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

APPEAL No.ST/52575/2015-CU[DB]

(Arising out of Order-in-Original No.(ST-156/2013)07 of 2015 dated 12/03/2015 passed by Commissioner, Customs, Central Excise & Service Tax, Allahabad)

M/s Om Transport **Appellant**

Vs.

Commissioner, Central Excise & Service Tax, Allahabad **Respondent**

Appearance:

Shri Sanjay Kumar (Adv.) for Appellant
Shri Sandeep Kumar Singh, Deputy Commissioner (AR), for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing/ Decision : 27/02/2019

FINAL ORDER NO.**70474 / 2019**

Per: Archana Wadhwa

The issue involved in the present appeal is as to whether the activity undertaken by the appellant under a contract with M/s Northern Coal Fields i.e. loading/unloading of coal, transportation of Coal within the mining area, removal of over-burden coal within the mining area etc. can be held to be mining services so as to levy service tax on the same. The Lower Authorities by holding that the said activities would be classifiable under the mining services, confirmed the demand against the appellant by invoking longer period of limitation. In addition interest also stands confirmed and penalties imposed upon them.

2. We note that the issue is no more *res-integra.* Tribunal in the case of M/s Ashirwad Equipments Pvt. Ltd. V/s Commissioner of Customs, Central Excise & Service Tax, Allahabad reported as 2018 (9) TMI 1209 – CESTAT Allahabad has held that the said activities would not be taxable. For better appreciation we reproduce relevant paragraphs of the said decision:-

> *"2. We note that the issue is no more res integra and stands settled by the various decisions of the Tribunal. In the case of Sarvmangla Construction Co. v. CCE & ST, Raipur [Final Order No.53110- 53113/2016 dated 26.05.2016, identical services provided by the appellant to M/s.South Eastern Coalfield, were held as not taxable. For arriving at the above finding, Tribunal relied upon the precedent decisions in the case of Arjuna Carriers Pvt.Ltd. v. CST, Raipur [2014- TIOL-3098-CESTAT-DEL]. For better appreciation relevant paragraph from the said order is reproduced below:- "5. The short question involved in these appeals for consideration by this Tribunal is as to whether the service provided by the appellants for transportation of goods within the mining area is taxable under the category of "mining service" for payment of service tax. We find that the issue involved in this case is squarely covered by the decision of the Tribunal referred supra, wherein it has been held that mere handling of coal and movement of the same through the motor vehicles or any other means of transport would not constitute mining service for the purpose of levy of service tax." 3. To the same effect another decision of the Tribunal in the case of Prahlad Rai Agarwal v. CCE, Raipur [Final Order No.54374/2017) dated 22.06.2017."*

3. Inasmuch as the issue stands decided, we set aside the impugned order and allow the appeal to that extent.

(Pronounced & Dictated in Court)

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

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