FAX : 0532-2400149

REGISTERED / AD

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

Dated: 13/02/2018

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. ST/A/70334/2018-CU[DB] dated 06/02/2018

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the **Finance Act, 1994 relating to Service Tax Act, 1994.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	ST/52336/2015	**Vanadana Enterprises** D-63/11, Mahmoorganj VARANASI UP
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Allahabad 38...M G MARG...CIVIL LINES, ALLAHABAD, UTTAR PRADESH-211001

Copy To
3Advocate(s) / Consultant(s):

Rajesh chibber
FA-9, KAVI NAGAR,
GHAZIABAD,
UP

4 Bar Association, CESTAT, Allahabad

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

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony 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 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Second Folder Copy 17 Guard File

Asstt. Registrar

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

APPEAL No. ST/52336/2015-CU[DB]

(Arising out of Order-in-Original No. (ST-157/2013) 09 of 2015 dated 17/03/2015 passed by Commissioner of Customs, Central Excise & Service Tax, Allahabad)

M/s Vanadana Enterprises — **Appellant**

Vs.

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

Appearance:

Shri Rajesh Chhibber, Advocate, — for Appellant
Shri Pawan Kumar Singh, Superintendent (AR), — for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 06/11/2017

FINAL ORDER NO...70334/2018..........

Per: Anil G. Shakkarwar

The present appeal is directed against Order-in-Original No. (ST-157/2013) 09 of 2015 dated 17/03/2015 passed by Commissioner of Customs, Central Excise & Service Tax, Allahabad.

2. The brief facts of the case are that the appellants were engaged in providing transportation of coal in contractor's tipping trucks from Bina to Kakri Wharfwall (MGR-Anpara), including manual breaking of coal to (-) 200mm size and loading of coal into contractor's tipping trucks and MGR wagons both with the help of contractor's payloaders. It

appeared to Revenue that the said service was covered by Mining of Mineral, Oil or Gas Services classifiable under Clause (zzzy) in Section 65(105) of the Finance Act, 1994. The period covered by the present appeal is from Financial Years 2008-09 to 2012-13. The appellant had not registered themselves for Service Tax. Therefore, a Show Cause Notice dated 04/10/2013 was issued to the appellant, wherein it was stated that it appeared to Revenue that M/s Vanadana Enterprises suppressed the fact of having rendered Mining of Mineral, Oil or Gas Services to M/s NCL (Northern Coal Fields), Singrauli (M.P.) during the period from 01/04/2008 to 31/03/2013 from the Department, therefore, the appellants were called upon to show cause as to why Service Tax amounting to Rs.1,40,81,855/- should not be demanded from them under the provisions of proviso to Sub-section (1) of Section 73 of the Finance Act, 1994. On contest the said Show Cause Notice was adjudicated through impugned Order-in-Original dated 17/03/2015, wherein the Original Authority confirmed the demand and imposed equal penalty. Aggrieved by the said order, appellant is before this Tribunal.

3. Heard the ld. Counsel for the appellant, who has submitted that Para 5 of C.B.E.C. Circular F. No. 232/2/2006-CX.4 dated 12/11/2007 has clarified as follows:-

> ***"5. Handling and transportation of coal/mineral from pithead to a specified location within the***

mine/factory or for transportation outside the mine:

These activities are post-mining activities and are chargeable to Service Tax under the relevant taxable services, i.e., "Cargo Handling Service" and "Goods Transport by Road". However, in case, such transportation is undertaken by mechanical systems, such as conveyor belt system, ropeway system, merry-go-round systems, etc. and the same is not transported by road, no Service Tax is, however, chargeable under "Cargo Handling Service", even if the loading, unloading and similar activities are done using mechanical systems."

He has submitted in view of the said clarification by Central Board of Excise & Customs that the activities of transportation undertaken by the appellant were not eligible to be classified as "Mining of Mineral, Oil or Gas Services".

4. Heard the ld. A. R. for Revenue, who has supported the impugned Order-in-Original dated 17/03/2015.

5. Having considered the rival contentions and on perusal of the facts on record, we find that Central Board of Excise & Customs C.B.E.C. Circular F. No. 232/2/2006-CX.4 dated 12/11/2007 has clarified that handling and transportation of coal/mineral from pithead to a specified location within the mine/factory or for transportation outside the mine are post-mining activities and could be chargeable to Service Tax

under the relevant taxable services, i.e., "Cargo Handling Service" and "Goods Transport by Road". We find that the said activities are not covered by "Mining of Mineral, Oil or Gas Services". Therefore, demand under "Mining of Mineral, Oil or Gas Services" raised through the said Show Cause Notice dated 04/10/2013, is not sustainable. We, therefore, set aside the impugned Order-in-Original dated 17/03/2015 and allow the appeal. The appellant shall be entitled for consequential benefit, as per law.

(Dictated & Pronounced in Court)

-Sd/-
(ANIL CHOUDHARY)
Member (JUDICIAL)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

Ansari

प्रमाणित प्रति/Certified True Copy
05/03/2018
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