

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.75393 of 2024

(Arising out of Order-in-Appeal No.153/Pat/ST/Appeal/2023-24 dated 13.12.2023 passed by Commissioner(Appeals) of Customs, Central GST & Central Excise, Patna.)

M/s. J.K. Engicon Private Limited

(Chathardhari Bazar, Bhagwan Bazar, Chapra, Saran-841301.)

...Appellant

VERSUS

Commissioner of CGST & CX, Patna

(C.R. Building, Bir Chand Patel Path, Patna, Bihar.)

.....Respondent

WITH

Service Tax Appeal No.75451 of 2024

(Arising out of Order-in-Appeal No.155/Pat/ST/Appeal/2023-24 dated 21.12.2023 passed by Commissioner(Appeals) of Customs, Central GST & Central Excise, Patna.)

M/s. J.K. & BSECPL (JV)

(Chathardhari Bazar, Bhagwan Bazar, Chhapra, Saran-841301.)

...Appellant

VERSUS

Commissioner of CGST & CX, Patna

(C.R. Building, Bir Chand Patel Path, Patna, Bihar.)

.....Respondent

APPEARANCE

Shri Navin Kumar Agarwal, C.A. for the Appellant (s)
Ms. Suman, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)

FINAL ORDER NO. 75689-75690/2026

DATE OF HEARING : 11.06.2026

DATE OF DECISION : 15.06.2026

R. MURALIDHAR :

At the time of Hearing, the Ld. Consultant appearing for both the appellants submits the issue is identical in both the cases. Hence, it is prayed that both the appeals may be taken up for disposal together. The Ld. AR agrees the issue is identical. Hence, with the consent of both the sides, the appeals have been taken up together for disposal.

2. The Appellant, M/s. JK & BSECPL (JV), is engaged in the business of providing 'Works Contract' service in respect of roads and bridges, which are fully exempt from Service Tax. They were undertaking contract as sub-contractor of Gawar Construction Limited, who is engaged in construction of Road and Bridge. Since no Service Tax is applicable for the main contractor and the sub-contractor [the appellant], the appellant has not got themselves registered with the Service Tax Dept. Based on the Balance Sheet of the appellant, the Revenue Dept. noted that the appellant had disclosed expenditure on account of "Royalty on Mineral" amounting to Rs 1,04,00,677/-, during the period 2016-17. On such amount, the Dept. issued SCN dated 22.10.2021 alleging that the appellant is liable to pay service tax amounting to Rs. 15,60,102/- on RCM basis. The SCN was issued by invoking the extended period provisions.

3. The appellant, M/s. J. K. Engicon Private Limited, is engaged in the business of providing of 'Works Contract'. During the material period, they have provided the works contract service Mainly to NE Railway, Gorakhpur and Varanasi, PWD Division and others. During verification process initiated by Central GST & CX, range - Chappra, for the FY 2016-17 and 2017-18 (April to June 2017), from the documents submitted by the appellant, The Revenue has found that the appellant has made payment on account of "Royalty" amounting to Rs 24,40,966/- as found from the appellant's payment certificate. On

such amount, the Dept. issued SCN dated 22.10.2021 alleging that the appellant is liable to pay service tax amounting to service tax amounting to Rs. 3,66,145/- RCM basis. The SCN was issued by invoking the extended period provisions.

4. The appellants submitted that they are undertaking road and bridge construction work on which full Service Tax exemption has been granted in terms of Notification No.25/2012 ST dated 20.6.2012. They have not obtained any License towards any Mining activity from any State Govt authorities. The amount shown in the Balance Sheet is on account of withholding of the amounts by the clients on account of Royalty. Such amounts are subsequently released when the requisite Form M and N are submitted. Therefore, it was pleaded that no Service Tax is required to be paid on RCM basis. The appellants also submitted that the SCN issued on 22.10.2021 and 21.04.2022, is time barred. However, the Adjudicating authority, after due process, went on to confirm the demand along with interest and penalty. On Appeal, the Commissioner (Appeals) dismissed the Appeals. Hence, the appellants are before the Tribunal.

5. The Ld. Chartered Accountant, appearing on behalf of the appellant, makes the following submissions:

6. In the SCN it has been alleged that the appellant has paid 'Royalty' to the Government for giving the permission or license for using natural resources of Material/adjacent land in the state as per norms and rate. It is thus an assignment of right to use any natural resources. However, the appellant had never been granted any permission or license for using natural resources of Material/adjacent land. M/s. Gawar Construction Limited has been awarded the works contract for Construction of Road (State Highway) from Bihar State Road Development Corporation Limited. Further, M/s. Gawar

Construction Limited has given such contract to the appellant on sub-contract basis. The appellant has never been granted any permission regarding assignment of right to use any natural resources. Since, there is no service involved, the question of payment of service tax under RCM does not arise at all. That the appellant has granted a work order from M/s. Gawar Construction Limited for Construction of Road (State Highway) from Bihar State Road Development Corporation Limited. To complete the above contract, the appellant purchased stone chips and sands (Minerals) from the vendors. These vendors got the license from the mining department for permission regarding assignment of right to use any natural resources. The appellant has purchased the stone chips and sands from these vendors only.

7. As per the Rule 40(10) of the Bihar Minor Mineral Concession Rules, 1972, which states that

*"To prevent evasion of royalty it is provided that works contractor shall purchase the minerals from lessee/permit holder and authorised dealers only and no Works Department shall receive the bill which the works contractors submit to recover cost etc. of mineral used by them in completion of the works of the Works Department under any agreement from the works contractor if the said bill is not accompanied by an affidavit in **Form 'M'** with particulars in Form 'N' of these Rules alongwith a photo copy of the said affidavit and particulars. It shall be the duty of the officer who receives or on whose behalf the said bill is received to send the photo copy of the Affidavit and particulars to the District Mining Officer/Assistant Mining Officer within whose jurisdiction the mineral was allegedly purchased, for verification.*

If contents of the said affidavit on verification by the concerned District Mining Officer/Assistant Mining Officer is found to be false either wholly or partly it shall be presumed that the concerned mineral was obtained by illegal mining and

in that event the said District Mining Officer/Assistant Mining Officer shall take action as prescribed in these Rules against the maker of the said affidavit:

Provided that if the Works Contractor deposits or pays the royalty in respect of the mineral so consumed/supplied by him as shown in the aforesaid affidavit and particulars the said District Mining Officer/Assistant Mining Officer in his discretion may not take action as prescribed in this Rule".

8. Therefore, in the present case, the appellants have purchased the stones and other minerals from such registered vendors. The Bihar Govt Department which is the authority granting the contract of Road and Bridge Building, retains the value of Royalty from the Bills submitted by the Contractor, to ensure that the Form M and Form N are submitted by the Vendor for having purchased the Minerals from the Registered License Holder Vendors, who are liable to pay the Royalty to the Govt. Thus, the amount shown in the Balance Sheet is the amount being withheld by the Bihar Govt, till the Form M and Form N is submitted by the contractor. The withheld amounts are released as and when such Forms are submitted by the contractor. This is an ongoing process. The sample copies of such Form M and N is enclosed for the perusal of the Hon'ble Tribunal.

9. Further, the appellants have not been granted any Mining rights by way of any License. The Service Tax is payable only when any Mining Rights have been obtained by anyone on which Royalty is paid to State Govt. In this case, the Revenue Dept has not brought in any evidence to the effect that the appellants had obtained any Mining Rights on which they are paying the Royalty.

10. Based on the above submissions, the Ld Consultant prays that the appeals may be allowed on merits.

11. He also takes the stand that the SCN issued on 22.10.2021 and 21.04.2022 for the transactions taking place in 2016-17 is clearly hit by time bar. He submits that appellant had not obtained any Mining License and were not paying any Royalty to any State Govt Dept. On the other hand part of their Invoice value was being withheld by the State Govt Authorities, for want of Form M and Form N to be submitted by the appellants. Therefore, the appellants carried a *bona fide* belief that no Service Tax is payable on RCM basis for such transactions.

12. It is submitted that the Department has not conducted any independent investigation in this instant case. Further, it is evident from the Show Cause Notice itself that the Department (Anti evasion unit) has simply taken the figures available in Balance Sheet provided by the appellants and accordingly worked out the differential demand. It is well settled by the CESTAT in several cases that where the demand is based solely on balance sheet data, the extended period is not invocable and the demand is liable to be set aside on limitation alone. Also, The Department itself admitted that the appellant has provided numbers of documents as asked for time to time, when asked by the Department. Therefore, the entire information was in the knowledge of the Revenue. The appellants rely upon the following cases for arguments on limitation:

- I. *M/s. Munna Construction v. Commissioner of C.Ex. & S.T., Jamshedpur [Final Order No. 77625 of 2024 dated 22.11.2024 in Service Tax Appeal No. 76359 of 2014 (CESTAT, Kolkata)]*
- II. *M/s. Arya Logistics v Commissioner of C.Ex. & S.T., Rajkot [Final Order No. 11700 of 2023 dated 17.08.2023 in Service Tax Appeal No. 12389 of 2014 (CESTAT, Ahmedabad)]*
- III. *M/s. Balajee Machinery v Commissioner of C.G.S.T. & Excise, Patna-II [2022 (66) GSTL 440 (Tri.-Kol)]*

13. In view of the above submissions, it is prayed that the appeals may be allowed even on account of time bar.

14. The Ld. A R appearing for the Revenue submits that the appellants have recorded that they have incurred expenditure on account of 'Royalty on Mineral' in the Balance Sheet. As per the Service Tax provisions, on payment of Royalty, the Service Tax is payable on RCM basis with effect from 01.04.2016 in view of the amendment carried out to Section 66D of the Finance Act 1994. The non-payment of Service Tax liability came to light only on account of detailed verification of the books of accounts of the appellant. Therefore, he justifies the confirmed demands.

15. Heard both the sides. Perused the appeal papers and other documents submitted.

16. The Royalty payment made for rights granted towards Mining was earlier covered under Negative List – Section 66D till 31.03.2016. With effect from 1-4-2016, however, section 66D(a)(iv) of the Finance Act was amended and '*all services provided by the government to a business entity*' were excluded from the negative list of services. Thus, services rendered by the government to a business entity became chargeable to service tax with effect from 1-4-2016. During the period under discussion in the present case, requires the License Holder to pay the Service Tax on RCM basis.

17. The Royalty is collected for the rights being conferred to any party by way of License, by which the party is allowed to mine the mineral for a particular number of years. Generally, such Mining Lease [Right] is conferred for a number of years. As and when the goods are mined, the right holder is required to pay the Royalty. The Service Tax is to be paid on RCM basis for such Royalty paid by the License Holder.

In the present case, the SCN is totally silent as to what kind of License was obtained by the appellant from which authority. It is also silent as to how such Royalties were being paid by the appellant. In case of such Licenses, the License holder is also required to file periodical Returns with the State Govt. authorities towards the quantity of goods which are mined and Royalty paid. The Revenue has not brought in any evidence in this context. On this ground itself, the confirmed demand fails.

18. The entire demand is based on the entry made in the Balance Sheet showing the expenditure on account of 'Royalty on Mining'. The appellants have explained the reason for such entries. As could be seen from the Rule 40(10) of the Bihar Minor Mineral Concession Rules, 1972, extracted above, Bihar State Road Development Corporation, insists that the Stones are procured from the License Holders, who are liable to pay the Royalty. Till the proof of having purchased the stones from such License Holders is not made available by the appellant by way of Form M and N, the Royalty portion is withheld and is released once the Forms are submitted.

19. I have gone through some of the sample documents submitted by the appellants, which are reproduced below:

Service Tax Appeal Nos.75393 & 75451 of 2024

M/s J.K.Engicon Private Limited
(Unit: M/s J. K. Construction, PAN: AAFFJ7987C)
Regd.Off: Hathua Chhawani, Chatradhari Bazar,
PS:Bhagwan Bazar,Chapra-841301 (Bihar)

Details of Contract Receipt Account as on 31.03.2017									
Name of Department (Govt.Agencies)	Gross Amount	Income Tax	Sales Tax (VAT)	Security Deposits	Royalty Cess	& Materials	Royalt (LWC)	Net Payment/ Cheque Amount	
M/s J K Construction, Firm									
01.N.E.Railway, Gorakh Pur (U.P)	10986786.00	248959.00	364424.00	451583.00	0.00	69491.00	0.00	9852329.00	
03. R W D Works Division, Mahnar (Bihar)	2033230.00	40665.00	101662.00	355815.00	0.00	0.00	20332.00	1514756.00	
04. R W D Works Division Chapra (Bihar)	18994541.00	379891.00	1066312.00	2356048.00	1441042.00	0.00	183319.00	13567929.00	
Sub Total "A"	32014557.00	669515.00	1532398.00	3163446.00	1441042.00	69491.00	203651.00	24935014.00	
M/s J K Engicon Private Limited									
01. Megotia Construction	8175636.00	163513.00	0.00	0.00	0.00	0.00	0.00	8012123.00	
02. Divisional Fin. Manager, N.E. Rail Varanasi	4807278.00	108934.00	240364.00	480728.00	0.00	8172.00	39969.00	3929111.00	
Sub Total "B"	12982914.00	272447.00	240364.00	480728.00	0.00	8172.00	39969.00	11941234.00	
Grand Total A+B	44997471.00	941962.00	1772762.00	3644174.00	1441042.00	77663.00	243620.00	36876248.00	

For J.K.Engicon Private Limited

(Vikas K Singh) (Director) (Managing Director) g Director

DIN:06464165 DIN:01206734

20. From the above Statement it is seen that Rs.14,41,043/- has been withheld by RWD Works Division under the Heading of Royalty. This cannot be viewed as Royalty payment by the appellant towards any License granted for Mining by the State Department.

SLN: 26
Date: 2/9/19

Stamp Duty: 00000
Stamp Value: 0000100
374144
INDIA
[FORM-M]

Stamp: 4.9.2018
Manoj Kumar
R. NO. 1135
Govt. of Bihar (India)

Stamp: 4.9.2018
Manoj Kumar
R. NO. 1135
Govt. of Bihar (India)

In the court of Executive magistrate:

1. I, Ganm Lov Fouja Ltd S/o Manoj Kumar resident of Moh/Vill. Digha Dubaul P.S. Baikunthm. District. Galdqui
Do hereby solemnly affirm and declare as follows:-

2. That I am a registered Contractor of the R.C.D. Department of Government of Bihar, India and have taken works of construction of Mohammatpur Karankudasiya Sect. 20-20km Mohammatpur Chok Road

3. That in the course of aforesaid work I have supplied/consumed the following quantity of minerals:
a. 504 M³ Boulder Stone form 12-4-18 to 13-5-18 (Dates) which was purchased by me from M/s Hani Sankar Singh Mirzab (Up) (full) address of lessee/Permit Holder/other Person.

4. That the material described in Paragraph no .3 above were Purchased by me in good faith and after due inquiry that the seller there of was authorise do deal with that details
Of which is given below:-

I. Name and address of the seller, if the seller is lessee Permit holder the details of the mine from which the minerals so sold was extracted.....
M/s Hani Sankar Singh Mirzab (Up)
If the seller is not a Permit holder/lessee then the name and address of other person from which the seller has Purchased.....

II. The quantity of the Purchased mineral with date 504 M³ Boulder dt. 12-4-18 to 13-5-18

5. That the certificate issued by the seller from whom the mineral consumed/supplied by me was Purchase is attached here with I believe to be true.

6. That the contents of this affidavit are true to the best of my Knowledge and belief.

(FORM-N)

[See Rule 40 (10)]

Form-N under rule 40 (10)- Specimen of the certificate which the works contractor will obtain from the sellers which he will enclose with the bill along with the affidavit.

1. Name and address of the seller if the seller is a lessee/permit holder the details of the mine from which the consumed mineral was extracted.
M/S Hanisankar Singh Mirzapur (up)
2. If the seller is not the lessee/permit holder then the name and address of that person from whom the said seller had purchased the minor mineral which we subsequently purchased by work contractor with the date of such purchase by the seller.

Name and address of the purchaser/Contractor
*Ganar Constructive Ltd
 Dighuz Dubauti, Gopdga*

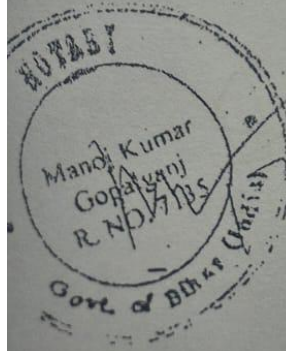
Quantity of Mineral purchased/by the contractor with date:
5.64 Cu Bander dt. 12-4-18 to 13-5-18

Certified that the aforesaid parties are true to my knowledge and belief.

[Signature]

Signature of Seller

Date: *12/9/18*



[Handwritten initials/signature]

(3)

21. The above Form M and N submitted by the main contractor shows that such Forms are being submitted to get the withheld amounts released by the Road Development Corporation.

22. The above documentary evidence prove that the 'Royalty on Mineral' accounted for by the appellant is only on account of such withheld amounts.

23. Considering the factual details and statutory provisions discussed above, I set aside the impugned Orders and allow the appeals on merits.

24. As canvassed by the appellants, the SCN has been issued based on the entries made in the Balance Sheet itself, without any corroborative evidence. The factual details point out that they appellant has not been granted any Mining Rights. Therefore, the appellant could have carried a Bonafide belief that no Service Tax is required to be paid on RCM basis. The SCN has been issued on 22.10.2021 and 21.04.2022 and the appellants have been able to counter the demand by proper evidence showing that no Service Tax is payable.

25. This Bench in several cases has held that mere reliance of 26AS / Balance Sheet, without any corroborative evidence, for issuing of Show Cause Notice is not legally sustainable for extended period and the demand would be hit by time bar. This Tribunal in the case of **Tabassum Enterprises vs. C, CGST & CX vide Final Order No.75452/2025 dated 19.09.2025 (Service Tax Appeal No.75037 of 2025)** has held as under:

"5. I find that the present demand has been raised and confirmed on the basis of data provided by the Central Board of Direct Taxes (CBDT). It is observed that the said demand has been confirmed without the support of any independent or corroborative evidence from the Service Tax records. Such mechanical reliance on Income Tax

data, without verification of the nature of receipts or proof of taxable services rendered, is impermissible in law. It is a settled legal position that mere entries in income tax returns or Form 26AS cannot, by themselves, establish liability under the Finance Act, 1994, unless corroborated by evidence demonstrating rendition of taxable service.

5.1. In support of this view, I rely upon the decision in the case of M/s. Rishu Enterprise vs Commissioner of C.G.S.T. & Excise, Dibrugarh, in Final Order No. 75177 of 2024 dated 08.02.2024 in Service Tax Appeal No. 75509 of 2022 [CESTAT, Kolkata], wherein this Tribunal has observed as under: - "8. In view of the judicial pronouncement of this Tribunal, we hold that merely on the basis of Form 26-AS issued by the Income Tax Department, the demand of Service Tax is not sustainable against the appellant.

11. In view of this, we hold that the impugned demand is not sustainable against the appellant on the basis of the details provided by the Income Tax Department in Form 26AS and the extended period of limitation is not invocable ."

5.2. The same view has been held by the Tribunal at Allahabad in the case of M/s. Quest Engineers & Consultant Pvt. Ltd. v. Commissioner of C.G.S.T. & C.Ex., Allahabad [2022 (58) G.S.T.L. 345 (Tri. - All.)] observing as follows: -

"12. We further find that Form No. 26AS is not a statutory document for determining the taxable turnover under the Service Tax provisions. We find that Form No. 26AS is maintained on cash/ receipt basis by the Income Tax Department for the purpose of tax deducted at source, etc. being the relevant data for Income Tax. Whereas under the Service Tax provisions, the service tax is chargeable on mercantile basis (accrual basis) on the service provided whether the value of such service is received or not. Thus, we find that the whole basis of show cause notice is incorrect and/or misconceived ."

5.6. Following the ratio of the decisions cited supra, I hold that the demand of service tax confirmed in the impugned order, solely relying the data received

from CBDT, without adducing corroborative evidence in support, cannot be sustained. Thus, I observe that the demand confirmed in the impugned order is liable to be set aside on this ground itself."

26. The ratio of the cited case law is squarely applicable to the facts of the present case. I find that in the present case the allegation of suppression has not been corroborated by any evidence by the Revenue against the Appellants. Therefore, following the ratio of the cited case law, I set aside the impugned orders on account of time bar also.

27. The appeals are allowed. The appellants would be eligible for consequential relief, if any, as per law.

(Order pronounced in the open court on 15.06.2026.)

Sd/

(R. MURALIDHAR)
MEMBER (JUDICIAL)

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