

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

PRINCIPAL BENCH- COURT NO. I

Service Tax Appeal No. 50422 of 2017

(Arising out of Order-in-Original No. 05/COMMR/ST/JBP/2016 dated 09.12.2016 passed by the Commissioner, Central Excise, Jabalpur.)

M/s South Eastern Coalfields Ltd

Central Revenue Building, Napier Town,
Opposite to Hotel Roopali Inn,
Jabalpur, Madhya Pradesh

....Appellant

Versus

**Commissioner of Central Goods And
Service Tax, Customs And Excise,
Jabalpur**

Sohagpur Area, P.O. Dhanpuri,
Dist. Shahdol,
Madhya Pradesh-481114

....Respondent

APPEARANCE:

Mr. Rajeev Agarwal, Advocate for the Appellant
Shri Harshvardhan, Authorized Representative for the Department

CORAM:

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. HEMAMBIKA R PRIYA, MEMBER (TECHNICAL)**

Date of Hearing/ Decision: March 02, 2023

FINAL ORDER NO. 50317/2023

JUSTICE DILIP GUPTA

The order dated 09.12.2016 passed by the Commissioner confirming the demand of service tax on sizing of coal under 'business auxiliary service'¹ with penalty and interest has been assailed by M/s South Eastern Coalfield Ltd² in this appeal.

2. The dispute relates to the period 2014-15 and the appellant asserts that at the time of sale it recovered basic price of the coal, coal

1. BAS

2. the Appellant

sizing charges, surface transport charges and other levies from the customers and paid the applicable excise duty/sales tax on the said amount.

3. The department however, believed that by recovering sizing charges, the appellant provided taxable service under the category of 'business auxiliary service'. A show cause notice was issued by the department proposing such charges and the demand was ultimately confirmed by an order that has been impugned in this appeal.

4. Shri Rajeev Kumar Agarwal, learned counsel appearing for the appellant stated that the issue involved in this appeal has already been decided by this Tribunal in number of cases and in this connection referred to a decision of this Tribunal rendered on 22.02.2018 in **Service Tax Appeal No. 54276 of 2014³**.

5. Shri Harshvardhan, learned authorised representative appearing for the department has, however supported the order.

6. It does transpire from a perusal of the aforesaid decision rendered in **South Eastern Coalfield** that the issue stands covered in favour of the appellant. The Tribunal, after relying upon the decision of the Supreme Court in **Bharat Sanchar Nigam Ltd vs. Union of India⁴**, held that both sales tax and service tax cannot be made applicable on the same transaction. In this view of the matter, when the appellant is only cutting the size of the coal to be provided to the customers, it cannot be said that any service has been offered by the appellant to the buyer of coal. The order impugned dated 09.12.2016

3. **M/s South Easter Coalfield Ltd vs. CCE & S.T., Raipur decided on 22.02.2018**
4. **2006 (2) STR-161 (S.C.)**

therefore, cannot be sustained and set aside. The appeal is accordingly allowed.

(Order dictated in the Open Court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R PRIYA)
MEMBER (TECHNICAL)

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