

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH-COURT NO. 1**

SERVICE TAX APPEAL NO. 55329 OF 2023

[Arising out of Order in Original No. 05/Commr/ST/IND(Audit)/2023-24 dated 25.04.2023 passed by the Commissioner of CGST & Central Excise, Indore]

BHARAT ALUMINIUM COMPANY LIMITED **.....APPELLANT**

Balco Nagar,
Korba-495684-Chhattisgarh

Vs.

**COMMISSIONER OF CENTRAL EXCISE &
CGST(AUDIT)-INDORE** **.....RESPONDENT**

Omega Tower, 5th Floor, 32, Mechanic
Nagar Ext., Vijay Nagar, Indore, Madhya Pradesh

Appearance:

Present for the Appellant : Shri Udit Jain, Advocate

Present for the Respondent: Shri Mayank Gupta, Authorised Representative

CORAM:

HON'BLE MR. RACHNA GUPTA, OFFICIATING PRESIDENT

HON'BLE MR. P.V.SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51614 /2026

DATE OF HEARING : 28/09/2026

DATE OF DECISION : 14/10/2026

P.V.SUBBA RAO

1. The order dated 25.04.2023 passed by the Commissioner (Audit) deciding the proposals made in the show cause notice dated 17.02.2022¹ covering the period April, 2016 to June, 2017 and confirming the demand of service tax of Rs.7,29,52,576/- under the proviso to section 73(1) of the Finance Act and penalty under section

78 of the Act is assailed by M/s Bharat Aluminum Company Limited² in this appeal.

2. The appellant manufactures aluminum ingots, rods, billets, rolled aluminum sheets and coils and for this purpose set up a captive power plant located at BALCO Nagar, Korba, Chhattisgarh. The power plant needs substantial water and for this purpose it entered into an agreement with the Chhattisgarhi Water resources department for water from Huskdev Barrage. As per the agreement, the appellant had to make its own arrangements for construction of civil and mechanical works to carry the water from the barrage and had to pay water charges at the rates fixed by the Chhattisgarh Water Resources department from time to time. There was no guarantee on the part of the Government in continuity of supply of water in the event of any force majeure event. The appellant was required to pay water charges for at least 90% of the water allowed to be drawn even if its actual water drawn is less.

3. The Directorate General of GST Intelligence, Raipur³ investigated the appellant and the agreement which it had entered into with the State Government and it felt that the agreement was an agreement under which a State Government had assigned the right to use a natural resource, water to the appellant as per section 66D(a) (14) of the Act and was chargeable to service tax with effect from 01.04.2016. Further, it was felt that by virtue of Sr. No. 6 of Notification No. 13/2012-ST dated 20.06.2012, the liability to pay this tax was on the appellant to the extent of 100% under reverse charge

2 Appellant
3 DGGI

mechanism. Since the appellant had not paid service tax, the SCN was issued demanding service tax along with interest and proposing to impose a penalty.

4. These proposals were confirmed by the Commissioner through the impugned order.

Submissions of the appellant

5. Learned counsel for the appellant made the following submissions:

- (i) The agreement was, in essence, for supply of water by the Chhattisgarh Water Resources Department to the appellant and, therefore, it was a transaction of sale and not one of service. Reliance is placed on the decision of this Tribunal in the case of **Sasan Power Limited vs. Commissioner, Central Excise & CGST, Jabalpur**⁴;
- (ii) The decision in **Sasan Power** was also followed by this Tribunal in **National Aluminum Company Limited vs. Commissioner of GST, Excise & Customs, Bhubaneswar**,⁵;
- (iii) Water is treated as goods under that Act and is recognized commercial committee;
- (iv) Section 65 B(44) of the Act expressly excludes a transfer of title in case from the definition of service;
- (v) Trading of goods is also expressly covered by the negative list under section 66D of the Act;

- (vi) Even if it is considered as a service, it is squarely covered by the Exemption Notification No. 25/2012-ST (Entry No. 39) which exempts any service provided by the Government or a local authority to business entities in relation to any of the functions entrusted to the municipality under Article 243(W) of the Constitution. Entry 5 of the Twelfth Schedule of the Constitution expressly includes water supply for domestic industrial and commercial purposes as a municipal function;
- (vii) Extended period of limitation is not invocable in this case as an entire question is merely of interpretation and it cannot be said that the appellant had any intention to evade payment of service tax.
- (viii) It is not also not invocable for the reason that the entire transaction is Revenue neutral as any service tax paid under reverse charge would have been admissible to the appellant as CENVAT credit and thus extended period of limitation is not invocable. The entire demand is beyond the normal period of limitation.
- (ix) In view of the above, the appeal may be allowed and the impugned order may be set aside.

Submission of Revenue

6. Learned authorized representative for the Revenue vehemently supported the impugned order and submitted as follows:

- (i) The permission to the appellant to draw specific quantity of water against payment of water charges fixed from time to time is in essence, an agreement for right between the appellant and Chhattisgarh Water Resources Department. As per the terms and conditions of the agreement the appellant was required to pay water charges in respect of at least 90 per cent of the total quantum of water allowed to be drawn irrespective of actual quantity of water drawn if it is 90 %. This indicates that the charges payable by the appellant is not completely dependent on the water drawn and, therefore, it was not essentially a transaction of sale. It is also a condition in the agreement that if water level in the water body reduces the executive engineer would serve a notice consequent upon it which the appellant had to reduce the water consumption.
- (ii) The engineer in chief, by letter dated 02.11.2017 informed that the water allotted by the State Government to the industry cannot be treated as sale of water as there is no provision of sale of water in Chhattisgarh Irrigation Act. And, therefore, the agreement is one of giving a right to the appellant to use a natural resources, namely water which is squarely covered as service under section 66D. The appellant had not paid service tax and had not responded to the summons issued by the department.

Therefore, it was more than a mere omission. Therefore, extended period of limitation is correctly invoked.

Findings

7. We have considered the submission advanced by both sides and perused the records.

8. Power plants and other large industries often need a continuous supply of large quantity of water which cannot be met by the normal water supply systems. Therefore, they are entered into an agreement with the State Government authorities to draw water directly from the water body are reverse.

9. The short question is whether such agreements amounts to an agreement in which the State Government as assigned a right to use natural resources or such agreements are, essentially an agreement for sale of water. This question was decided by this Tribunal in **Sasan Power Limited** in which it was held that such agreements was essentially an agreement for supply of water and not merely an agreement for excess to water resource. Even in that case, the appellant had to draw the water from the water body and make arrangements to carry the water to its plant by itself. This decision was followed by this Tribunal in subsequent cases also. We find no reason to take a different view in this appeal. Accordingly, we hold that the agreement is one of sale of water and not of assignment of right to use natural resources. Therefore, the demand cannot be sustain and deserves to be set aside on merits.

10. Even otherwise, had the appellant paid any service tax under reverse charge mechanism, it could have immediately availed CENVAT credit of the service tax so paid and utilized it to pay the central excise duty on its final products. Therefore, the entire exercise is revenue neutral. Even if the demand is confirmed, the appellant was entitled to the CENVAT credit and since the CENVAT Credit Rules are no longer in force as per section 142 of CGST Act, 2017, the appellant will be entitled to cash refund of any service tax so paid.

11. In view of the above, we find that the demand cannot be sustained even on the ground of limitation. In view of the above, we allow the appeal both on merits and on limitation and set aside the impugned order with consequential relief to the appellant.

[Order pronounced on **14/10/2026**]

(DR.RACHNA GUPTA)
OFFICIATING PRESIDENT

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

Tejo