

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE  
TRIBUNAL  
REGIONAL BENCH : ALLAHABAD  
COURT No. I**

**APPEAL No.ST/52456/2015-CU[DB]**

(Arising out of Order-in-Original No.(ST-198/2013)11 of 2015 dated 26/03/2015 passed by Commissioner, Central Excise & Service Tax, Allahabad)

**M/s Surya Chemicals**

**Appellant**

Vs.

**Commissioner, Customs, C. Excise & S. Tax, Allahabad**

**Respondent**

Appearance:

Decide on Merits

Shri Mohd. Altaf, Assistant Commissioner (AR),

for Appellant

for Respondent

**CORAM:**

**Hon'ble Mrs. Archana Wadhwa, Member (Judicial)**

**Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)**

Date of Hearing : 19/11/2018  
Date of Pronouncement : 07/12/2018

**FINAL ORDER NO. 72786 / 2018**

**Per: Archana Wadhwa**

The appellants have made a request for deciding the matter on merits and in the light of the earlier order of the Tribunal in the case of M/s D.K. Associates V/s Commissioner of Customs, Central Excise & Service Tax, Allahabad vide Final Order No. 71973/2018 dated 20.08.2018. Accordingly, we have heard learned AR and have gone through the impugned orders.

2. We find that Service Tax stands confirmed under the category of 'Mining of Mineral Oil & Gas Services', on the findings that the appellants by selling the explosive to the service recipients and supervising the use of the same, they have rendered the above services. On the other hand it is the contention of the appellant that mere sale of explosive and supervising the use of the same inasmuch as the same is essential so as to avoid any accidental damage, cannot be held to be an activity falling under the category of 'Mining of Mineral Oil & Gas Services'.

3. We find that the identical issue was considered by the Tribunal in the case of M/s D.K. Associates and vide Final Order No. refereed supra and by making a reference to the earlier decision of the Tribunal in the case of M/s Explo Tech Services V/s Commissioner of Central Excise and Service Tax, Raipur reported as 2017-TIOL-3094-CESTAT-DEL, the matter was remanded for fresh consideration. For better appreciation para 5 of the said order is reproduced below:-

*"5. We have heard both the sides and perused the appeal records. On the first point regarding service tax liability of the appellant with reference to certain contracts executed with 5 other companies, under the category of Site Formation and Clearance, Excavation and Earthmoving and Demolition Service, we have perused the supply orders placed by these companies. It appears that these companies have placed orders for supply of explosives and accessories and there is no service element in the work order.*

*As such, we find force in the submission made by the appellant. Amount received by them in respect of supply of explosives, without involving rendering of service in respect of various contracts, cannot be subjected to service tax levy, without individually examining and appreciating the scope of supply/work order. This has to be done by the Original Authority to correctly determine the service tax liability of the appellant.”*

4. As is seen from above, the matter stands remanded for examination of the contract entered into between the appellant and the service receiver and for deciding the issue, afresh in the light of the Tribunal's Order referred supra. By following the said decision, we set aside the present impugned order and remand the matter to Original Adjudicating Authority. All the issues are kept open for the appellants to contest the same before the Original Adjudicating Authority for which purpose they would be provided an opportunity.

(Pronounced in Court on 07.12.2018)

Sd/-  
**(Anil G. Shakkarwar)**  
**Member (Technical)**

Sd/-  
**(Archana Wadhwa)**  
**Member (Judicial)**

*Nihal*