

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH – COURT NO. III

(1) SERVICE TAX APPEAL No.52575 of 2018

(Arising out of Order-in-Original No.ALW-EXCUS-000-COM-033-039-17-18 dated 23.01.2018 passed by Commissioner of Central Goods & Service Tax and Central Excise, Alwar (RAJHASTHAN)]

The Mining Engineer,

Department of Mines & Geology, Khanij Bhawan,
Near Chamunda Mata Bhakri, Sojat City,
Distt – Pali,
Rajasthan.

Appellant

VERSUS

Commissioner of GST & Central Excise,

CGST Commissionerate,
Alwar, 'A' Block, Surya Nagar,
Alwar 301 001.

Respondent

WITH

**(2) SERVICE TAX APPEAL No.52576 of 2018 (MINING ENGINEER
Vs CGST & CE ALWAR)**

(Arising out of Order-in-Original No.ALW-EXCUS-000-COM-033-039-17-18 dated 23.01.2018 passed by Commissioner of Central Goods & Service Tax and Central Excise, Alwar (RAJHASTHAN)]

**(3) SERVICE TAX APPEAL No.52577 of 2018 (MINING ENGINEER
Vs CGST & CE JODHPUR) WITH SERVICE TAX APPLICATION (EH)
NO.50080 OF 2021 (by Dept.)**

(Arising out of Order-in-Original No.JOD-EXCUS-000-COM-0027-17-18 dated 27.03.2018 passed by Commissioner of Central Goods & Service Tax and Central Excise, Jodhpur (RAJHASTHAN)]

**(4) SERVICE TAX APPEAL No.52578 of 2018 (MINING ENGINEER
Vs CGST & CE JODHPUR)**

(Arising out of Order-in-Original No.JOD-EXCUS-000-COM-0024-17-18 dated 21.03.2018 passed by Commissioner of Central Goods & Service Tax and Central Excise, Jodhpur (RAJHASTHAN)]

ST/52575-52587/2018,
 ST/51389,51478,51495,51715/2019
 (with ST/EH No.50080,50099/2021)
 ST/50917,51396-51399/2019
 (with ST/EH/50077-50078/2021,
 ST/Cross/50723-50725, 50737/2019)

(5) SERVICE TAX APPEAL No.52579 of 2018 (MINING ENGINEER Vs CGST & CE JODHPUR)

(Arising out of Order-in-Original No.JOD-EXCUS-000-COM-0022-17-18 dated 20.03.2018 passed by Commissioner of Central Goods & Service Tax and Central Excise, Jodhpur (RAJHASTHAN))

(6) SERVICE TAX APPEAL No.52580 of 2018 (MINING ENGINEER Vs CGST & CE JODHPUR)

(Arising out of Order-in-Original No.JOD-EXCUS-000-COM-0023-17-18 dated 21.03.2018 passed by Commissioner of Central Goods & Service Tax and Central Excise, Jodhpur (RAJHASTHAN))

(7) SERVICE TAX APPEAL No.52581 of 2018 (MINING ENGINEER Vs CGST & CE JODHPUR)WITH SERVICE TAX APPLICATION (EH) NO.50099 OF 2021 (By Dept.)

(Arising out of Order-in-Original No.JOD-EXCUS-000-COM-0025-17-18 dated 21.03.2018 passed by Commissioner of Central Goods & Service Tax and Central Excise, Jodhpur (RAJHASTHAN))

(8) SERVICE TAX APPEAL No.52582 of 2018 (MINING ENGINEER Vs CGST & CE ALWAR)

(Arising out of Order-in-Original No.ALW-EXCUS-000-COM-033-039-17-18 dated 23.01.2018 passed by Commissioner of Central Goods & Service Tax and Central Excise, Alwar (RAJHASTHAN))

(9) SERVICE TAX APPEAL No.52583 of 2018 (MINING ENGINEER Vs CGST & CE ALWAR)

(Arising out of Order-in-Original No.ALW-EXCUS-000-COM-033-039-17-18 dated 23.01.2018 passed by Commissioner of Central Goods & Service Tax and Central Excise, Alwar (RAJHASTHAN))

(10) SERVICE TAX APPEAL No.52584 of 2018 (MINING ENGINEER Vs CGST & CE ALWAR)

(Arising out of Order-in-Original No.ALW-EXCUS-000-COM-033-039-17-18 dated 23.01.2018 passed by Commissioner of Central Goods & Service Tax and Central Excise, Alwar (RAJHASTHAN))

(11) SERVICE TAX APPEAL No.52585 of 2018 (MINING ENGINEER Vs CGST & CE JODHPUR)

(Arising out of Order-in-Original No.JOD-EXCUS-000-COM-0026-17-18 dated 27.03.2018 passed by Commissioner of Central Goods & Service Tax and Central Excise, Jodhpur (RAJHASTHAN))

ST/52575-52587/2018,
 ST/51389,51478,51495,51715/2019
 (with ST/EH No.50080,50099/2021)
 ST/50917,51396-51399/2019
 (with ST/EH/50077-50078/2021,
 ST/Cross/50723-50725, 50737/2019)

(12) SERVICE TAX APPEAL No.52586 of 2018 (MINING ENGINEER Vs CGST & CE ALWAR)

(Arising out of Order-in-Original No.ALW-EXCUS-000-COM-033-039-17-18 dated 23.01.2018 passed by Commissioner of Central Goods & Service Tax and Central Excise, Alwar (RAJHASTHAN))

(13) SERVICE TAX APPEAL No.52587 of 2018 (MINING ENGINEER Vs CGST & CE ALWAR)

(Arising out of Order-in-Original No.ALW-EXCUS-000-COM-033-039-17-18 dated 23.01.2018 passed by Commissioner of Central Goods & Service Tax and Central Excise, Alwar (RAJHASTHAN))

(14) SERVICE TAX APPEAL No.51389 of 2019 (MINING ENGINEER Vs CGST & CE JODHPUR)

(Arising out of Order-in-Original No.JOD-EXCUS-000-COM-0008-0011-18-19 dated 19.02.2019 passed by Commissioner of Central Goods & Service Tax and Central Excise, Jodhpur (RAJHASTHAN))

(15) SERVICE TAX APPEAL No.51478 of 2019 (MINING ENGINEER Vs CGST & CE JODHPUR)

(Arising out of Order-in-Original No.JOD-EXCUS-000-COM-0008-0011-18-19 dated 19.02.2019 passed by Commissioner of Central Goods & Service Tax and Central Excise, Jodhpur (RAJHASTHAN))

(16) SERVICE TAX APPEAL No.51495 of 2019 (MINING ENGINEER Vs CGST & CE JODHPUR)

(Arising out of Order-in-Original No.JOD-EXCUS-000-COM-0008-0011-18-19 dated 19.02.2019 passed by Commissioner of Central Goods & Service Tax and Central Excise, Jodhpur (RAJHASTHAN))

(17) SERVICE TAX APPEAL No.51715 of 2019 (MINING ENGINEER Vs CGST & CE JODHPUR)

(Arising out of Order-in-Original No.JOD-EXCUS-000-COM-0008-0011-18-19 dated 19.02.2019 passed by Commissioner of Central Goods & Service Tax and Central Excise, Jodhpur (RAJHASTHAN))

ST/52575-52587/2018,
 ST/51389,51478,51495,51715/2019
 (with ST/EH No.50080,50099/2021)
 ST/50917,51396-51399/2019
 (with ST/EH/50077-50078/2021,
 ST/Cross/50723-50725, 50737/2019)

(18) SERVICE TAX APPEAL No.50917 of 2019

(Arising out of Order-in-Appeal No. 498(SM)ST/JPR/2018dated 30.11.2018passed by Commissioner (Appeals), Central Excise&Central Goods and Service Tax,Jaipur, NCRB, Statue Circle, Jaipur]

Commissioner of GST & Central Excise.

CGST Commissionerate.
 Alwar, 'A" Block, Surya Nagar,
 Alwar 301 001.

Appellant

Vs

The Mining Engineer.

Department of Mines & Geology,
 Khanij Bhawan,Near Chamunda Mata Bhakri, Sojat City,
 Distt – Pali,
 Rajasthan.

Respondent

WITH

(19) SERVICE TAX APPEAL No.51396 of 2019 (CGST & CE JODHPUR Vs MININING ENGINEER) with SERVICE TAX APPLICATION No.50077-50078 of 2021 (by Dept.) & ST/CROSS/50723 of 2019 (by assessee)

(Arising out of Order-in-Original No.JOD-EXCUS-000-COM-0008-0011-18-19 dated 19.02.2019 passed by Commissioner of Central Goods & Service Tax and Central Excise, Jodhpur (RAJHASTHAN))

(20) SERVICE TAX APPEAL No.51397 of 2019 (CGST & CE JODHPUR Vs MININING ENGINEER) with ST/CROSS/50725 of 2019(by assessee)

(Arising out of Order-in-Original No.JOD-EXCUS-000-COM-0008-0011-18-19 dated 19.02.2019 passed by Commissioner of Central Goods & Service Tax and Central Excise, Jodhpur (RAJHASTHAN))

ST/52575-52587/2018,
 ST/51389,51478,51495,51715/2019
 (with ST/EH No.50080,50099/2021)
 ST/50917,51396-51399/2019
 (with ST/EH/50077-50078/2021,
 ST/Cross/50723-50725, 50737/2019)

(21) SERVICE TAX APPEAL No.51398 of 2019 (CGST & CE JODHPUR Vs MININING ENGINEER) with ST/CROSS/50724 of 2019(by assessee)

(Arising out of Order-in-Original No.JOD-EXCUS-000-COM-0008-0011-18-19 dated 19.02.2019 passed by Commissioner of Central Goods & Service Tax and Central Excise, Jodhpur (RAJHASTHAN)]

(22) SERVICE TAX APPEAL No.51399 of 2019 (CGST & CE JODHPUR Vs MININING ENGINEER) with ST/CROSS/50737 of 2019(by assessee)

(Arising out of Order-in-Original No.JOD-EXCUS-000-COM-0008-0011-18-19 dated 19.02.2019 passed by Commissioner of Central Goods & Service Tax and Central Excise, Jodhpur (RAJHASTHAN)]

APPEARANCE:

Shri Ritul Patwa, Chartered Accountant (Consultant)
 For the Assessee

Shri A. Thapliyal, Authorized Representative
 for the Revenue

**CORAM : HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
 HON'BLE MR. P.V. SUBBA RAO, MEMBER(TECHNICAL)**

**DATE OF HEARING :09.09.2021
 DATE OF PRONOUNCEMENT:25.11.2021**

FINAL ORDER No. 52006-52027/2021

ORDER :Per :SULEKHA BEEVI C.S

The Mining Engineer, Department of Mines and Geology, Government of Rajasthan, the assessee herein, was issued show cause notices demanding service tax under the category of "Renting of Immovable Property Service" for the period 01.07.2012 to 31.03.2016.

ST/52575-52587/2018,
ST/51389,51478,51495,51715/2019
(with ST/EH No.50080,50099/2021)
ST/50917,51396-51399/2019
(with ST/EH/50077-50078/2021,
ST/Cross/50723-50725, 50737/2019)

After adjudication, by various orders, the original authority confirmed the demand, interest and penalties. Aggrieved by the decision of confirmation of demand, interest and penalty, the assessee has filed appeals. Revenue has also filed appeals against the order passed by adjudicating authority who has granted benefit of reduced penalty vide OIOs dated 19.02.2019 and also against order of Commissioner (Appeals) who has set aside the demand vide OIA No.498(SM)/ST/JPR/2018 dated 30.11.2018. The parties are hereinafter referred to as Assessee and Revenue for the sake of convenience.

2. Revenue had filed applications for early hearing of the appeals and Miscellaneous Applications were filed by assessee to link up the appeals for being heard together. These applications were allowed on 13.01.2021 and 21.01.2021. The EH applications in other appeals were taken up on 09.09.2021. The request for early hearing were allowed pursuant to the EH granted in earlier applications. These appeals were heard together and are disposed of by this common order. The details of appeals and cross objections disposed as per this order are as under :

ST/52575-52587/2018,
 ST/51389,51478,51495,51715/2019
 (with ST/EH No.50080,50099/2021)
 ST/50917,51396-51399/2019
 (with ST/EH/50077-50078/2021,
 ST/Cross/50723-50725, 50737/2019)

S.No	Appeal No.	Appellant	Respondent	Arising out of Order-in-Original No. and date
1.	ST/52575/2018	The Mining Engineer, Dept. of Geology, Rajasthan	CGST & CE, Alwar	OIO ALW-EXCUS-000-COM-033-039-17-18 dt. 23.01.2018
2.	ST/52576/2018	-do-	CGST & CE Alwar	-do-
3.	ST/52577/2018 [with ST/EH/50080/2021]	-do-	CGST & CE Jodhpur	OIO JOD-EXCUS-000-COM-0027-17-18 dt. 27.03.2018.
4.	ST/52578/2018	-do-	CGST & CE Jodhpur	OIO JOD-EXCUS-000-COM-0024-17-18 dt. 21.03.2018.
5.	ST/52579/2018	-do-	CGST & CE, Jodhpur	OIO JOD-EXCUS-000-COM-0022-17-18 dt. 20.03.2018.
6.	ST/52580/2018	-do-	CGST & CE Jodhpur	OIO JOD-EXCUS-000-COM-0023-17-18 dt. 21.03.2018.
7.	ST/52581/2018 [with ST/EH/50099/2021]	-do-	CGST & CE Jodhpur	OIO JOD-EXCUS-000-COM-0025-17-18 dt. 21.03.2018.
8.	ST/52582/2018	-do-	CGST & CE Alwar	OIO ALW-EXCUS-000-COM-033-039-17-18 dt. 23.01.2018
9.	ST/52583/2018	-do-	CGST & CE Alwar	-do-
10.	ST/52584/2018	-do-	CGST & CE Alwar	-do-
11.	ST/52585/2018	-do-	CGST & CE Jodhpur	OIO JOD-EXCUS-000-COM-0026-17-18 dt. 27.03.2018.
12.	ST/52586/2018	-do-	CGST & CE Alwar	OIO ALW-EXCUS-000-COM-033-039-17-18 dt. 23.01.2018
13.	ST/52587/2018	-do-	CGST & CE Alwar	OIO ALW-EXCUS-000-COM-033-039-17-18 dt. 23.01.2018
14.	ST/51389/2019	-do-	CGST & CE Jodhpur	OIO JOD-EXCUS-000-COM-0008-0011-18-19 dt. 19.02.2019
15.	ST/51478/2019	-do-	CGST & CE Jodhpur	-do-
16.	ST/51495/2019	-do-	CGST & CE Jodhpur	-do-
17.	ST/51715/2019	-do-	CGST & CE Jodhpur	-do-

ST/52575-52587/2018,
 ST/51389,51478,51495,51715/2019
 (with ST/EH No.50080,50099/2021)
 ST/50917,51396-51399/2019
 (with ST/EH/50077-50078/2021,
 ST/Cross/50723-50725, 50737/2019)

18.	ST/50917/2019	CGST & CE Alwar	The Mining Engineer, Dept. of Geology, Rajasthan	Order-in- AppealNo.498(SM)ST/JPR/2 018 dated 30.11.2018
19.	ST/51396/2019 [withST/EH/50077, 50078/2021&ST/Cross/50723/2 019]	CGST & CE Jodhpur	The Mining Engineer, Dept. of Geology, Rajasthan	OIO JOD-EXCUS-000-COM- 0008-0011-18-19 dt. 19.02.2019
20.	ST/51397/2019 [with ST/Cross/50725/2019]	CGST & CE Jodhpur	The Mining Engineer, Dept. of Geology, Rajasthan	-do-
21.	ST/51398/2019 [with ST/Cross/50724/2019]	CGST & CE Jodhpur	The Mining Engineer, Dept. of Geology, Rajasthan	-do-
22.	ST/51399/2019 [with ST/Cross/50737/2019]	CGST & CE Jodhpur	The Mining Engineer, Dept. of Geology, Rajasthan	-do-

Case put forward by Revenue :

3. Learned Authorized Representative Shri A. Thapliyal, appeared and argued for the Revenue and also filed written submissions. The Department of Mines and Geology, Government of Rajasthan, the assessee herein collected 'dead rent' as well as 'royalty' on lease agreements entered for granting mining rights. The dead rent is a fixed amount which is collected by the assessee for giving the land on lease and royalty is being collected for right to use the land for mining purposes. The royalty depends on the quantity of ore mined by the lessee. The lessee thus requires to pay dead rent or royalty whichever is

ST/52575-52587/2018,
 ST/51389,51478,51495,51715/2019
 (with ST/EH No.50080,50099/2021)
 ST/50917,51396-51399/2019
 (with ST/EH/50077-50078/2021,
 ST/Cross/50723-50725, 50737/2019)

higher. The lessee has to pay minimum annual royalty as dead rent to the assessee in four equal quarterly instalments.

4. He submitted that the assessee by entering into lease agreements for grant of mining rights is providing "Renting of Immovable Property Services" and is liable to pay service tax for the period 01.07.2012 to 31.03.2016.

5. The definition of "Renting of Immovable Property" prior to 01.07.2012 did not include renting of vacant land solely used for mining purposes. However, with the introduction of negative list of services, the definition of "renting" as provided under Section 65B (41) of the Finance Act, 1994 includes renting of land for mining purposes. The definition "renting" as per Section 65B (41) in Chapter V of Finance Act, 1994 reads as under :

"Section 65B (41)—"renting" means allowing, permitting or granting access, entry, occupation, **use or any such facility**, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property."

[emphasis supplied]

6. It is argued by the Ld. A.R, that the words in the definition are 'use or any such facility'. The definition is very wide so as to include use of immovable property / land for mining purposes also. Further, with effect from 01.07.2012, 'Renting of Immovable Property Services' was included in the 'declared services'. These "declared services" given in Section 66E of the Finance Act 1994 is as under :

ST/52575-52587/2018,
 ST/51389,51478,51495,51715/2019
 (with ST/EH No.50080,50099/2021)
 ST/50917,51396-51399/2019
 (with ST/EH/50077-50078/2021,
 ST/Cross/50723-50725, 50737/2019)

“SECTION 66E. Declared services. — The following shall constitute declared services, namely:—

(a) renting of immovable property

(b)

(c)

.....

(i) service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity.

.... ..”

7. The ‘Negative list of services’ which are not exigible to service tax are given in Section 66D of Finance Act, 1994. This list does not mention renting of vacant land for mining purposes though renting of vacant land for mining purposes was excluded from taxable service prior to 01.07.2012. Therefore, after 01.07.2012 renting of land for mining purposes has to be considered as a taxable service. The negative list of services given in Section 66D is as under :

“SECTION 66D. Negative list of services.—

The negative list shall comprise of the following services, namely :—

(a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere—

(i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;

(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

ST/52575-52587/2018,
 ST/51389,51478,51495,51715/2019
 (with ST/EH No.50080,50099/2021)
 ST/50917,51396-51399/2019
 (with ST/EH/50077-50078/2021,
 ST/Cross/50723-50725, 50737/2019)

(iv) support service, other than services covered under clauses (i) to (iii) above, provided to business entities”.

[emphasis supplied]

8. From the above, it can be seen that as per sub-clause (iv) of Section 66D (a), “support services” provided by Government to business entities are chargeable to service tax. “Support Services” are defined under Section 65B(49) of Finance Act, 1994 which reads as under :

“**Support Service**” means infrastructural, operational, administrative, logistic, marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall **include** advertisement and promotion construction or works contract, **renting of immovable property**, security, testing and analysis.

[emphasis supplied]

9. According to the Revenue, though the negative list comprises of various services provided by Government and are not exigible to service tax, however, when these services fall within the definition of ‘support services’, even if provided by Government they are subject to levy of service tax. As per the definition of ‘support services’, ‘Renting of immovable property’ is a kind of support service and is taxable for the impugned period even if it is provided by Government. Moreover, w.e.f. 01.04.2016, the words “support service” was omitted and the word “any service” was inserted in the said entry. As a consequence thereof, with effect from 01.04.2016, any service provided by Government to business entities which do not fall under (i) to (iii) of

ST/52575-52587/2018,
ST/51389,51478,51495,51715/2019
(with ST/EH No.50080,50099/2021)
ST/50917,51396-51399/2019
(with ST/EH/50077-50078/2021,
ST/Cross/50723-50725, 50737/2019)

66D (a) are chargeable to service tax. It is also argued by the Learned Authorized Representative that as per the mega Exemption Notification No.25/2012-ST dated 20.06.2012 as amended, there is no exemption available to service of renting of land for mining purposes. The assessee has entered into lease agreements for grant of mining rights. This activity of leasing of land for mining purposes is nothing but 'Renting of Immovable Property Service'. Thus, renting of immovable property service being a support service is a taxable service for the period from 01.07.2012 to 31.03.2016, even if it is provided by the Government.

10. The Ld. A.R adverted to the Service Tax Rules to argue that it is the Government, being the service provider, who is liable to pay the service tax on the impugned service during the impugned period. Service Tax Rules, 1994 speaks about the person who is liable to pay service tax. As per Section 68 (2) of Finance Act, 1994 read with Rule 2(1) (d) (E) of Service Tax Rules 1994 and Notification No.30/2012-ST dated 20.06.2012, the liability to pay service tax is cast upon the person who provides the service and not upon the recipient of the service. The assessee herein, the Department of Mines and Geology being the provider of service is liable to pay service tax on renting of immovable property service.

ST/52575-52587/2018,
ST/51389,51478,51495,51715/2019
(with ST/EH No.50080,50099/2021)
ST/50917,51396-51399/2019
(with ST/EH/50077-50078/2021,
ST/Cross/50723-50725, 50737/2019)

11. It is submitted that the State being the owner of the minerals lying under the surface, royalty/dead rent is a charge by the owner of minerals, in consideration of the exploitation / removal of mineral resources by the lessee or lease holder. It is the consideration received by the assessee for giving the right to use the immovable property for mining purpose and depends on the quantity of ore mined by the lessee. That, the consideration received in the nature of royalty or dead rent is nothing but rent payable to government for ore or mineral excavated or utilized from leased land.

12. The Ld. A.R relied upon the decision of the Hon'ble High Court of Rajasthan filed by Udaipur Chamber of Commerce and industry &Ors. in D.B. Civil Writ Petition No.14578 of 2016. He submitted that in the said judgement, the Hon'ble High Court has categorically held that in the case of mining lease, there is no transfer of title of immovable property and in absence of this, the activities would fall within the definition of 'service' as given under Section 65B (44). He submitted that the royalty being "consideration" certainly places assignment of right to use natural resources deposited in the leased area as a 'service' as defined under Section 65B (44) of the Finance Act, 1994. The said section defines 'service' to mean any activity carried out by a person for any consideration and includes a declared service. Further, as already stated, the mining lease granted by the assessee to lease holders / licensee for excavation, removal or utilization of mineral from

ST/52575-52587/2018,
ST/51389,51478,51495,51715/2019
(with ST/EH No.50080,50099/2021)
ST/50917,51396-51399/2019
(with ST/EH/50077-50078/2021,
ST/Cross/50723-50725, 50737/2019)

the leased land would come under the purview of "renting" as defined under Section 65B (41) of the Finance Act, 1994.

13. With regard to appeals filed by the department, Ld. A.R submitted that SCNs were issued to the assessee for non-payment of service tax on the consideration collected by them from the lease holder or through contractor / recovery agent. The demand proposed in the SCN though confirmed, the adjudicating authority wrongly extended the benefit of reduced penalty of 50% of the service tax determined in terms of first proviso to sub-section (1) of Section 78 of the Finance Act, 1994. He submitted that while extending the benefit of reduced penalty of 50% of the tax demand, the adjudicating authority has not given any finding to conclude as to whether the details of such transactions are recorded in accounts maintained by assessee. Such a requirement being a condition prescribed under the statute itself, it is necessary to record a finding with regard to this fact before extending the benefit of reduced penalty. That, in the absence of such finding the benefit of reduced penalty cannot be extended.

14. With regard to Revenue appeals filed against OIA dated 30.11.2018 passed by CGST & CE (Appeals), Jaipur in Service Tax Appeal No.50917/2019, it is submitted by the Ld. A.R that the Commissioner (Appeals) has erred in setting aside the demand, interest and penalties. The Commissioner (Appeals) has wrongly concluded that leasing of land for grant of mining rights by the

ST/52575-52587/2018,
ST/51389,51478,51495,51715/2019
(with ST/EH No.50080,50099/2021)
ST/50917,51396-51399/2019
(with ST/EH/50077-50078/2021,
ST/Cross/50723-50725, 50737/2019)

Department of Mines and Geology does not fall under 'support services'. He prayed that the assessee's appeals may be dismissed and the department appeals may be allowed.

Case of the assessee:

15. Ld. Consultant Shri Ritul Patwa appeared and argued for the assessee and also filed written submissions. He submitted that the assessee is a Department of government of Rajasthan engaged in Grant of Mining rights for extraction, exploration, and sale of Minerals by the Lessees, against payment of Royalty and Dead Rent and is covered within the definition of 'Government' given under Section 65B (26A) of the Finance Act, 1994 which reads as under :

"Government" means the Department of the Central Government, a State Government and its Departments and a Union Territory and its Departments, but shall not include any entity, whether created by a Statute or otherwise, the accounts of which are not required to be kept in accordance with the Article 150 of the Constitution or the rules made thereunder".

15.1 The Revenue demands service tax for the period 01.07.2012 to 31.03.2016 on the royalty and dead rent collected for grant of mining rights by the Department of Geology, Govt. of Rajasthan, the assessee herein, by treating the activity as support service in the nature of 'Renting of Immovable Property Service' on a Forward charge basis.

ST/52575-52587/2018,
ST/51389,51478,51495,51715/2019
(with ST/EH No.50080,50099/2021)
ST/50917,51396-51399/2019
(with ST/EH/50077-50078/2021,
ST/Cross/50723-50725, 50737/2019)

16. He submitted that the allegation is that lease agreements entered for grant of mining rights falls within the definition of 'renting' in terms of Section 65B (41) and that renting of immovable property service is a 'Declared Service' under Section 66E of the Finance Act, 1994. Further, that by virtue of Section 66D (a) [Negative list] read with Section 65B (49) [definition of 'support services'] of the Finance Act, 1994 renting of immovable property provided by Government to a business entity has to be treated as 'support service' which is not covered under negative list of services; that therefore leasing of land for grant of mining rights is subject to levy of service tax.

17. Ld. Consultant submitted that by reading Rule 2(1)(d) (E) together with Notification No.30/2012 dt.20.06.2012, it has been concluded by Revenue that renting of immovable property is under forward charge of service tax and thus demand has been raised on the service provider, assessee herein, on the royalty and dead rent collected in terms of the lease agreement for the period 01.07.2012 to 31.03.2016.

18. The Ld. Consultant asserted that the grant of mining rights is a sovereign right of the Government and it is neither 'Renting of Immovable Property' nor a 'Support Service'. Therefore, the Royalty and Dead rent collected are not taxable as under clause (a) of Section 66D of the Negative List. As per this negative list sub-clause (iv) of Section 66D (a) states that when support services are provided by

ST/52575-52587/2018,
ST/51389,51478,51495,51715/2019
(with ST/EH No.50080,50099/2021)
ST/50917,51396-51399/2019
(with ST/EH/50077-50078/2021,
ST/Cross/50723-50725, 50737/2019)

Government to business entities it is taxable. The lease of land for grant of mining rights does not fall within the definition of 'support service'. Further, the word 'support services' was omitted w.e.f. 01.04.2016 and the word 'any service' was inserted.

18.1 It is alleged by Revenue that the definition of 'renting' under Section 65B (41) is wide so as to include 'use' of immovable property. Under the mining lease, the right to excavate the minerals is granted and this does not fall within the definition of 'renting'. There is no right given to lessee on the surface of the land. The assessee does not collect surface rent, and the surface rent for use of land for purpose of mining has to be paid to State Revenue Department as per the rates prevalent in the area.

18.2 The Ld. Consultant referred to the provisions contained in The Rajasthan, Minor Mineral Concession Rules, 1986, Form 5 i.e; the Modal form for mining lease and explained as under :

- (a) Lease rights are related to extraction, exploration and sale of specific minerals.
- (b) For extraction of each mineral from the same land, separate mining lease is granted by the assessee.
- (c) Assessee do not own land or grant any rights related to the land and the rights or permission related to the land has to be separately obtained by the lessee from the owner of the land.

ST/52575-52587/2018,
 ST/51389,51478,51495,51715/2019
 (with ST/EH No.50080,50099/2021)
 ST/50917,51396-51399/2019
 (with ST/EH/50077-50078/2021,
 ST/Cross/50723-50725, 50737/2019)

(d) Surface rent is separately payable by the lessee to the Revenue Department and the same is not charged or collected by the assessee.

19.1 The Ld. Consultant provided the following table in his written submission to explain the activity of mining lease :

S.No.	DESCRIPTION	REFERENCE	DEFINITION AND LEGAL PROVISION
a)	What is Royalty	Rule 3 (1) (xx)	" Royalty " means the charge payable to the Government in respect of the ore or mineral excavated, removed or utilized from any land as prescribed in schedule-I.
b)	What is Dead Rent	Rule 3 (10) (x)	" Dead Rent " means the minimum guaranteed amount payable for mining lease which is calculated as per the area of the lease and revisable as provided in these rules.
c)	Dead Rent is in the Nature of Minimum Royalty	Fifth Proviso to Sub Rule (3) of Rule 18	Provided further also that the lessee shall be liable to pay either dead rent or royalty in respect of each mineral whichever is higher but not both;
d)	Surface Rent is Separate from Royalty & Dead Rent	Sub Rule (2) (a) of Rule 18	The lessee shall pay for surface area used by him for the purpose of mining, surface rent to Revenue Department as per the rates prevalent in the area;
e)	Mining Lease does not give Surface Area Rights	Sub Rule 29 of Rule 18	The Lessee / lessees shall abstain from entering upon the surface of any occupied Government land or of any private land comprised within the leased area without previously obtaining the consent of the occupant in writing:
f)	Royalty & Dead Rent are paid against Movable Assets viz. minerals lying beneath the land and not Land	Clause 1 (a) of Form No.5	In consideration of the rents and royalties covenants and agreements hereinafter contained and on the part of the Lessee / Lessees to be paid, observed and performed the Government

ST/52575-52587/2018,
 ST/51389,51478,51495,51715/2019
 (with ST/EH No.50080,50099/2021)
 ST/50917,51396-51399/2019
 (with ST/EH/50077-50078/2021,
 ST/Cross/50723-50725, 50737/2019)

			hereby grants and demises up to the Lessee / Lessees, all these mines / beds / veins/seams of(hereinafter referred to as the said minerals) <u>situated, lying and being in or under the lands</u> which are referred to hereinafter and subject of other provisions of this lease.
g)	Surface Rent	Clause 4 (2) of Form No.5	Surface rent – The Lessee / Lessees shall pay for the surface area used by him / them (for the purpose of mining) surface rent equal to the land revenue payable under the Rajasthan Land Revenue Act, 1956 or any other law in force to the Land Revenue Department of State.
h)	Dead Rent is in the Nature of Minimum Royalty	Clause 4 (3) of Form No.5	Dead Rent – The Lessee / Lessees shall also pay for every year, the yearly dead rent as determined from time to time. Provided that the Lessee / Lessees shall be liable to pay the dead rent or royalty in respect of <u>each mineral</u> , which ever be higher but not both.
i)	What are Goods	Section 65B (25) of Finance Act, 1994	"goods" means every kind of movable property other than actionable claims and money; and <u>includes</u> securities, growing crops, grass and things attached to or forming part of the land which ae agreed to be severed before supply or under a contract of supply.

19.2 It is asserted by the Ld. Consultant that royalty and dead rent are collected by the assessee, Government, for removal or consumption or sale of mineral which is a movable property, and not

ST/52575-52587/2018,
ST/51389,51478,51495,51715/2019
(with ST/EH No.50080,50099/2021)
ST/50917,51396-51399/2019
(with ST/EH/50077-50078/2021,
ST/Cross/50723-50725, 50737/2019)

against rent for use of barren land or surface area which is immovable property. The definition of royalty spells out that it is paid against excavation, removal and utilisation of Ore or Mineral from the land. Mining rights are also granted on self-owned land of the lessee and in such situations, there cannot be any tax as it would be self service of renting. He referred to copy of land patta and lease agreement in which land owner itself is the lessee in the mining lease. That surface rent receipts would show that such rent is paid to revenue department, and not to assessee herein.

20. Ld. Consultant submitted that there is change in law with respect to taxability of services provided by the Government for the period 01.07.2012 to 31.03.2016 and thereafter from 01.04.2016 to 30.06.2017 (till the introduction of GST). For the period from 01.07.2012 to 31.03.2016, which is the disputed period in these appeals, 'support services' provided by Government to a business entities are taxable in terms of Section 66D (a) of the Finance Act, 1994. With effect from 01.04.2016, the word "support service" was omitted. Thus 'any service' provided by the Government to a business entity became exigible to service tax. The liability to pay service tax on services provided by Government to business entities except renting of immovable property is on the recipient of service. The demand against the assessee is only till 01.04.2016. The liability to pay service tax on 'renting of immovable property service' is on the provider of

ST/52575-52587/2018,
ST/51389,51478,51495,51715/2019
(with ST/EH No.50080,50099/2021)
ST/50917,51396-51399/2019
(with ST/EH/50077-50078/2021,
ST/Cross/50723-50725, 50737/2019)

service. However, there is no change as to who has to discharge service tax on renting of immovable property before and after 01.04.2016. The demand being made only till 01.04.2016 would show that renting of immovable property in the nature of mining lease is not taxable prior to 01.04.2016 also.

21. As per Rule 2 (1) (d) E and Notification No.30/2012, the person liable to pay service tax on renting of immovable property always remained under forward charge mechanism before and after 01.04.2016; that merely to suite interest of Revenue and in conflict to the uniform view taken by all Commissionerates across India (including Jaipur and Udhapur Commissionerates of Rajasthan), the Commissionerates of Alwar and Jodhpur of CGST and Central Excise have been taking such view of taxability on mining lease by which these show cause notices have been issued.

22. The show cause notices demanding service tax under renting of immovable property services on the very same activity of mining lease for the period after 01.04.2016 are issued to lessees and not to the assessee herein. For the period from 01.04.2012 to 31.03.2016 though Revenue claims that granting of mining right is renting of immovable property for which assessee (Government of Rajasthan) has to pay service tax on forward charge basis, for the period from 01.04.2016 to 30.06.2017, for the very same services, Revenue has issued notices to

ST/52575-52587/2018,
ST/51389,51478,51495,51715/2019
(with ST/EH No.50080,50099/2021)
ST/50917,51396-51399/2019
(with ST/EH/50077-50078/2021,
ST/Cross/50723-50725, 50737/2019)

the lessees for payment of service tax on royalty and the dead rent under reverse charge mechanism.

23. Learned Consultant asserted that from the above itself it is clear that the granting of mining rights by the Government will not fall under support services in the nature of 'renting of immovable property services' for the disputed period.

24. Learned Consultant submitted that CBEC has issued clarifications in this regard wherein it is stated that services provided by Government in their sovereign right to business entities in the nature of granting of mining rights will not come within the meaning of "support services". He relied on "Taxation of Services – An Education Guide dated 20.06.2012" issued by Tax Research Unit of CBEC. Ld. Consultant submitted that clarification issued by Department is binding upon the Revenue and the demand raised against the clarification cannot sustain.

25. Countering the arguments put forward by the Ld. A.R relying upon the decision of the Hon'ble High Court of Rajasthan in D.B. Civil Writ Petition filed by Udaipur Chambers of Commerce and Industry and Ors. (supra), he submitted that said writ petition is filed by lessee against whom show cause notices were issued demanding service tax for the period after 01.04.2016 under reverse charge mechanism. He submitted that this itself would substantiate the arguments of assessee in this case.

ST/52575-52587/2018,
ST/51389,51478,51495,51715/2019
(with ST/EH No.50080,50099/2021)
ST/50917,51396-51399/2019
(with ST/EH/50077-50078/2021,
ST/Cross/50723-50725, 50737/2019)

26. The Ld. Consultant argued on the ground of limitation also. The SCN has been issued invoking the extended period alleging that assessee has not taken service tax registration and that has wilfully and deliberately suppressed the facts with intent to evade payment of service tax. The said allegation is without any basis as the CBEC itself has issued clarification that grant of mining lease is not a support service. Further, being a Government Department the assessee cannot be saddled with intent to indulge in any wilful or deliberate violation of law. The collection of royalty and dead rent are properly accounted and subject to legal audit. He prayed that assessee appeals may be allowed and department appeals be dismissed.

ISSUE :

27. The issue to be decided is whether the assessee is liable to pay service tax under the category of "Renting of Immovable Property Services" falling within the definition of 'support services' for the period from 01.07.2012 to 31.03.2016 on the royalty and dead rent collected in terms of mining lease agreements for grant of mining rights.

FINDINGS :

28. It is not in dispute that the appellant is a Department of the State Government of Rajasthan. The grant of mining rights in the State of Rajasthan are governed by the Central legislation - 'The Mines and Minerals (Development & Regulation) Act, 1957' and the State

ST/52575-52587/2018,
ST/51389,51478,51495,51715/2019
(with ST/EH No.50080,50099/2021)
ST/50917,51396-51399/2019
(with ST/EH/50077-50078/2021,
ST/Cross/50723-50725, 50737/2019)

legislation –‘The Rajasthan, Minor Mineral Concession Rules, 1986’. Though the land may be owned by private persons, the minerals under the surface of the land are owned by the State and only State has the right to grant permission to mine, and remove these minerals. Private entity or person cannot do any act of mining of minerals or grant mining rights.

29. Now, let us proceed to examine whether the activity of entering into mining lease agreements with private parties for grant of mining rights and collection of royalty and dead rent is a taxable service in terms of the Finance Act, 1994, for the disputed period under the category of ‘renting of immovable property service’ falling under the definition of ‘support services’

30. As per the law that existed prior to 01.07.2012, leasing of vacant land / immovable property for mining purposes was not taxable and was expressly excluded from the definition of “renting of immovable property service”. Prior to 01.07.2012, only those services which were specified by definition given in subsection (105) of Section 65 were taxable.

31. A brief look into the history of service tax law would show that prior to 01.07.2012, Section 65 was the pivotal section of service tax law and it provided definition of all taxable services. The definition of ‘renting of immovable property’ was provided in Section 65 90(a). The taxable service of renting of immovable property was provided in

ST/52575-52587/2018,
 ST/51389,51478,51495,51715/2019
 (with ST/EH No.50080,50099/2021)
 ST/50917,51396-51399/2019
 (with ST/EH/50077-50078/2021,
 ST/Cross/50723-50725, 50737/2019)

Section 65 (105) (zzzz). Similarly, what is 'event management' is given in Section 65 (40) and the taxable service of event management is defined in Section 65 (zzzzr). An activity whether constitutes service was understood on the basis of the definition of classification and whether such service is taxable was to be understood on the basis of the definition of taxable service provided in Section 65 (105).

32. The said Section 65 (105) (zzzz) which defined 'renting of immovable property' prior to 01.07.2012 reads as under :

"SECTION 65. Definitions. — In this Chapter, unless the context otherwise requires, -

... ..

(105) "taxable service" means any service provided or to be provided -

(zzzz) to any person, by any other person, by renting of immovable property or any other service in relation to such renting, for use in the course of or, for furtherance of, business or commerce.

Explanation 1. — For the purposes of this sub-clause, "immovable property" includes —

- (i) building and part of a building, and the land appurtenant thereto;
- (ii) land incidental to the use of such building or part of a building;
- (iii) the common or shared areas and facilities relating thereto; and
- (iv) in case of a building located in a complex or an industrial estate, all common areas and facilities relating thereto, within such complex or estate,
- (v) vacant land, given on lease or license for construction of building or temporary structure at a later stage to be used for furtherance of business or commerce;

but does not include —

- (a) **vacant land solely used for** agriculture, aquaculture, farming, forestry, animal husbandry, **mining purposes;**

ST/52575-52587/2018,
 ST/51389,51478,51495,51715/2019
 (with ST/EH No.50080,50099/2021)
 ST/50917,51396-51399/2019
 (with ST/EH/50077-50078/2021,
 ST/Cross/50723-50725, 50737/2019)

- (b) vacant land, whether or not having facilities clearly incidental to the use of such vacant land;
- (c) land used for educational, sports, circus, entertainment and parking purposes; and
- (d) building used solely for residential purposes and buildings used for the purposes of accommodation, including hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities.

Explanation 2. — For the purposes of this sub-clause, an immovable property partly for use in the course or furtherance of business or commerce and partly for residential or any other purposes shall be deemed to be immovable property for use in the course or furtherance of business or commerce;”

[emphasis supplied]

33. From the definition, it can be seen that prior to 01.07.2012, definition of taxable service of ‘renting of immovable property services’ did not include renting of vacant land solely used for mining purposes.

34. A new service tax regime was introduced vide Finance Act, 2012 which gave up the system of identifying taxable services with reference to the definitions or classification of services. For the first time in 2012 “service” was defined under Section 65B. The definition of “service” in Section 65B is as under :

“SECTION 65B. Interpretations. — 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, but shall not include—

- (a) an activity which constitutes merely,—
 - (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
 - (ii) a transaction in money or actionable claim;

ST/52575-52587/2018,
 ST/51389,51478,51495,51715/2019
 (with ST/EH No.50080,50099/2021)
 ST/50917,51396-51399/2019
 (with ST/EH/50077-50078/2021,
 ST/Cross/50723-50725, 50737/2019)

(b) a provision of service by an employee to the employer in the course of or in relation to his employment;

(c) fees taken in any Court or tribunal established under any law for the time being in force.

Explanation 1. — For the removal of doubts, it is hereby declared that nothing contained in this clause shall apply to,—

(A) the functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that office as such member; or

(B) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or

(C) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority and who is not deemed as an employee before the commencement of this section.

.....”

35. The above Section 65B thus practically replaced erstwhile elaborate definitions and classifications provided in Section 65. Section 66B was inserted as the new charging section. A negative list was introduced as Section 66D which comprises of the list of services which are not taxable under law. This list mainly covers the services rendered by Government and local authority. Section 66D as it stood during the disputed period reads as under (prior to its' amendment w.e.f. 01.04.2016) :

SECTION 66D. Negative list of services. —The negative list shall comprise of the following services, namely :—

(a) **services by Government or a local authority excluding the following services to the extent they are not covered elsewhere—**

ST/52575-52587/2018,
 ST/51389,51478,51495,51715/2019
 (with ST/EH No.50080,50099/2021)
 ST/50917,51396-51399/2019
 (with ST/EH/50077-50078/2021,
 ST/Cross/50723-50725, 50737/2019)

- (i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;
- (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) **support services, other than services covered under clauses (i) to (iii) above, provided to business entities;**

[emphasis supplied]

36. From the above list of negative services given in Section 66D, it can be seen that in sub-clause (iv) of clause (a), when support services are provided by Government to business entities such services are exigible to service tax.

37. It then becomes necessary to look into the meaning of 'support services'. Section 65B (49) of the Finance Act, 1994 defines 'support services' as under :

"Support Service" means infrastructural, operational, administrative, logistic, marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall **include** advertisement and promotion construction or works contract, **renting of immovable property**, security, testing and analysis.

[emphasis supplied]

38. As per the above definition of 'support service', renting of immovable property is a kind of 'support service'. According to Revenue, leasing of land is in the nature of 'renting of immovable property services'. That though the leasing is provided by Government

ST/52575-52587/2018,
 ST/51389,51478,51495,51715/2019
 (with ST/EH No.50080,50099/2021)
 ST/50917,51396-51399/2019
 (with ST/EH/50077-50078/2021,
 ST/Cross/50723-50725, 50737/2019)

as it falls within the definition of “support services”, and the lease being to business entities is chargeable to service tax. The Revenue is thus of the view that after 01.07.2012 when the definition of identification of services as given under Section 65 of Finance Act, 1994 has been done away with and also for the reason that renting of immovable property falls within the definition of ‘support services’, the royalty and dead rent collected by the assessee is a ‘consideration’ for service which is subject to levy of service tax. The allegation in the SCNs is that the activity of renting vacant land for mining purposes is a “support service” provided by assessee (Government of Rajasthan) to business entities and therefore taxable.

39. Further, Revenue has relied on the Service Tax Rules, 1994 to contend that the liability to pay the service tax is on the assessee. The Service Tax Rules 1994 lays down from whom the service tax has to be collected. In other words, these rules lay down the person who is liable to pay service tax. The relevant Rules 2 (1) (d) E is noticed as under :

“RULE 2. Definitions.— (1) In these rules, unless the context otherwise requires, -

... ..

(d) “person liable for paying service tax”, -

.... ..

(E) in relation to [support]* services provided or agreed to be provided by Government or local authority except,-

ST/52575-52587/2018,
 ST/51389,51478,51495,51715/2019
 (with ST/EH No.50080,50099/2021)
 ST/50917,51396-51399/2019
 (with ST/EH/50077-50078/2021,
 ST/Cross/50723-50725, 50737/2019)

(a) renting of immovable property, and

(b) services specified sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994, to any business entity located in the taxable territory, the recipient of such service."

**The word 'support' has been omitted w.e.f. 01.04.2016.*

[emphasis supplied]

The above Rules lay down that when 'support services' are provided by Government to business entities other than renting of immovable property, the person liable to pay service tax is the recipient of service. In other words, for support services provided by Government in the nature of renting of immovable property, the liability to pay service tax is on the person providing services. In the present case, provider of service is the Government of Rajasthan. It would benefit to add that it is the service provider who is generally liable to pay service tax and in some services, the Rules cast the liability to pay service tax on the recipient of service. To make it clear, when the service provider is liable to pay service tax, the collection of service tax is said to be on forward charge basis. Conversely, when the recipient of service is liable to pay service tax, the collection of service tax is said to be on reverse charge basis.

40. Before we proceed further, in order to understand the contentions raised by the assessee, the amendments brought forth in the list of services in Section 66D (negative list) requires to be

ST/52575-52587/2018,
ST/51389,51478,51495,51715/2019
(with ST/EH No.50080,50099/2021)
ST/50917,51396-51399/2019
(with ST/EH/50077-50078/2021,
ST/Cross/50723-50725, 50737/2019)

mentioned. In the negative list of services, the words "support services" was omitted w.e.f. 01.04.2016 and the words "any service" was inserted. In consequence thereof, w.e.f. 01.04.2016 in terms of sub-clause (iv) of Section 66D (a), any service other than services covered under clauses (i) to (iii) of the list, if provided to business entities is subject to service tax. The person liable to pay service tax is the recipient of service.

41. It requires to be noted that even though 'any service' provided by Government to business entities was brought within the service tax net w.e.f. 01.04.2016, there was no change in Service Tax Rules with regard to the person who is liable to pay service tax in respect of renting of immovable property. It remained unchanged and the collection of service tax on renting of immovable property in terms of Rule 2 (1) (d) E of Service Tax Rules, 1994 continued as forward charge basis even after 01.04.2016. Interestingly, SCNs have been issued against lessee (service recipients) demanding service tax on the very same activity for the period after 01.04.2016. The assessee though continued to be the service provider the demand is only upto 01.04.2016.

42. From Rule 2 (1) (d) (E) of Service Tax Rules, 1994 noticed above, it can be seen that except for renting of immovable property

ST/52575-52587/2018,
 ST/51389,51478,51495,51715/2019
 (with ST/EH No.50080,50099/2021)
 ST/50917,51396-51399/2019
 (with ST/EH/50077-50078/2021,
 ST/Cross/50723-50725, 50737/2019)

service (and services specified in sub clause (i) (ii) and (iii) of clause (a) of Section 66D which are not relevant for this case) when the services are provided by Government to business entities, the liability to pay service tax is on the recipient of service. It is thus argued by the assessee that when there is no change in law as to the person liable to pay service tax, the Revenue cannot collect service tax from the assessee (Government) on forward charge basis for the period 01.07.2012 to 31.03.2016 and under reverse charge basis from the lessee on the very same service after 01.04.2016. That this act of Revenue by changing the liability to pay service tax after 01.04.2016 itself would show that the lease of land for mining purpose is not a support service.

43. Learned Consultant has relied upon the clarification issued by CBEC in their Education Guide dated 20.06.2012 wherein the meaning of support services has been clarified. It is categorically stated in this clarification that service of granting of mining rights provided by Government will not fall under the category of "support services". The relevant part of said Education Guide reads as under :

"4.1.7. What is the meaning of "support services" which appears to be a phrase of wide ambit?"

Support Services have been defined in section 65B of the Act as "infrastructural, operational, administrative, logistic, marketing *or* any other support of any kind comprising

ST/52575-52587/2018,
 ST/51389,51478,51495,51715/2019
 (with ST/EH No.50080,50099/2021)
 ST/50917,51396-51399/2019
 (with ST/EH/50077-50078/2021,
 ST/Cross/50723-50725, 50737/2019)

functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion construction or works contract, renting of immovable property, security, testing and analysis.

Thus services which are provided by government in terms of their sovereign right to business entities, and which are not substitutable in any manner by any private entity are not

support services e.g. grant of mining or licensing rights or audit of government entities established by a special law, which are required to be audited by CAG under section 18 of the Comptroller and Auditor-General's (Duties, Power and Conditions of Service) Act, 1971 (such services are performed by CAG under the statute and cannot be performed by the business entity themselves and thus do not constitute support services)".

[emphasis supplied]

The Board has categorically clarified that services in the nature of grant of mining or licensing rights or services of audit of Government entities performed under statute will not fall within the definition of "support services". In the case on hand, lease agreements entered for granting mining rights are under the provisions of Mines and Minerals (Regulation and Development) Act, 1957 and Allied Rules. The Modal Form of Mining Lease entered is also prescribed in the said Act / Rules. The lease agreement would show that the assessee has no role in deciding the terms of the agreement, or the consideration that has to be collected. The schedule in the Act / Rules lay down the type of Major / Minor minerals that can be permitted for mining and the

ST/52575-52587/2018,
ST/51389,51478,51495,51715/2019
(with ST/EH No.50080,50099/2021)
ST/50917,51396-51399/2019
(with ST/EH/50077-50078/2021,
ST/Cross/50723-50725, 50737/2019)

royalty / dead rent that can be collected. The lease agreement in the prescribed Form No.5 in terms of Rule 19 of MMR Rules furnished by the appellant is as under :

ST/52575-52587/2018,
 ST/51389,51478,51495,51715/2019
 (with ST/EH No.50080,50099/2021)
 ST/50917,51396-51399/2019
 (with ST/EH/50077-50078/2021,
 ST/Cross/50723-50725, 50737/2019)

M L No. 13/2011

GOVERNMENT OF RAJASTHAN
 DEPARTMENT OF MINES & GEOLOGY, RAJASTHAN

FORM NO. 5

MODAL FORM OF MINING LEASE

[See Rule (19)]

This indenture made this 27th day of Feb. 2013 between the Governor of the State of Rajasthan (hereinafter referred to as the Government which expression shall, where the context so admits, include his successors in office and assigns) of the one part and

(1) When the lessee is an individual N.A. (hereinafter referred to as the 'lessee' which expression shall where the context so admits, include his heirs, executors, administrators, representatives, and permitted assigns).

(2) When the lessees are more than one individual N.A. (Name of person) ----- of ----- (Address and occupation) and ----- (name of person) of ----- (Address and occupation) and ----- (name of person) of ----- (Address and occupation) (hereinafter referred to as the "Lessees" which expression shall, where the context so admits include their respective heirs, executors, administrators, representatives and permitted assign).

(3) When the lessee is a firm N.A. (Name of person) of ----- (Address) and ----- (Name of person) of ----- (Address).

All carrying on business in partnership at (address of the firm -----) under the name and style of (Name of the Firm) ----- (hereinafter referred to as the "Lessees" which expression shall, when the context so admits, include all the partners of the said firm, their representatives, heirs, executors, administrators and permitted assigns).

(4) When the lessee is a registered Company GREAT GRANITES PRIVATE LIMITED (Name of the Company) a Company registered under ----- (Act under which incorporated) and having its registered office at 507 Navjeevan Complex, Station Road, Jaipur - 302006 (Address) (hereinafter referred to as the "Lessee" which expression shall, where the context so admits, include its successors and permitted assigns) of the other part. Present Director Name I. Shri Vijay Kumar Arora S/o Shri Madan Lal Arora, 19 Nemi Nagar, Gotam Marg, Vaishali Nagar, Jaipur - 302021

XXX XXXX XXX

ST/52575-52587/2018,
 ST/51389,51478,51495,51715/2019
 (with ST/EH No.50080,50099/2021)
 ST/50917,51396-51399/2019
 (with ST/EH/50077-50078/2021,
 ST/Cross/50723-50725, 50737/2019)

4. The Lessee/Lesseees hereby covenants with the Government as following:-

(1) Covenants in accordance with Rajasthan Minor Mineral Concession Rules, 1986. The Lessee/Lesseees shall pay royalty on the quantity of the said mineral despatched from or consumed within the leased area at the rates specified in Schedule-I appended to Rajasthan Minor Mineral Concession Rules, 1986.

Provided that the said rates shall be liable to be revised by the Government and such revision shall apply to this lease subject to the condition that the enhancement in the rate of royalty shall not be made more than once during any period of four years.

(2) **Surface rent:-** The Lessee/Lessee shall pay for the surface area used by him/them (for the purpose of mining) surface rent equal to the land revenue payable under the Rajasthan Land Revenue Act, 1956 or any other law in force to the Land Revenue Department of State एवं उसमें समय समय पर होने वाले संशोधनानुसार।

(3) **Dead Rent:-** The Lessee/Lesseees shall also pay for every year, the yearly dead rent as determined from time to time.

Provided that the lessee/Lesseees shall be liable to pay the dead rent or royalty in respect of each mineral, which ever be higher but not both.

(4) **Rate and mode of payment of dead rent etc.** Subject to the provisions of sub-clause (3) above as from the day of registration the subsistence of the lease, the Lessee/Lesseees shall pay to the Government पंजीयन तिथी से अग्रिम तिमाही in four equal quarterly installments on जो पंजीयन तिथि day of प्रथम तिमाही the day of द्वितीय तिमाही, तृतीय तिमाही the day of and the day of चतुर्थ तिमाही for each year the minimum annual royalty as "dead rent" of Rs.1,20,000/- in the Office of the Mining Engineer/Assistant Mining Engineer of the Division/Sub-Division subject as aforesaid. This provision will also apply to the payment of Royalty. Surface rent will be deposited with the Revenue Department.

ST/52575-52587/2018,
 ST/51389,51478,51495,51715/2019
 (with ST/EH No.50080,50099/2021)
 ST/50917,51396-51399/2019
 (with ST/EH/50077-50078/2021,
 ST/Cross/50723-50725, 50737/2019)

XXX XXXXXX

Further- covenants of the lessee:- The Lessee/Lessees hereby Covenants/ Covenant with the Government as follows:-

(1) Unless specifically exempted by the State Government, the Lessee/ Lessees shall provide and at all time keep at or near the pit-head at which the said minerals shall be brought to bank a properly constructed and efficient weighing machine and shall weigh or cause to be weighed thereon all the said minerals from time to time brought to bank, sold, exported and also the converted products, and shall at the close of each day cause the total weights of the said minerals, ores and products raised, sold, exported and converted during the previous twenty four hours to be ascertained and entered in the aforesaid books of accounts. The Lessee/Lessees shall permit the Government at all time during the said term to employ any person or persons to be present at the weighing of the said minerals as aforesaid and to keep accounts thereof and to check the accounts kept by the Lessee/Lessees. The Lessee/Lessees shall give 15 days previous notice in writing to the Mining Engineer/Assistant Mining engineer of every such measuring or weighing in order that he or some officer on his behalf may be present thereat.

(2) **To allow test to weighing machine:-** The Lessee/Lessees shall allow any person or persons appointed in that behalf by the Government at any time or all times during the said term to examine and test every weighing machine to be provided and kept as aforesaid and the weights used therewith in order to ascertain whether the same respectively are correct and in good repair and order and if upon any such examination or testing any such weighing machine or weight shall be found incorrect or out of repair or order, the Government may require that the same be adjusted, repaired and put in order by and at the expenses of the Lessee/Lessees within fourteen days failing which the Government may cause such weighing machine or weight to be adjusted, repaired and put in order and the expense of so doing shall be paid by the Lessee/Lessees to the Government on demand, and if upon any such examination of testing as aforesaid any error shall be discovered in any weighing machine or weights to the prejudice of the Government, such error shall be regarded as having existed for three calendar months previous to the discovery thereof or inform the last occasion of so examining and testing the same weighing machine and weights, in case such occasion shall be within such period of three months and the said rent and royalty shall be paid and accounted for accordingly.

CS Scanned with CamScanner

XXXXXXXXXX

ST/52575-52587/2018,
 ST/51389,51478,51495,51715/2019
 (with ST/EH No.50080,50099/2021)
 ST/50917,51396-51399/2019
 (with ST/EH/50077-50078/2021,
 ST/Cross/50723-50725, 50737/2019)

Calculation of royalty, assignment of tax and recovery of dues:- It is hereby further agreed between the parties hereto as follows:-

(1) The royalty payable hereunder shall be calculated on the quantity despatched from or consumed within the leased area as per the rates prescribed in Schedule-I of Rajasthan Minor Mineral Concession Rules, 1986.

(2) The Lessee/Lessees shall not assign, sublet or part with the possession of the leased area or any part thereof except in the manner permitted by rule 15 of the said rules.

(3) Without prejudice to any other mode of recovery under any provision of this lease or any law, all amounts falling due hereunder against the Lessee/Lessees may be recovered as arrears of land revenue under the law in force for such recovery.

(4) The Lessee/Lessees shall duly and regularly pay to the competent authority all taxes, cesses and local dues in respect of the leased area, said minerals or the working of the mines.

CS Scanned with CamScanner

XXXXXXXXXXXX

44. The demand of service tax is on the royalty and dead rent collected by the assessee. Royalty and dead rent are defined in The Rajasthan Minor and Mineral Concession Rules, 1986. Relevant provisions are as under :

“Rule 3 (1) (xx) : “Royalty means the charge payable to the Government in respect of the ore or mineral excavated, removed or utilized from any land as prescribed in schedule-I:

Rule 3 (1) (x): “Dead Rent” means the minimum guaranteed amount payable for mining lease which is calculated as per the area of the lease and revisable as provided in these rules;”

45. The Revenue alleges that royalty and dead rent is the consideration paid for providing renting of immovable property services. The act of entering into a lease agreement for grant of mining rights

ST/52575-52587/2018,
 ST/51389,51478,51495,51715/2019
 (with ST/EH No.50080,50099/2021)
 ST/50917,51396-51399/2019
 (with ST/EH/50077-50078/2021,
 ST/Cross/50723-50725, 50737/2019)

arises out of statute, namely, Mines and Minerals (Regulation and Development) Act, 1957 as well as the Rajasthan Minor Minerals Concession Rules, 1986. No amount other than the charges specified in the Acts/Rules can be collected. The conditions that can be incorporated in the agreement are also prescribed by giving a Modal Agreement. The assessee who is the service provider thus has no say in the terms and the conditions of the agreement or on the charges that may be collected from the lessee. For that matter, the lessee who is the service recipient also has no say as to the terms or the consideration that has to be paid. Everything flows from the statute. The clarification issued by the Board under the new Tax regime w.e.f. 01.07.2012 explaining the application of definition of "support services" lays down that services provided by Government in the nature of grant of mining rights or licensing rights does not fall within the meaning of 'support services' and is not taxable service. The circular / clarification / instructions issued by the Board are binding on the Revenue.

46. Section 37B of Central Excise Act, 1944 lays down that all officers employed in the execution of the Act, shall observe and follow such orders, instructions and directions of the Board. The said Section reads as under :

“SECTION 37B. Instructions to Central Excise Officers. —
 The Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963), may, if it considers it necessary or expedient so to do for the purpose of uniformity in the classification of excisable goods or with respect to levy of duties of excise on [such goods or for the implementation of

ST/52575-52587/2018,
 ST/51389,51478,51495,51715/2019
 (with ST/EH No.50080,50099/2021)
 ST/50917,51396-51399/2019
 (with ST/EH/50077-50078/2021,
 ST/Cross/50723-50725, 50737/2019)

any other provision of this Act], issue such orders, instructions and directions to the Central Excise Officers as it may deem fit, and such officers and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the said Board :

Provided that no such orders, instructions or directions shall be issued —

(a) so as to require any Central Excise Officer to make a particular assessment or to dispose of a particular case in a particular manner;

or

(b) so as to interfere with the discretion of the Commissioner of Central Excise (Appeals) in the exercise of his appellate functions.”

[emphasis supplied]

47. Section 83 of the Finance Act, 1994 provides that the above section shall apply in relation to service tax also. The said Section reads as under :

“SECTION 83. Application of certain provisions of Act 1 of 1944. —
The provisions of the following sections of the Central Excise Act, 1944, as in force from time to time, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise :-

sub-section (2A) of section 5A, sub-section(2) of section 9A, 9AA, 9B, 9C, 9D, 9E, 11B, 11BB, 11C, 12, 12A, 12B, 12C, 12D, 12E, 14, 15, 15A, 15B 31, 32, 32A to 32P, 33A, 35EE, 34A, 35F, 35FF, to 35O (both inclusive), 35Q, 35R, 36, 36A, 36B, 37A, **37B**, 37C, 37D 38A and 40.”

[emphasis supplied]

Section 37B lays down that in order to achieve uniformity in the classification of excisable goods or with respect to levy of duties of excise, the Board can issue necessary instructions. In the case on hand, the Ld. Consultant has put forward a plea that only the Commissionerates of Jodhpur & Alwar have raised the demand and

ST/52575-52587/2018,
 ST/51389,51478,51495,51715/2019
 (with ST/EH No.50080,50099/2021)
 ST/50917,51396-51399/2019
 (with ST/EH/50077-50078/2021,
 ST/Cross/50723-50725, 50737/2019)

other Commissionerates all over the country have accepted the clarification issued by the Board. In various judgments it has been held that the circular/ instructions / clarifications issued by Board are binding on the Revenue.

48. In *Ramadey Micronutrients Vs CCE*- 1996 (87) ELT 19 (SC), the Hon'ble Apex Court held that Board circulars are meant for adoption of uniform practice and that they are binding on officers of Revenue Department.

49. The Hon'ble Apex Court in the case of *UOI Vs Arviva Industries (I) Ltd.* - 2007 (209) ELT 5 (SC) observed as under :

“2. We agree with the view taken by the High Court that the Circulars issued by the Central Board of Excise & Customs are binding on the department and the department cannot be permitted to urge that the Circulars issued by the Board are not binding on it.

3. This Court in a series of decisions has held that Circulars issued under Section 119 of the Income Tax Act, 1961 and Section 37B of the Central Excise Act, 1944 are binding on the revenue. [See *Navnit Lal C. Jhaveri v. K.K. Sen*, (1965) 56 ITR 198 (SC); *Ellerman Lines Ltd. v. CIT*, (1972) 4 SCC 474; *K.P.Varghese v. ITO*, (1981) 4 SCC 173; *Union of India v. Azadi BachaoAndolan*, (2003) 8 SCALE 287, 308; *CCE v. Usha Martin Industries*, (1997) 7 SCC 47; *Ranadey Micronutrients v. CCE*, (1996) 10 SCC 387; *CCE v. Jayant Dalal (P) Ltd.*, (1997) 10 SCC 402; *CCE v. Kores (India) Ltd.*, (1997) 10 SCC 338; *Paper Products Ltd. v. CCE*, (1999) 7 SCC 84 and *Dabur India Ltd v. CCE*, (2003) 157 E.L.T.129.

4. A slightly different approach was taken by this Court in *Hindustan Aeronautics Ltd. v. CIT*, (2000) 5 SCC 365 by two learned Judges which runs counter to the decisions, referred to above. The view taken in *Hindustan Aeronautics Ltd. (supra)* being contrary to the subsequent decision of the Constitution Bench of this Court in *CCE v. Dhiren Chemical Industries (I)*, (2002) 2 SCC 127 cannot be taken to be good law.

ST/52575-52587/2018,
 ST/51389,51478,51495,51715/2019
 (with ST/EH No.50080,50099/2021)
 ST/50917,51396-51399/2019
 (with ST/EH/50077-50078/2021,
 ST/Cross/50723-50725, 50737/2019)

5. This Court in *Commissioner of Customs, Calcutta & Others v. Indian Oil Corporation Limited & Another*, (2004) 3 SCC 488, after examining the entire case law, culled out the following principles :

“1. Although a circular is not binding on a court or an assessee, it is not open to the Revenue to raise a contention that is contrary to a binding circular by the Board. When a circular remains in operation, the Revenue is bound by it and cannot be allowed to plead that it is not valid nor that it is contrary to the terms of the statute.

2. Despite the decision of this Court, the Department cannot be permitted to take a stand contrary to the instructions issued by the Board.

3. A show-cause notice and demand contrary to the existing circulars of the Board are *ab initio* bad.

4. It is not open to the Revenue to advance an argument or file an appeal contrary to the circulars.”

[emphasis supplied]

50. In the case of *Seventh Plane Networks Pvt. Ltd. Vs UOI* 2020 (41)

GSTL - 165 (Del.). The Hon'ble High Court held as under :

“11. Having heard Learned Counsel for the parties and having perused the paper book, this Court finds that the expression ‘quantified’ in Section 121(r) has been extended/widened by way of para 2(v) of Circular dated 12th December, 2019 and paras 4(a) and 10(g) of Circular dated 27th August, 2019.

12. In *Navnit Lal C. Javeri v. K.K. Sen, Appellate Assistant Commissioner of Income Tax, Bombay*, AIR 1965 SC 1375, *K.P. Varghese v. Income Tax Officer, Ernakulam & Anr.*, (1981) 4 SCC 173 and *Paper Products Ltd. v. Commissioner of Central Excise*, (2001) 247 ITR 128 (SC) = [1999 \(112\) E.L.T. 765](#) (S.C.), it has been held that circulars are binding on departments and department cannot challenge them even if they are inconsistent with the statute.”

51. The Hon'ble High Court of Bombay in *CST Vs Citi Bank N.A.* - 2018

(18) GSTL 580 (Bom.) held that the clarification issued by the Board is

binding on the Revenue :

ST/52575-52587/2018,
 ST/51389,51478,51495,51715/2019
 (with ST/EH No.50080,50099/2021)
 ST/50917,51396-51399/2019
 (with ST/EH/50077-50078/2021,
 ST/Cross/50723-50725, 50737/2019)

“10. In fact, the Central Board of Excise & Customs on 24th February, 2009 has issued a clarificatory Circular No. 111/5/2009, clarifying that in respect of services following under category/clause (c) above i.e. Rule 3(1)(iii) of the Export of Services Rules, 2005, the relevant factor is the location of the Services recipient and not the place of performance. It also clarified that the phrase used ‘outside India’, is to mean that the benefits of the service is to accrue outside India. This Circular which is binding on the Revenue, also concludes the issue in favour of the respondent.

11. In view of the above, as the answer to question as proposed is self evident and covered by the binding Circular, no substantial question of law arises. Thus, not entertained.

12. Accordingly, appeal dismissed.”

The Board having clarified that the said activity is not support service, the demand raised cannot sustain.

52. We now proceed to analyse the definition of ‘support service’ in depth. The definition has already been noticed in para-37 above. At the cost of repetition, admittedly, the appellant would conform to the definition of ‘Government’ as contained in General Clauses Act, 1897 and also in terms of definition of ‘Government’ introduced in Section 65 (26A) of Finance Act, 1994 w.e.f. 14.05.2015. Further, it is also not in dispute that grant of mining rights in the State of Rajasthan are governed by the Central legislation – ‘The Mines and Minerals (Development & Regulation) Act, 1957’ and the State legislation – ‘The Rajasthan, Minor Mineral Concession Rules, 1986’. Mining rights are granted in accordance with these legislations. The statute provides for entering into a lease deed with the purported lessee and also for collecting royalty and dead rent. So, in order to grant mining rights, it is

ST/52575-52587/2018,
 ST/51389,51478,51495,51715/2019
 (with ST/EH No.50080,50099/2021)
 ST/50917,51396-51399/2019
 (with ST/EH/50077-50078/2021,
 ST/Cross/50723-50725, 50737/2019)

necessary to enter into a lease deed. In other words, the lease agreements are intended solely for the purpose of grant of mining rights. Such activity of grant of mining rights is exclusive to the State and cannot be rendered by any person or private entity. The activity can be said to be an exercise of sovereign right of the State.

53. The show cause notice has been issued alleging that 'renting of immovable property' falls within the definition of "support services". On analysis of the definition of 'support service', it can be seen that it contains three parts. The first part is the means part. This is followed by a middle part which explains the class / genus of services that can be incorporated as 'support services'. The third part is the includes part. For better appreciation, the same is shown as under :

"support service"

➤ means

infrastructural, operational, administrative, logistic, marketing

➤ *or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever*

➤ *and shall include*

advertisement and promotion construction or works contract, renting of immovable property, security, testing and analysis.

54. The means part mentions five services. The third part which is the includes part gives a list of services. The middle part explains the

ST/52575-52587/2018,
ST/51389,51478,51495,51715/2019
(with ST/EH No.50080,50099/2021)
ST/50917,51396-51399/2019
(with ST/EH/50077-50078/2021,
ST/Cross/50723-50725, 50737/2019)

category of services which can be accommodated along with other services in the includes part and means part. The middle part uses the word 'any other support of any kind'. These words 'any other support of any kind' are general words. However, this is expressly followed by the words '*comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing*'. Therefore, only those services which fit into the category of services which business entities can render by themselves can find place in the means part and includes part of the definition. In other words, the middle part fixes the category of services that would fall within the 'means part' and 'includes part' of the definition. The middle part applies to both the means part and the includes part. Though the word "include" is of wide import, the middle part curtails the category of services that can fall within the includes part. It can be said that middle part carves out a particular class / genus of services that would fall within the definition of "support services".

55. True, it may be that renting of immovable property is mentioned in the includes part of the definition of "support services". However, the said services of renting of immovable property has to be understood in the context of it being a support service provided by a Government to business entities. An activity of mere renting of immovable property by Government to business entities would fall within the definition of 'support service' and would be taxable. For example, renting of vacant

ST/52575-52587/2018,
ST/51389,51478,51495,51715/2019
(with ST/EH No.50080,50099/2021)
ST/50917,51396-51399/2019
(with ST/EH/50077-50078/2021,
ST/Cross/50723-50725, 50737/2019)

land for the purpose of parking vehicles, renting of building for commercial purposes etc. would fall within the definition of 'support services' provided by Government to business entities. This is because such services are in the nature which entities can carry out in ordinary course of operations by themselves. In other words, these are not services which can be provided exclusively by Government. The activity of lease of land solely for mining purposes is in the nature of exercise of sovereign right and is not a service that entities can carry out by themselves. The service of renting of immovable property would fall within the definition of 'support service' only if such services fit into the middle part of the definition.

56. The above analysis of the definition would throw more light on the argument advanced by the assessee that though liability to pay service tax on renting of immovable property remained always on the service provider before and after 01.04.2016, however, the Revenue has issued SCNs to the lessee/service recipient for the period after 01.04.2016. It can be gathered that the intention to omit the word 'support services' and substitute the word 'any service' wherein the liability is always cast upon the service recipient is to sort out the confusion created by the definition of 'support service' and to retain the sanctity of negative list which comprises of services rendered for the public by Government and local authority.

ST/52575-52587/2018,
ST/51389,51478,51495,51715/2019
(with ST/EH No.50080,50099/2021)
ST/50917,51396-51399/2019
(with ST/EH/50077-50078/2021,
ST/Cross/50723-50725, 50737/2019)

57. It appears that the clarification issued by Board that mining lease for grant of mining rights is not a 'support service' is in accordance with the statute.

58. The Ld. Authorized Representative has not made any submission countering the clarification issued by the Board. He has relied upon the decision of the Hon'ble High Court of Rajasthan in the case of Udaipur Chambers of Commerce & Industry and Ors. in Civil Writ Petition No.14578/2016. The said writ petition is filed by lessee / service recipients against whom show cause notices have been issued demanding service tax after 01.04.2016 under reverse charge mechanism. Pertinently after the deletion of the words "support services" in Section 66D (a). The demand of service tax is made under reverse charge mechanism for the period after 01.04.2016 after the substitution of the word "any service" in clause (iv) of Section 66D (a) whereas the demand in these appeals is on the allegation that 'renting of immovable property' is a 'support service'. The words 'support services' having been omitted w.e.f. 01.04.2016, the circular is not applicable for the period after 01.04.2016. The Hon'ble High Court therefore had no occasion to consider the meaning of 'support service' and also the Circular issued by Board. For these reasons, keeping in view the changed scenario of law after 01.04.2016, the judgement of the Hon'ble High Court of Rajasthan in above D.B. Civil Writ petition (supra) is not applicable to the disputed period and facts of this case.

ST/52575-52587/2018,
 ST/51389,51478,51495,51715/2019
 (with ST/EH No.50080,50099/2021)
 ST/50917,51396-51399/2019
 (with ST/EH/50077-50078/2021,
 ST/Cross/50723-50725, 50737/2019)

From the foregoing, the issue on merits is held in favour of assessee and against the Revenue.

59. Additionally, the Commissioner (Appeals) vide OIA No.533(CRM)ST/JDR/2019 dt. 10.06.2019 has set aside the demand confirmed by the original authority applying the Board circular. The relevant discussion is as under :

“5.5.....I find that the Department, on the one hand has imposed Service Tax Liability on the Royalty and Dead Rent collected by the Government from 01-07-2012 to 31-03-2016 under the Forward Charge Mechanism from the Government, classifying the same as “Renting of Immovable Property” which is excluded from RCM under Notification No.30/2012-ST and on the other hand w.e.f. 01-04-2016 to 30-06-2017, giving notices to the Lessees for payment of Service Tax by re-classifying the same service as “Other government Services” covered under RCM, as the Renting of Immovable property Service provided by the Government continues to be excluded from the RCM liability under Notification No.30/2012-ST. I find that merely to suit the interest of Revenue and to Collect Service Tax on Royalty & Dead Rent on Assignment of Rights to use Natural Resources by the Government (which is exempted under Negative List till 31-03-2016), the adjudicating authority has classified this Service as ‘Renting of Immovable Property’ in contravention to the legal provisions, explicit Clarification issued by the Tax Research Unit (TRU) of Central Board of Excise & Customs (CBEC) in Para 4.1.7 of its ‘Taxation of Services – An Education Guide’ dated 20-06-2012.”

60. Ld. Consultant has argued on the ground of limitation also. The period involved is from 01.07.2012 to 31.03.2016. The show cause notices have been issued on dates thereafter invoking extended period. In para-16 of the SCN dt. 05.10.2017 it is stated that assessee has not paid service tax and has not obtained services tax registration. It is also alleged that if the Revenue had not requested to provide information,

ST/52575-52587/2018,
ST/51389,51478,51495,51715/2019
(with ST/EH No.50080,50099/2021)
ST/50917,51396-51399/2019
(with ST/EH/50077-50078/2021,
ST/Cross/50723-50725, 50737/2019)

non-payment of service would have gone unnoticed. That therefore, assessee has wilfully and deliberately suppressed facts with intent to evade payment of service tax. On appreciation of facts, we find that, the assessee being the Department of State of Rajasthan, the allegation that they have wilfully and deliberately suppressed facts is without any basis. The details of lease deed, royalty and dead rent collected etc. are reflected in the accounts. No particular positive act of wilful and deliberate suppression has been unearthed by Revenue with cogent evidence. Further, in the present case, there is clarification issued by the Board that grant of mining rights is not support service. For these reasons, we hold that demand raised invoking the extended period cannot sustain. The assessee succeeds on the issue of limitation also.

61. From the discussions made above, after appreciating the facts, law and evidence placed before us we are of the considered view that the demand of service tax cannot sustain. In the result, the Assessee's appeals are allowed. The Revenue's appeals are dismissed. The cross objections filed by assessee are also disposed off.

(Pronounced in court on 25.11.2021)

**(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)**

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