



आयुक्त का कार्यालय),अपीलस(
Office of the Commissioner,
केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate-
Ahmedabad



जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद 380015.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad-380015
☎ 26305065-079 : टेलीफैक्स 26305136 - 079 :
Email- commrappl1-cexamd@nic.in

DIN-20210564SW00003303DF

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/229/2020-Appeal-O/o Commr-CGST-Appl-Ahmedabad /1318 T-1322
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-004/2021-22**
दिनांक Date : **27.04.2021** जारी करने की तारीख Date of Issue : **11.05.2021**
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original Nos. **GST-06/Refund/07/AC/JRS/Ranjit/2020-21** dated **15.06.2020**, passed by Assistant/Deputy Commissioner, Central GST & Central Excise, Div-VI, Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Appellant- - M/s Ranjit Buildcom Limited.

Respondent- Assistant Commissioner, Central GST & Central Excise, Div-VI, Ahmedabad-North

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा का उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

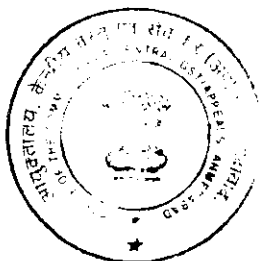
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

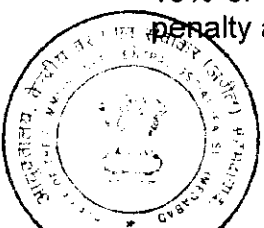
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

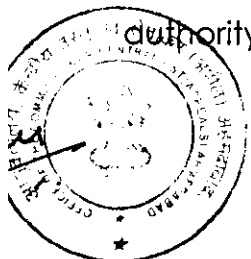


ORDER IN APPEAL

This appeal has been filed by M/s. Ranjit Buildcon Limited, Ranjit House, Opp. Sun Residency, Near Goga Maharaj Temple, Thaltej, Ahmedaabd (henceforth referred as "appellant") against the Order-In-Original No.GST-06/Refund/07/AC/JRS/Ranjit/2020-21 dated 15.06.2020 (henceforth referred as "impugned order") issued by the Assistant Commissioner, Central GST, Division-VI, Ahmedabad-North (henceforth, "adjudicating authority").

2.1. Briefly stated, the facts of the case are that the appellant were engaged in the business of infrastructure development and mining activities and holding Service Tax Registration No.AABFR8746FST001 under the category of Site Preparation and Clearance Service, Mining Services, Construction Service and Works Contract Services. They filed total 29 (13+10+6) refund claims between 13.12.2007 and 13.03.2008 on the ground that they had wrongly paid service tax under the head "Site formation and clearance service, other than agriculture, irrigation" as defined in erstwhile Section 65(105) of the Finance Act, 1994. They contended that initially they were under an opinion that the services provided by them under contracts awarded to them by M/s Nevyeli Lignite Corporation for Barasinagar Project, Bikaner would be classifiable under the Site formation and Excavation Services and they accordingly paid the service tax when it became due. Subsequently, it was found from their contract with M/s Nevyeli Lignite Corporation that it involved transportation of materials from one place to another within the site, which contributes to the substantial value of whole contract, and as the same is not done by road and it does not fall under the definition of taxable services Site formation and Excavation Services as defined in erstwhile Section 65(105) of the Finance Act, 1994. They further contended that the services provided by them would get appropriately covered under Mining Service and since **mining service was introduced w.e.f 01.06.2007, service tax for this service was not payable prior to that date.**

2.2. The said refund claims were initially rejected by the adjudicating authority vide Order-In-Original No. SD-III/81/R/07-08 dated 26.03.2008, SD-



III/82/R/07-08 dated 28.03.2008 and SD-III/41 R/08-09 dated 29.04.2008. It was held that the activities/service of removal of over burden by excavating at the mineral properties and sites were **covered under the Site Preparation and Clearance, excavation and earth moving Service** and the nature of activities carried out by the appellant was still covered under site formation, even after introduction of mining services w.e.f 01.06.2007. Thus, the services rendered by the appellant were correctly classified under Site Preparation and Clearance Service and does not fall under Mining Service.

2.3. Being aggrieved, appellant filed three appeals against Order-In-Original No. SD-III/81/R/07-08 dated 26.03.2008, SD-III/82/R/07-08 dated 27.03.2008 and SD-III/41 R/08-09 dated 28.04.2008 before the Commissioner (Appeal-IV), Central Excise, Ahmedabad. These appeal which were decided vide Order-In-Appeal Nos. 83 to 85/2009(STC)/LMR/ Commr.(A)/Ahd dated 18.03.2009 whereby the appeals filed by appellant were rejected and the OIOs passed by the adjudicating authority were upheld.

2.4. Therefore, the appellant filed appeals against OIA Nos. 83 to 85/2009(STC)/LMR/ Commr.(A)/Ahd dated 18.03.2009 before the Hon'ble CESTAT, WZB, Ahmedabad. The Hon'ble Tribunal vide Order No. A/11021-11023/2019 dated 19.06.2019 decided the appeals and held that the issue of classification under head of **"Supply of Tangible Goods for use"** was **raised first time before the Tribunal** and the same was neither claimed before the lower authority nor it was considered. Accordingly, Hon'ble CESTAT, WZB, Ahmedabad set aside the impugned orders and **remanded the matter back to the adjudicating authority** for considering on all the issues as above and to order afresh.

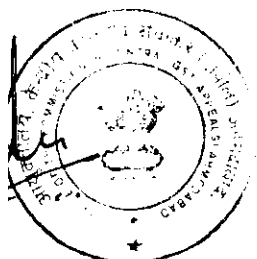
3. In compliance of the directions contained under Hon'ble CESTAT, Ahmedabad's Order No. A/11021-11023/2019 dated 19.06.2019, the adjudicating authority, passed impugned order afresh and held that the activities carried out by the appellant was rightly classifiable under the **category of Site Formation and Excavation Service and taxable during the relevant period. Accordingly, he rejected all the refund claims** under the



provisions of Section 11B of the Central Excise Act, 1944 as made applicable to service tax matters vide Section 83 of the Finance Act, 1994 read with Section 174 of the Central Goods and Service Tax Act, 2017.

4. Being aggrieved with the impugned order, the appellant has filed the instant appeal on the grounds that:

- That the Commissioner of Central Excise (Appeals) has erred in contending the services rendered by the appellant covered in refund claims for relevant period to be taxable services classifiable under the category of "Site Formation and Excavation" services;
- That activity undertaken under the contract is **generally and commercially designated as Mining activity**;
- That the pith and essence of the contract is to held mining of lignite from the mine filed and hence serviced involved in the contract as Mining Services or part of Mining Services;
- That mining Service has been brought to the net of Service Tax since 01.06.2007 with distinct and independent category of 'Mining of Minerals, Oil and Gas' services;
- That the appellant relied upon the decision of Hon'ble Tribunal in case of L & T Vs CCE, Vadodara-II reported at (2007) 7 STR 224 (Tri. Ahmedabad) wherein it was contended that Works Contract Services were brought to tax w.e.f 1.6.2007 hence no service tax could be levied on services of works contract prior to that under any other category;
- That the appellant relied upon a decision of Hon'ble Kolkata Tribunal in case of M/s B.K. Thakkar Vs CCE, Bhubaneswar-II reported at 2008 (9) STR 542 wherein it was decided that excavation, transportation and feeding of iron ores to the hill top crusher plant for further processing of iron ore were in the nature of mining services and hence not taxable;
- That the Commissioner of Central Excise (Appeals) was totally wrong in presuming the major services to be in the nature of Site Formation and Excavation instead of transportation;
- That contract involves transportation of materials extracted from Mine field which incidentally requires excavation, removal, blasting, drilling, dumping and spreading of said materials;



- That if it is not considered as Mining Service, it leaves no doubt that essence of the primary service is transportation of overburden/ materials;
- That cost apporportionable to excavation loading others etc are 180 ml i.e 36% and Transportation are 320ml i.e 64% and hence, transportation of materials within the mine filed is not subject to service tax.

5. Personal hearing in the matter was held on 18.03.2021 through virtual mode. Shri Rahul Patel, CA appeared on behalf of the appellant for hearing. He re-iterated the submissions made in Appeal Memorandum. Though he also stated that he would make additional written submission, no written submission was submitted by him.

6. I have carefully gone through the facts of the case and submissions made by the appellant in the Appeal Memorandum as well as those made during personal hearing. I find that the issue to be decided in the matter is whether the refund claims in question have been rightly rejected by the adjudicating authority by holding that the services provided by the appellant were appropriately classifiable under the category of **Site Formation and Excavation service** or otherwise? The matter has arisen by way of remand proceedings as per orders dated 19.06.2019 of Hon'ble Tribunal, Ahmedabad.

7. It is observed that 29 refund applications were filed by the appellant in the month of December 2007, January 2008 and March 2008 pertaining to service tax paid by them under the category of Site Formation and Clearance Service during **the period from August 2006 to May 2007**. They were awarded contract by M/s. Nevyeli Lignite Corporation for Barasinagar Project, Bikaner under Agreement dated 14.09.2006 and contract for Northern Flank Area under Agreement dated 07.12.2004. The appellant initially paid service tax under the category of "Site Formation and Excavation service as defined under earstwhile Section 65(105) of the Finance Act,1994. However, they subsequently filed the refund claims in question on the ground that service rendered by them were not falling within the scope of Site Formation and Excavation service but were



appropriately classifiable as taxable service under the category of Mining Service which was taxed w.e.f. 01.06.2007 and not earlier.

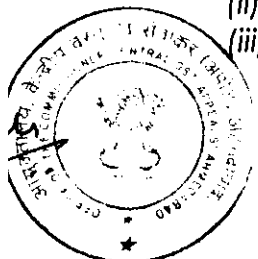
7.1. The said refund claims were earlier rejected by the adjudicating authority under OIOs dated 26.03.2008, 27.03.2008 and 28.04.2008 by holding that the activities/service i.e. **removal of over burden by excavating at the mineral properties and sites were covered under the Site Preparation and Clearance, excavation and earth moving Service** even after introduction of Mining services w.e.f 01.06.2007 and did not fall under Mining Service.

7.2. The appeals preferred by the appellant before the Commissioner (Appeals) were dismissed. They carried the matter further before the Hon'ble Tribunal, Ahmedabad where they also contended that the services provided by them were classifiable under supply of tangible goods services.

7.3. In terms of the appellants contention for classification of their service under the category 'Supply of Tangible Goods for use' service, Hon'ble CESTAT, WZB, Ahmedabad under the order dated 19.06.2019 remanded the matter to the adjudicating authority to reconsider it fresh. In compliance of such directions of Hon'ble CESTAT, the adjudicating authority again rejected the refund by holding that the service provided by the appellant were classifiable under Site Preparation and Clearance, excavation and earth moving Service. Thus, the refunds were denied to the appellant in both the occasions holding the service under Site Preparation and Clearance, excavation and earth moving Service.

8. The definition of the 'site formation and clearance, excavation and earthmoving and demolition' service provided under erstwhile Section 65(97a) of the Finance Act, 1994, which was inserted by the Finance Act, 1994 w.e.f. 15.06.2005, are as under:

- [(97a) "site formation and clearance, excavation and earthmoving and demolition" includes, —
- (i) drilling, boring and core extraction services for construction, geophysical, geological or similar purposes; or
 - (ii) soil stabilization; or
 - (iii) horizontal drilling for the passage of cables or drain pipes; or



- (iv) land reclamation work; or
- (v) contaminated top soil stripping work; or
- (vi) demolition and wrecking of building, structure or road,

but does not include such services provided in relation to agriculture, irrigation, watershed development and drilling, digging, repairing, renovating or restoring of water sources or water bodies;]

8.1 From plain reading of the definition contained in clause (i) above, it is apparent that it relates to all the activities i.e. drilling, boring and core extraction services for construction, geophysical, geological or similar purpose. It can be seen that all the activities which are incidental and preparatory are included in the scope. It is further observed that this is an inclusive definition and activities mentioned are indicative and not exhaustive. Furthermore, CBIC has vide Circular F.No.B1/6/2005-TRU dated 27.07.2005 has clarified the issue as under:

6. Site formation and clearance, excavation, earth moving and demolition services

- 6.1 Any service provided or to be provided to any person, by any other person, in relation to site formation and clearance, excavation and earthmoving and demolition and such other similar activities is leviable to service tax under sub-clause (zzza) of section 65(105) of the Finance Act, 1994. **"Site formation and clearance, excavation and earthmoving and demolition"** has been defined in clause (97a) of section 65 of the Finance Act, 1994.
- 6.2 The definition of site formation and clearance, excavation and earthmoving and demolition is an inclusive definition and the activities specifically mentioned are indicative and not exhaustive. Prior to construction of buildings, factory or any civil structure, activity of mining or laying of cables or pipes, preparation services of site formation and clearance, excavation and earthmoving or leveling are normally undertaken for a consideration to make the land suitable for such activities. Such services include blasting and rock removal work, clearance of undergrowth, drilling and boring, overburden removal and other development and preparation services of mineral properties and sites, and other similar excavating and earthmoving services. Demolition of structures, buildings, streets or highways is also undertaken for a consideration as a preparatory activity for subsequent construction activity or for clearing the site for any other purpose. All such activities fall within the scope of this service.
- 6.3 However, site formation and clearance, excavation and earthmoving and demolition services when provided in relation to agriculture, irrigation, watershed development and drilling, digging, repairing, renovating or restoring of water sources or water bodies are specifically excluded and not within the scope of this service.



6.4 Notification 17/2005-S.T., dated 7-6-2005 exempts this service provided in the course of construction of roads, airports, railways, transport terminals, bridges, tunnels, dams, major and minor ports.

8.2 It is observed from the Board's Circular above that the services including blasting and rock removal work, clearance of undergrowth, drilling and boring, overburden removal and other development and preparation services of mineral properties and sites, and other similar excavating and earthmoving services undertaken prior to activity of mining are covered under the category of "Site formation and clearance, excavation and earthmoving and demolition".

8.3. I have gone through the Contract No. 053289/0003J/RP/Cont. Mines/OBR/06 dated 14.09.2006 entered into the appellant with Neyveli Lignite Corporation Ltd for Barasinagar Project at Bikaner (Rajasthan). The relevant Technical and Special Commercial conditions of the contract contained in Annexure II of the contract are as under:

1.0 NAME OF THE WORK:

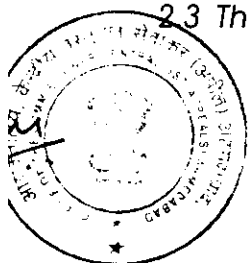
"Hiring of Crawler mounted Shovels/ Hydraulic Excavators, Backhoes, Dumpers for the removal of all types of Overburden materials in all kinds of strata, including its Drilling, Blasting, Excavation, Loading, Transport and Dumping Spreading, Dozing at specified places for the exposure of lignite at Barisngsar Lignite Mine Project, Rajasthan".

2.0 SCOPE OF THE WORK:

2.1 Excavation of Acolian sand, kankar, sandstone, variegated clay etc., loading, transportation, dumping, dozing, leveling at dump site at different at the places designated by the Mine-in-Charge by using equipment and machineries, at the Site in Barsingsar, Bikaner District, Rajasthan, as per the drawing annexed to the Contract ("Drawing"). The Contractor is required to carryout the work in accordance with the directions, if any, issued by the NLC and in compliance with the other requirements as per NIB. The scope of work includes drilling, blasting, excavation, transportation, dumping formation/ maintenance of roads including haul roads, formation/ maintenance of drains, lighting etc., and all that are necessary and incidental for the removal and transportation of OB of the stated quantity.

2.2 The scope of work includes preparation of site and blast hole drilling wherever required, storage of explosives in the magazine, drawal and transportation of explosives from magazine, charging, stemming and blasting including arranging sentries, re-transportation of balance explosives back to magazine after blasting Magazine, Magazine-in-charge and Blaster will be provided by NLC. Explosives will be procured and supplied to the contractor by NLC on Chargable Basis".

2.3 The 'machinery' referred to in clause 2.1 shall include:



- a) Excavators/Backhoes/Shovels of not less than 3.5 m³ bucket capacity, Dumpers of capacity not less than 35T/16 m³ for Aeolian sand and kankar removal.
 - b) Excavators/Backhoes/Shovels of not less than 4.0 m³ bucket capacity, Dumpers of capacity not less than 40T/18 m³ for sand stone and variegated clay removal.
 - c) Drill machines of not less than 100 mm diameter, Bulldozers, Pumps, Sprinklers, Motor Graders of adequate capacities, Amubulance for the respective purposes.
- 2.4 The Aeolian sand (topsoil) should be excavated separately and dumped at the Aeolian sand dump area in the northeast shown by NLC. Other excavated soil shall be dumped at the outside main dump yard/internal dumping yard, as per the directives of Mine-in-charge and schedule for which will be given from time to time by the mining officials.
- 2.5 Contractor may use any excavated material for road making in the project area, free of cost.

- 8.4. Further, the General Commercial Condition of Contract contained in Anneuxre-I are as under:

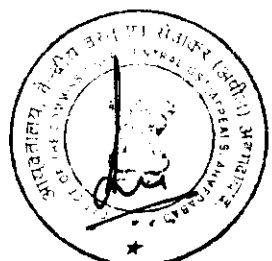
3.0 SCHEDULED QUANTITIES AND TIME:

- 3.1 The aggregate quantity of overburden (OB) to be removed under the Contract is 63.0 Millien Cubic Meters during a period of 7 Years (84 Months) commencing from the Effective Date.
- 3.2 The aggregate quantity of overburden to be removed during the Contract Period shall be split up as follows and on such basis NLC shall specify the quantity of overburden to be removed during every Year (Scheduled Annual Quantity), including for the stub periods, if any, at the beginning and end of the Contract Period.

Period from Effective Date	First 12 months	Second 12 months	Third 12 months	Fourth to Seventh 12 months	Total for 84 months
OB MM3 (Million Cubic meter)	8.0	9.5	9.1	9.1 (each 12 months)	63.0

However the quantities mentioned above will be notified by the Mine-in-Charge and fit into the 1st, 2nd, 3rd and 4th Quarters of the financial years and will be given to the Contractor within 10 days from LOA. The Contractor shall be allowed a period of two and half months from the Effective Date, as mobilization period, for which period no targets will be set by the NLC for removal of OB. However the Contractor is not precluded from performing removal of OB during the said period of two and half months.

- 3.3 If any changes are proposed by Mine-in-Charge in the targets mentioned in para 3.2 the same will be intimated to the Contractor not less than 1 month before the commencement of each Quarter. The aggregate of the Quarterly Schedules with respect to any Year shall not exceed the revised Scheduled Annual Quantity for that Year.
- 3.4. Based on the Quarterly Schedule, the Contractor shall intimate Monthly Quantities for each month of that Quarter. The Contractor shall furnish the intimations for all the three months of a Quarter, at least 15 days prior to the commencement of the respective Quarter. The Contractor shall be entitled to vary, by increasing or decreasing, the Monthly



Quantity with respect to a month, by a written notice served on the NLC not less than 6 business days prior to the commencement of that month; provided that the concerned Quarterly Schedule is not altered.

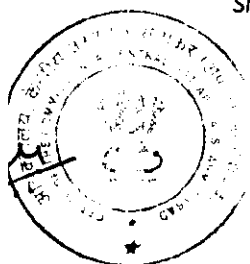
8.5. It is observed from the conditions of contract that it specifies the quantity of overburden to be removed. The primary scope of the work detailed therein makes it apparent that the appellant were engaged by M/s Nevyeli Lignite for the removal of all types of overburden material in all kinds of strata, including its drilling, blasting, excavation, loading, transport and dumping, spreading, dozing at specified places for the exposure of lignite with the help of their equipments. Therefore, I find that the appellant has specifically provided services including removal of overburden by excavating at the mineral properties and site, which are in nature of preparation of land for mining activity explained under Board's Circular dated 27.07.2005 above and are squarely covered under the category of 'Site formation and clearance, excavation and earthmoving and demolition' as contained under erstwhile Section 65(97a) of the Finance Act, 1994.

9. The definition of 'mining' service, which was brought under service tax net w.e.f. 01.06.2007, provided under erstwhile Section 65(105)(zzzy) of the Finance Act, 1994 reads as under:

(zzzy) to any person, by any other person in relation to mining of mineral, oil or gas;

10. From the above, I find that the introduction of service tax on mining service as a separate taxable service w.e.f. 01.06.2007 as defined above would not change the taxability of the services under 'Site formation and excavation service for the period prior to such new levy. The Board has vide letter F.No. 232/2/2006-CX4 dated 12.11.2007 cited at 2007 (8) STR (C15) has issued clarifications which is reproduced below:

It may be recalled that vide appropriate entry in the Finance Act, 2007, 'service provided by any person to any other person in relation to mining of minerals, oil or gas' has been comprehensively brought under the ambit of service tax with effect from 1.6.2007. However, for the prior period, certain disputes relating to chargeability of service tax on some of the services provided to mining sector were reported. In this regard, a draft circular dated 9.10.2006 was put up on the official web-site, soliciting response from the stakeholders. The responses received have since been examined.



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.
3. Excavation/drilling and removal of the overburdens : These activities are essentially in the nature of site formation, clearance, excavation and earth moving. As clarified earlier vide circular B1/6/2005-TRU dated 27.07.2005 (para 6.2), the definition of site formation and clearance, excavation and earthmoving and demolition service is an inclusive definition and activities specifically mentioned are indicative and not exhaustive. Prior to construction of buildings, factory or any civil structure, activity of mining or clearance, excavation and earth moving or leveling are normally undertaken for a consideration to make the land suitable for such activities. Such services include blasting and rock removal work, clearance of underground, drilling and boring, overburden removal and other development and preparation services of mineral properties and site, and other similar excavating and earth moving services. Hence, these activities are taxable under the category of site formation and clearance, excavation and earthmoving and demolition service w.e.f. 16.6.2005.

10.1 It is observed from the scope of work and relevant technical & special commercial conditions contained in the contract as narrated in para 8.3 and para 8.4 above that the activities carried out by the appellant were specifically of excavation, drilling and removal of overburden and hence falls under the category of Site Formation and Excavation service as per the clarification issued by Board at the time of introduction of service tax on mining services. I find that the contract nowhere specifies extraction of minerals in scope of work and hence the contention of the appellant for classification of their service under mining service is devoid of any merit and is rejected.

10.2 Further, the appellant relied on case law in case of L & T v/s CCE, Vadodara-II(2007) 7 STR 224(Tri-Ahmedabad). I find that in the said judgment, it was argued that since Service tax liability on works contract is brought into service tax net from 2007, these services were not to be taxed earlier. However, in the case on hand, it is main argument of the appellant that due to introduction of service tax on mining service w.e.f. 01.06.2007, service tax paid under "Site formation and excavation service for the period prior to such new levy, were not required to be paid and

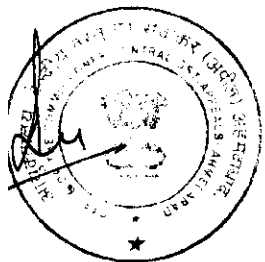


refund of such tax paid for earlier period needs to be granted to them. Thus, the decision under said case law cannot be made applicable to the present issue. Relevant part of said judgment is reproduced below:

Stay/Dispensation of pre-deposit - Works contract service - Erection, commissioning and installation service - Impugned contract whether to be considered as turnkey project contract or divisible for levy of service tax - Works contract services brought into service tax net from 2007 - Stay granted by Tribunal on identical facts in respect of another party - Strong prima facie case made out by applicant - Pre-deposit waived and recovery thereof stayed - Section 35F of Central Excise Act, 1944 as applicable to Service tax vide Section 83 of Finance Act, 1994 - Sections 65(39a), 65(105)(zzza) and 67 of Finance Act, 1994. [paras 2, 4, 7]

[Order per : M.V. Ravindran, Member (J)]. - This stay is directed against the order-in-original dt. 27-12-06 vide which the Service tax demand was confirmed and the penalties were imposed on the appellant.

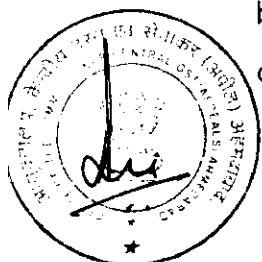
2. Heard the submissions at length made by both sides and perused the records.
3. In this case the issue is whether the services like "Erection, Installation, & Commissioning" as being rendered by the applicant to BPCL, GEB & IOCL, are liable to be taxed under Service tax, despite they being a Turn Key projects.
4. It is the contention of the advocate for the applicant that contract entered by applicant is for turn key projects. The issue in this case is whether the said contract has to be considered as turn-key contract or divisible for imposition of Service tax. We see from the records, that in the applicant's own case, in an identical situation, the Tribunal vide its Order Nos. A/318-319/2000, dt. 21-3-07 held that turn key contracts entered into for execution, would not get covered under Consulting Engineering Services. Another aspect which is to be considered is that Finance Bill of 2007 has included works contract services as taxable in Clause No. (zzza) to Section 65(105) of Finance Act 1994. **Since the Service tax liability on works contract is brought into net from 2007, it can be argued that these services were not to be taxed earlier.** In an identical issue, in the case of SEPCO Electric Power Corporation, Division Bench of the Tribunal in Order No. S/177/07-S.T., dt. 24-4-07 [2007 (7) S.T.R. 229 (Tribunal)], granted an unconditional stay to the appellant therein.
7. Accordingly, we find that the applicants have made out a strong prima facie case for waiver of pre-deposit of the amounts involved. The application for waiver of pre-deposit of amounts are allowed and recovery thereof are stayed till the disposal of the appeal. Since the stakes involved in this case are heavy, we direct the Registry to fix the appeal for out of turn hearing on 23-7-07.



Hence, the judgement in case of L & T relied upon by the appellant is distinguished in the facts of present case.

11. With reference to the suitability of the services in question under the category of 'Supply of Tangible Goods Service', which was raised by the appellant first time before the Hon'ble CESTAT, the same was discussed in detail by the adjudicating authority in para 19 of the impugned order. He has observed that said service was brought under service tax net w.e.f. 16.05.2008 only and the period involved in the refund application pertains to prior to introduction of said category and hence the question of classification of the service under 'Supply of Tangible Goods Service' is infructuous. He has further observed therein that claimant has been making attempt to dodge the provisions of law by making gratuitous arguments at different stages of proceedings and that to after accepting the classification of service and after making payments of appropriate service tax during the period of provision of service, which does not merit any consideration. It is observed from the terms and conditions of the contract entered in to by the appellant with Neyveli Lignite Corporation Ltd., discussed in para 8.3 and para 8.4 above, that it was specifically for removal of overburden at site with the equipments supplied by the appellant. The contract nowhere mentioned the number of equipments to be supplied. The time frame prescribed in the contract was specifically for quantity of removal of overburden. Hence, I find that the services provided by the appellant cannot be classified under supply of tangible goods service as contained under erstwhile Section 65(105)(zzzzj) of the Finance Act, 1994. Accordingly, I do not find merit in the argument of the appellant regarding classification of service provided by them under supply of tangible goods service and is rejected.

12. In view of the discussions above, I find that the activities carried out by the appellant for M/s. Neyveli Lignite Corporation Ltd in respect of Barasinagar Project, under agreement dated 14.09.2006 and M/s. Northern Flank Area under agreement dated 14.09.2006 and dated 07.12.2004, during the period from August 2006 to May 2007 has been rightly classified by them under the category of Site Formation and Excavation service during the relevant period and that they had rightly discharged service tax




for the said services. Therefore, the impugned order is held to be legal and correct and the appeal filed by the appellant is liable for rejection.

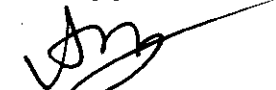
13. In view of the above, I reject the appeal filed by the appellant and uphold the impugned order.

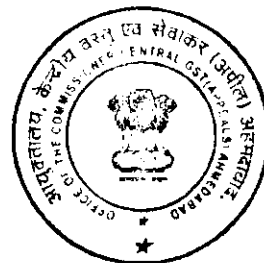
14. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeals filed by the appellant stand disposed off in above terms.


 27th April, 2021..
 (Akhilesh Kumar)
 Commissioner (Appeals)
 Ahmedabad
 /04/2021

Attested


 (Atul B Amin)
 Superintendent (Appeals)
 CGST, Ahmedabad



By R.P.A.D

To

M/s. Ranjit Buildcon Limited,
 Ranjit House, Opp. Sun Residency,
 Near Goga Maharaj Temple,
 Thaltej, Ahmedabad.

Copy to:

1. The Principal Chief Commissioner, Central Excise, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner, CGST, Division-VI, Ahmedabad-North.
4. The Assistant Commissioner, System-CGST, Ahmedabad North.
25. Guard File.
6. P.A. File.