

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi

PRINCIPAL BENCH – COURT NO. 3

Service Tax Appeal No. 51807 Of 2021

[Arising out of OIO No. ALW-EXCUS-000-COM-004-19-20 dated 03.07.2019 passed by the Commissioner of Central Goods and Service Tax, Alwar]

Mining Engineer

Department of Mines & Geology
Bharatpur Dist., Rajasthan

: Appellant

Vs

Commissioner of CGST-Alwar

A-Block, Surya Nagar, Alwar-301001

: Respondent

APPEARANCE:

Shri Ritul Patwa, Advocate for the Appellant

Shri Shashank Yadav, Authorized Representative for the Respondent

CORAM :

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER No. 50145/2026

Date of Hearing:15.01.2026

Date of Decision:23.01.2026

HEMAMBIKA R. PRIYA

The present appeal is filed by Mining Engineer¹, Department of Mines & Geology, Rajasthan against the order in original Alw-Excus-000-Com-004-19-20 dated 30.07.2019 wherein the demand of ₹3,47,87,620/-was confirmed.

2. The appellant is engaged in grant of mining leases for extraction and sale of minerals within Bharatpur district in Rajasthan. The appellant is also engaged in provisioning for the collection of dead rent, royalty, excess royalty etc. The department issued a show cause

1 the appellant

notice dated 23.10.2018 alleging that the appellant was collecting royalty which was in the nature of rent for allowing the use of vacant land for mining purposes. Hence, the service tax was leviable under renting of immovable Property. The Commissioner passed the impugned order holding that such royalty payment or dead rent was akin to rent paid for use of vacant land and confirmed the duty along with interest and penalty. Hence, the present appeal filed by the appellant is before this Tribunal.

3. Learned counsel for the appellant submitted that the royalty and dead rent for Grant of mining rights are exempted under section 66D(a) of the Finance Act, 1994. He further submitted that the issue is no more res-integra and had been decided in favour of the appellant in their own case vide **Final Order 52006-52027/2021 dated 25.11.2021.**

4. Learned AR for the department reiterated the findings of the impugned order. He, however, conceded that the matter was decided in favour of the appellant.

5. We have heard the learned counsel for the appellant and the learned AR for the department and perused the records. The issue for our consideration is no more res integra as the same stands covered by a decision of this Tribunal in appellant's own case.

The relevant extract is reproduced herein after:-

"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.

xxxxxxx xxxxxxxx xxxxxxxx xxxxxxxx
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 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.

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."

6. Similar view was taken by this Bench in the Final order no. 50932/2025 in the case of **Director vs Commissioner, Jodhpur.**

"8. In view of the guidelines issued by CBEC in the name of "Taxation of Service: An Education Guide" dated 20.06.2012 and the Lease Agreement entered for granting Mining Rights under the statutory provisions and the definition of 'royalty' and 'dead rent' as defined under the Rajasthan Minor and Mineral Concession Rules, 1986, the Bench observed as under:-

"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 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."

9. Noticing that the Board having clarified that the said activity is not "Support Service", the demand raised cannot be sustained, the Bench further appreciated the definition of 'Support Service', as under:-

"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 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 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 services", 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.....

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 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 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."

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11. Considering the change introduced in Section 66D(a) of the Negative List whereby the words "Support Services" were omitted with effect from 1.04.2016 and the words "any service" were inserted, read with Rule 2(1)(d)E of Service Tax Rules, 1994, which remained unchanged and the collection of service tax on "Renting of Immovable Property" continued on forward charge basis, even after 01.04.2016, the Bench accepted the submissions of the appellant 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 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. This shows that lease of land for mining purpose is not a "Support Service". The relevant paragraph reads as under:-

"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."

12. The observations of the Principal Bench on the merits of the case that mining lease for grant of mining rights is not a "Support Service" is in accordance with the statute is squarely applicable to the facts of the present case. The controversy is centered around the same period and the appellant being a Government Department is entitled to the same relief. The appellant is charging the amount only for extracting/excavation of minerals, oil and natural gases and the land which is being given on license/lease by them is not their land and hence they are not covered under the category of taxable service under "Renting of Immovable Property".

7. In view of the settled legal position, we set-aside the impugned order and allow the appeal.

(Order pronounced in the open Court on 23.01.2026)

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

G.Y.