FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
CUSTOMS APPEAL BRANCH

Dated: 20/06/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/70263/2016-CU[DB] dated 08/06/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 86(5) of the **Finance Act, 1994 relating to Service Tax Act, 1994.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	ST/168/2009	**Commissioner of CUSTOMS-Meerut-I** EXCISE CHOWK...UNIVERSITY ROAD,MANGAL PANDEY NAGAR, MEERUT,UTTAR PRADESH 250005
		Name and Address of Respondent
2		JASPAL DHARSHAN LAL & DARSHAN LAL C-115, MILLS COLONY, MAWANA,, MEERUT,U.P.

Copy To

3Advocate(s) / Consultant(s): SH BIPIN GARG,ADV B-1/1289-A, VASANT KUNJ 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, 3-8, 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 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
15 C.D.R. 16 Office Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No.ST/168/09(DB)

(Arising out of Order-in-Appeal No. 212-213-CE/MRT-I/2008 dated 24/12/2008 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-I)

For approval and signature:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
and
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

Commissioner of Customs,
Central Excise& Service Tax, Meerut-I — **Appellant**

Vs.

M/s Jaspal Darshan Lal &
M/s Darshan Lal — **Respondents**

Appearance:

Shri D.S. Mann, Assistant Commissioner (AR), — for Appellant
Ms Rinki Arora, Advocate — for Respondents

CORAM:

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

Date of Hearing : 20/05/2016
Date of Decision : 08/06/2016

Final ORDER NO. 70263/2016

Per: Anil G. Shakkarwar

This appeal is filed by the Revenue against Order-in-Appeal No. 212-213-CE/MRT-I/2008 dated 24/12/2008 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-I.

2. The respondents were providing the services under contract for loading, unloading and shifting of sugar bags from the floor of the mills to godown, from one godown to another godown or as desired by their clients. M/s Jaspal Darshan Lal and M/s Darshan Lal were issued with show cause notice dated 17.10.2007. The show cause notice alleged that the respondents were providing cargo handling service. In the signal show cause notice two business entities were issued with demand. M/s Jaspal Darshan Lal was called upon to show cause as to why Service Tax to the tune of Rs.24,16,100/- for the period from 16.08.2002 to 31.12.2005 should not be demanded from him. In the same show cause notice M/s Darshan Lal was called upon to show cause as to why Service Tax to the tune of Rs.15,04,834/- for the period from 01.11.2005 to 31.03.2007 should not be recovered from them invoking provision to Sub-section (1) of Section 73 of the Finance Act, 1994. The said show cause notice was adjudicated through Order-in-Original dated 13.08.2008 wherein the original authority has held that both the respondents were providing "Cargo

Handling Service" and confirmed the said demand of Rs.24,16,100/- and Rs.15,04,834/- and imposed penalties.

3. Aggrieved by the said Order-in-Original dated 13.08.2008 respondents preferred appeal before the Commissioner (Appeals) which was decided through Order-in-Appeal No. 212-213-CE/MRT-I/2008 dated 24/12/2008 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-I which is impugned order. The learned Commissioner (Appeals) hold as follows:-

"The defence put forth thus merits consideration. Service tax is required to be paid only when the cargo is handled by a cargo handling agency as defined in Sec. 65(105)(zr) of the Finance Act, 1994. Neither the impugned order nor the show cause notice has mentioned that the appellant has a cargo handling agency. The sugar mill, in the absence of the regular contractor, for their own convenience, made the appellant a supervisor of fellow labourers and the commission meant for the contractor was given to the appellant which they had distributed among fellow labourers.

I find that loading, unloading and shifting of sugar bags from the floor of the mills to the godown does not appear to fall under cargo handling services.

In view of the foregoing facts and provisions of law on the issue, the activity of the appellants do not appear to come within the purview of "Cargo Handling Services" as the appellant did not have any cargo handling agency as required under sec. 65(105)(zr) of the Finance Act, 1994 nor they were working as a cargo handling agency at any other place except the aforesaid sugar mill where they were working actually as labourers.

However, the said activity i.e. supply of labour would be more appropriately covered under the category of manpower recruitment agency and not cargo handling agency service. Since the issue in the impugned order as well as in appeal is not related to Manpower Recruitment Agency, as both the show cause notice and O-in-O of adjudicating authority is confined only to service tax payable as cargo handling agency. Hence the applicable service in this case cannot be changed at this stage.

I also find that the adjudicating authority at para 4.9.2 has stated that I am of the view that the said miscellaneous activity under the contracts of sugar in the sugar factory is the activity related to the handling of sugar intended to be transported subsequently by any means of transport like truck, rail, ship or aircraft etc. This statement is not based on any proof of evidence in the form of documents/records etc and thus the view that the intention subsequently is to transport sugar by any means of transport i.e. Truck, Rail, Ship or Aircraft is merely an assumption.

The demand cannot be raised on assumptions and presumptions. The Hon'ble Supreme Court has held in the case of M/s Gain Mahtani Vs State of a Maharastra-AIR 1971SC1998. "finding of revenue authorities based on pure assumption and conjecture and no evidence should be quashed". The Hon'ble CESTAT have consistently held that demand based on assumption and conjectures has to be set aside. In this regard decisions in Icy Cold Commercial Enterprises Vs CCE 1994(69) ELT 337, CEGAT, D.P. Steel Industries Vs CCE 1995(78) ELT 492 CEGAT, CCE Vs Hardran & Brothers 2004 (168) ELT 454 CESTAT, are relevant.

Since the demand itself does not sustain, the issue of penalty becomes redundant.

In view of the foregoing discussions and findings, the impugned order is set aside and the appeal is allowed with consequential benefit if any to the appellants."

4. Challenging the said Order-in-Appeal dated 24.12.2008 Commissioner of Customs, Central Excise & Service Tax Meerut-I has preferred this appeal and prayed to set aside the said Order-in-Appeal. The ground of appeal is that as per CBEC Circular dated 01.08.2002 if the cargo handling service is provided by individual that does not come under the preview of taxability. In the instant case Cargo Handling Service is provided by partnership firm hence the said Circular is not applicable.

5. Heard the Learned Departmental Representative. He has reiterated the ground of appeal and relied on this Tribunal's Ruling in the case of Maharaja Group & Associates Vs Commissioner of Central Excise, Raipur 2016 (41) S.T.R. 681 (Tri.-Del.). He pleaded that in the case of Maharaja Group & Associates (supra) Maharaja group provided manpower to do certain work and claimed that their service falls under manpower recoupment or supply service and not under cargo handling service. This Tribunal has held that in the said case the service was not rendered by an individual but by the propriety concern and held that the service was cargo handling service. The Learned DR further argued that in the case before this Tribunal the services were rendered by partnership from and not by individual and that it should be classified under "Cargo Handling Services".

6. The Learned Advocate for respondent submitted that in the show cause notice or the proceedings nowhere any evidence was provided to establish as to what work was exactly carried out by the manpower to whom the service receivers have paid. The invoices

which were raised by the service providers giving details of the services rendered to the service receivers were not relied upon in the whole proceedings, further it was not necessary that each and every term of contract is implemented in a case. Further, he has pleaded that Darsan Lal in his statement dated 28.06.2007 has stated that the services provided by him includes shifting of sugar bags from conveyer belt to deferent godowns, stocking there and loading of such bags on trucks. Further, he has relied on this Tribunal's decision in the case of Gaytri Construction Co. Vs Commissioner of Central Excise, Jaipur 2012 (25) S.T.R. 259 (Tri-Del.). This Tribunal in the said case has held that shifting of goods within factory premises will not come within the scope of cargo handling services. Therefore, their case is squarely covered by the case law in the case of Gaytri Construction Co. (supra).

7. We have carefully gone through the rival contentions. We find that in the case of Maharaja group and Associates (supra) the work was related to opening of wagon doors, cleaning and closing of doors after cement loading. It was also observed by this Tribunal in the said case that the services rendered in that case included works relating to packing cement into bags and loading of the packed bags into wagons and trucks as well as stocking of packed bags on platform or godown as the case may be. The handling of goods was not within the factory premises in that case where as in the case of Gaytri Construction Co. (supra) the service was related to the shifting of goods within the factory premises. In the present case also in the absence of any

evidence produced by revenue that the manpower supplied by respondent carried out any work outside the factory premises and in view of the statement stated above it is to be held that the manpower was shifting the goods within the factory premises. Therefore, we are inclined to hold that the present case is squarely covered by this Tribunal's ruling in the case of Gaytri Construction Co. (supra) and following the said ruling we hold that the services rendered in the present case do not fall under Cargo Handling Service. Therefore, we do not find any infirmity in the order passed by the learned Commissioner (Appeals) requiring any interference by us. We dismissed the appeal filed by the revenue. No Costs.

(Pronounced in the open Court on 08/01/2016)

(Anil G. Shakkarwar)
Member (Technical)

(Anil Choudhary)
Member (Judicial)

akp

प्रमाणित प्रति / Certified True Copy
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सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001