

Compensation amount received on cancellation of allocation of coal blocks not leviable to service tax – CESTAT

16 November 2021



Summary

The Customs Excise Service Tax Appellate Tribunal (CESTAT) Kolkata bench has set aside the demand of service tax, interest and penalty on compensation received by the appellant pursuant to cancellation of allocation of coal blocks. The CESTAT observed that the act of cancellation of the coal blocks and consequent receipt of compensation was as per the law pronounced by the Hon'ble Supreme Court and the subsequent Coal Mines (Special Provisions) Act, 2015 and Coal Mines (Special Provisions) Rules, 2015 (CMSPA) passed by the Parliament. The appellant had no choice but to accept the cancellation of allocation. The receipt of compensation is a consequence of the operation of a statute and not the result of any agreement. Therefore, the CESTAT held that service tax cannot be levied on the compensation amount received by the appellant.

Facts of the case

- The appellant¹ is engaged in mining and selling coal. It was allocated certain coal blocks; however, the allocation was cancelled pursuant to a judgement of the Supreme Court.
- The appellant had invested in mining of these blocks. Therefore, to make up for the financial loss due to cancellation, CMSPA was enacted which provided for compensation to be paid to allottees whose allocation was cancelled.
- The revenue alleged that the appellant had tolerated the act of cancellation of coal blocks by the Ministry of Coal and received a compensation in lieu of the cancellation. Therefore, this activity of the appellant appears to be a declared service².
- Thereafter, the demand was confirmed along with interest and penalty. Hence, aggrieved by the said order, the appellant filed present appeal³ before the CESTAT.

CESTAT Kolkata observations and ruling⁴:

- **No choice but to tolerate cancellation:** The appellant had no choice for tolerating cancellation and it had to accept the same. The cancellation was in pursuance of the order of the Supreme Court and not because of a contract to tolerate cancellation.
- **Cancellation due to operation of law:** There was no consideration for tolerating the cancellation, only a compensation provided by the statute for the investment made in the mines by the appellant. The cancellation of allocation of coal blocks and receipt of compensation, both are by operation of law and not pursuant to some contract.
- **Compensation cannot be equated with consideration:** Consideration is a result of execution of contract whereas damages are a result of frustration of the contract. Even in cases where any amount is received under a contract as a compensation or liquidated or unliquidated damages, it cannot be termed 'consideration'.
- **Service tax cannot be levied:** The receipt of compensation by applicant is like the receipt

¹ MNH Shakti Ltd

² Section 65B (44) read with 65B (22) and section 66E (e) of the Finance Act, 1994

³ SERVICE TAX APPEAL NO. 75218 OF 2020

⁴ Final Order No.75689/2021 dated 10 November 2021

of a compensation when one's land is acquired by the government in public interest. It is completely incorrect to say that landowner has tolerated the acquisition of his land as per an agreement and charge service tax on the compensation. Therefore, service tax cannot be levied on amounts received by appellant as compensation.

Our comments

Even under the GST law, where certain activities or transactions constitute a 'supply', they shall be treated either as supply of goods or supply of services as referred to in Schedule II. However, if there is absence of element of supply of service, as in the present case, Schedule II may not be required to be referred as the primary condition to qualify as supply under Section 7(1), is not getting fulfilled. In this regard, it is pertinent to note that, the Bombay HC⁵ had earlier held that GST is not payable on damages/compensation paid for a legal injury. The HC observed that such payment does not have the necessary quality of reciprocity to make it a 'supply' and, therefore, GST is not payable on such amount.

⁵ Bai Mamubai Trust, Vithaldas Laxmidas Bhatia, Smt. Indu Vithaldas Bhatia vs. Suchitra

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