, Goods & Service Tax, Panchkula**[10] however, in view of the distinction pointed out, the said decisions are of no help to the appellant.

13. The conclusion we have arrived on the first issue is also supported by the decision in **Prism Johnson Ltd.** vs. **Commissioner of CGST & Central Excise–Jabalpur**[11] where the Tribunal dealt with quite a similar controversy where the case of the Revenue was that the appellant rendered taxable service (mining service) to Shrawan, but had not paid service tax as they had not received consideration for its services from

[8] 2015 (38) STR 606 (Tri.–Chennai)
[9] Final Order No. 40863/2023 dated 04.10.2023, CESTAT, Chennai
[10] Final Order No. 60099–60100 /2026 in ST/3210/2012–CESTAT, Chandigarh
[11] Final Order No. 50034–50042/2025 dated 10.01.2025

Shrawan in cash, but instead, Shrawan sold limestone to the appellant for lower prices than the prices at which limestone was sold to independent buyers and this difference was the consideration which the appellant received from Shrawan for services and, therefore, service tax has to be paid. On the other hand, the case of the appellant was that Shrawan had transferred the mine and the mining lease to them, and also sold the entire limestone by virtue of agreements and, therefore, it was only self-service. In that scenario, the issue considered was whether the appellant had mined the limestone for itself or it had rendered mining services to Shrawan. Considering, the nature of relationship as per the agreement between Shrawan and the appellant, the Bench observed that the operator agreement was nothing but an agreement in which the appellant provided mining services to Shrawan, who had the license to mine limestone. It was therefore, concluded that the appellant was appointed only to operate and was only the service provider to Shrawan. The analogy in the said decision is squarely applicable in the facts of the present case and lends support to the conclusion that the appellant has provided services to JSL and was therefore, liable to pay service tax.

14. Regarding the second issue of service tax levied on royalty and permit fee, firstly, we may take note of the decision in **Mineral Ore Development** vs. **Steel Authority of India** where the nine Judges Bench of the Apex Court, decided the issue that royalty paid in respect of mining is a contractual consideration paid by mining lessee to lesser for enjoyment of mineral rights. Therefore, royalty paid in respect of any mineral removed or consumed from lease area at specified rates as

envisaged under Section 9 of Mines and Minerals, (Development and Regulation) Act, 1957 is not a tax. Hence, there is no quarrel with the levy of service tax on the ground of double taxation.

15. The contention of Mr. B. L. Narasimhan that service tax on services provided by government were brought into force only w.e.f. 01.04.2016 and in their case services, if any, were received prior to 01.04.2016 and hence, they cannot be subjected to service tax. In this context, the provisions of Section 66D(a) as amended w.e.f. are set out below:

> "(a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere-
> (i) …….
> (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
> (iii) transport of goods or passengers; or
> (iv) any service, other than services covered under clauses (i) to (iii) above, provided to business entities;"

16. Read along with the aforesaid provisions, we find that the Central Government by Notification No. 25/2012 dated 20.06.2012 , subsequently amended by Notification No. 22/2016–ST dated 13.04.2016 and vide Serial No. 61, it provided as under:

> "Services provided by Government or a local authority by way of assignment of right to use any natural resource where such right to use was assigned by the Government or the local authority before the 1st April, 2016. Provided that the exemption shall apply only to service tax payable on one time charge payable, in full upfront or in instalments for assignment of right to use such natural resource..."

17. The contents of the notification have been rightly appreciated by the adjudicating authority in the Order-in-Original as under:

> 5.7 From the above, I find that the exemption has been given to services in respect of assignment of right to use natural resources which have been granted by the Government/Local Authority before 01.04.2016.

> However, the exemption is limited to one time charges (whether paid in full or in installments) for assignment of right to use such natural resource. In other words, the periodic charges/payments made by the business entities to Government or a local authority have been kept out of the exemption and thus. would be taxable. I find that M/s. Northern Core Drilling Private Limited through concent of M/s Jinal Saw Limited is paying the royalty to the Government of Rajasthan on per metric ton for removal of overburden from permit area with the permission of the Mining Engineer or Assistant Mining Engineer allocated by the Government. Hence, I hold that the royalty payable on per metric ton basis is not exempted from payment of service tax. Thus, there remains no doubt about the fact that the grant of permission for removal of over burden is a service which is neither included in the negative list nor is exempted under the notification issued under section 93 of the Act, hence the same is taxable and the assessee is liable to pay tax thereon."

18. We completely agree with the above findings arrived at and in view thereof, on merits, we conclude as under:

a. Under the mining laws, the disposal of overburden being the responsibility of JSL but is disposed by the appellant for which no amount has been paid by JSL clearly reflects that the amount collected on account of sale of boulder by the appellant to its customers represents the amount/consideration on account of services rendered by the appellant to JSL for disposal of overburden.

b. The appellant is liable to pay service tax on royalty paid towards removal of overburden.

19. On the issue of limitation, we are of the confirmed view that the appellant had suppressed the true nature of the relationship and the transaction between them and JSL. The invoices relied on by the appellant is nothing but camouflage. Consequently, we hold that the ingredients specified under the proviso to Section 73(1) are fully satisfied and therefore the extended period has been rightly invoked.

20. In view of our findings, we do not find any error in the impugned orders and the same are hereby affirmed. The appeals are, accordingly dismissed.

[Order pronounced on 20.08.2026]

(BINU TAMTA)
MEMBER (JUDICIAL)

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

DJ