FAX : 011-26108426

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

Old Red Building ~~Room No 210 & 220~~ ~~2nd Floor~~, 38,M.G.Marg, Civil Line,

~~Office Of Commissioner Of Central Excise,Customs,Service Tax~~, Allahabad-211001

~~ABC~~ APPEAL BRANCH

Dated: 17/09/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70014 /2015- dated 16/09/2015

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

Asstt. Registrar(~~ABC~~ Appeal Branch)

Application	Appeal	Name and Address of Appellant
	ST/1330/2010	NORTHERN COAL FIELDS BINA PROJECTS, BINA, DISTT- SOBEBHADRA, UP

Name and Address of Respondent: CCE ALLAHABAD, 38,M.G.MARG, CIVIL LINES, ALLAHABAD..

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s): SH AKSHAT SRIVASTAVA,ADV CHAMBER NO 18, SUPREME COURT OF INDIA, NEW DELHI.

4 Bar Association, CESTAT, Delhi

5 Director Publications, Customs, Excise, I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38
13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad,-500082
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar(~~ABC~~ Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CIRCUIT BENCH AT ALLAHABAD

APPEAL NO: ST/1370/2010

[Arising out of Order-in-Appeal No: 19/ST/ALD/2010 dated 26/02/2010 passed by the Commissioner of Central Excise (Appeals), Allahabad.]

For approval and signature:

Hon'ble Shri P. S. Pruthi, Member (Technical)
Hon'ble Shri S.S. Garg, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	No
2.	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	No
3.	Whether Their Lordships wish to see the fair copy of the Order?	:	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	:	Yes

Northern Coal Fields ...*Appellant*

Versus

Commissioner of Customs & Central Excise
Allahabad ...*Respondent*

Sd/-

Appearance:

Shri Inderjeet Yadav, Advocate for the appellant

Shri Govind K Dixit, Addl. Commissioner (AR) for the respondent

CORAM:

Hon'ble Shri P. S. Pruthi, Member (Technical)
Hon'ble Shri S.S. Garg, Member (Judicial)

Date of hearing:	**16/09/2015**
Date of decision:	**16/09/2015**

Final **ORDER NO:** 70014/2015

CUSTOMS EXCISE & SERVICES TAX APPELLATE TRIBUNAL

Per: S.S. Garg:

The present appeal is directed against the Order-in-Appeal No: 19/ST/ALD/2010 dated 26/02/2010 passed by the Commissioner of Central Excise (Appeals), Allahabad in the case of Northern Coal Fields wherein the learned Commissioner (Appeals) has held that the appellant is liable to pay service tax on 'Goods Transport Agency.' Being aggrieved by the said order, the appellant is before us.

2. The brief facts of the case are that the appellant is a subsidiary of Coal India Limited and is engaged in mining and sale of coal. The assessee owns coal mines in different areas and is doing open cast

mining of coal. The coal is found in the area in different streta i.e. layers and thereafter shifted to the voids in nearby area of own dumpers and from there it is transported by own dumpers to storage point within the coal mining area itself for ultimate dispatch of coal to the customers by rail. There is a railway siding within the coal mining area itself. It is further alleged that for loading the coal in the railway wagon the appellant has coal crushing plant in between the storage point and railway siding. The coal from storage point to the crusher is transported by tippers where it is crushed and carried in dumpers up to the storage point and from there it is transported to coal handling plant and from there delivered directly from the silo in the railway wagon. It is further alleged that for the transportation of coal from the storage point to crusher, private transport contractors are engaged to transport the coal by their tipper through temporary passages within the coal mining area itself as per contracts entered into by the assessee with them.

3. The learned counsel for the appellant further submitted that the entire arrangement of raising coal and bringing the same to the point of delivery in the wagon is within the mining area itself which is private temporary passage and not public road usable by public. The transporter does not issue consignment note or any other document showing quantity, distance, weight and transport charges payable and they do not transport coal or any other goods outside the mining area.

He further submitted that the learned Commissioner (Appeals) mis-read and mis-interpreted the provisions of Section 66 read with Section 65(105)(zzp) as including the transport of goods by road as covering private temporary road within the mining area itself maintained by assessee and not open to public. He also submitted that the learned Commissioner (Appeals) mis-understood and misconstrued the circular of CBEC No. 232/2/2006/CXA dated 12/11/2007 wherein in the last para the Board explained that in case transport is undertaken by mechanical system and the same is not transportation by road, no service tax is chargeable. He also submitted that learned Commissioner (Appeals) has wrongly held that transport contracts are Goods Transport Agency as defined under Section 65(50b) which is reproduced herein below:

> "Goods transport agency'; means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called.

4. The learned counsel further submitted that this Tribunal, in their own case, vide its order dated 06/07/2015 has held that since there is no issuance of consignment note by transporters who provided the services to the appellant, there is no rendition of GTA service legitimizing levy and collection of tax under that category. While quashing the impugned order, the Tribunal relied upon the decision in *South Eastern Coal Fields Ltd.* 2014-TIOL-1554-CESTAT-DEL and

898/15/STB dated 07/04/2015 wherein this Tribunal held that issuance of a consignment note is non-derrogable ingredient for classification of an activity as Goods Transport Agency Service defined in Section 65(50b) of the Act.

6. Revenue reiterated the findings of Commissioner (Appeals).

7. We have heard both the sides and perused the records. Since the issue involved in the present appeal is squarely covered by the decision of this Tribunal cited supra, in appellant's own case, following the Tribunal's decision, we quash the impugned order by holding that the appellant is not liable to service tax, interest and penalty under the category of Goods Transport Agency. Consequently we allow the appeal. There is no order as to costs.

(Pronounced in Court)

Sd/-
(P.S. Pruthi)
Member (Technical)

Sd/-
(S.S. Garg)
Member (Judicial)