

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH**

Dated: 27/07/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/52319-52322/2015-CU[DB] dated 16/07/2015

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(CUSTOMS Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	ST/305/2009	C.C.E. BHOPAL Hoshangabad Road, 48, Administrative Area, Area Hills, Bhopal (M.P.) 462011
2	ST/306/2009	C.C.E. BHOPAL Hoshangabad Road, 48, Administrative Area, Area Hills, Bhopal (M.P.) 462011
3	ST/456/2009	Nizamsingh Chauhan, D Sump (moil), Tirodi Balaghat Distt. Madhya Pradesh.
4	ST/457/2009	V.j.trivedi, Main Road, Balaghat District Madhya Pradesh.
5		Name and Address of Respondent NIZAM SINGH CHAUHAN D.DUMP (MOIL), TIRODI, DISTT. BALAGHAT (M.P.),

(P.T.O)

6

V.J. TRIVEDI
MAIN ROAD, DISTT.
BALAGHAT
(M.P.),

7

C.C.E. & S.T.-Bhopal
48...ADMINISTRATIVE
AREA,ARERA
HILL...HOSHANGABAD
ROAD,
BHOPAL,
MADHYA PRADESH-462011

8

C.C.E. & S.T.-Bhopal
48...ADMINISTRATIVE
AREA,ARERA
HILL...HOSHANGABAD
ROAD,
BHOPAL, MADHYA
PRADESH-462011

Other Appellants and Respondents as per Annexure

Copy To

9 Advocate(s) / Consultant(s):

**Swamy Associates
21/8, RAMS FLATS,
ASHOKA AVENUE,
DIRECTORS COLONY,
KODAMBAKKAM,
CHENNAI,
TAMIL NADU
600024**

10 Additional Party's Name & Address :

11 Bar Association, CESTAT, Delhi

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

13 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

14 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

15 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

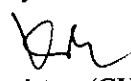
16 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

17 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

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

19 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38

20 C.D.R. 21 Office Copy 22 Guard File


Asstt. Registrar(CUSTOMS Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.**

Date of Hearing/Order : 16.7.2015

For Approval & Signature :

**Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, 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?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Department Authorities?	

Appeal No. ST/456-457/2009-CU(DB)

M/s Nizamsingh Chauhan
M/s V.J. Trivedi

Appellant

Vs.

CCE, Bhopal

Respondent

Appeal No. ST/305-306/2009-CU(DB)

(Arising out of common Order-in-Appeal No. 155 & 156/BPL/2009 dated 5.3.2009 passed by the Commissioner of Central Excise, (Appeals), Bhopal)

CCE, Bhopal

Appellant

Vs.

M/s Nizam Singh Chauhan
M/s V.J. Trivedi

Respondent

Appearance:

Adj. letter - for the Appellant/Assessee

Shri Govind Dixit, D.R - for the Respondent/Revenue
Shri Amresh Jain, D.R.

**Coram : Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Member (Technical)**



F. Order No. 52319-52322/2015

Per **R.K. Singh** :

Appeals Nos. ST/456-457/2009 have been filed by the appellant - assessee against order-in-Appeal 155 & 156/BPL/2009 dated 5.3.2009 which upheld the respective orders-in-original dated 13.10.2008 and 10.9.2008 only to the extent of sustaining the demand along with interest for the normal period of one year under cargo handling service for the service rendered by these appellants to M/s Maganese Ore India Ltd. (MOIL) but the said orders-in-original the demand under cargo handling service was confirmed for the extended period of five years along with interest and also penalties were imposed under Section 76, 77 and 78.

2. The Revenue ~~has~~ filed appeals Nos. ST/305-306/2009 against the said order-in-appeal on the ground that the Commissioner (Appeals) has incorrectly set aside the demand for the period beyond the normal period and penalties were also unjustifiably dropped as the appellants were guilty of suppression of facts.

3. No one appeared on behalf of the appellant - assessee when the case was called. The appellant - assessee sent a Fax received at 11.06 A.M. on the date of the hearing seeking adjournment on the ground that their Advocate was pre-occupied. As the request was



received rather too late and that too to convey the Advocate's pre-occupation in such perfunctory manner ^{it} is not considered good and sufficient ground to grant adjournment ^{and so} we proceed to decide the appeals on merit.

3. The appellant - assesseees have contended in their appeals that the activity undertaken by them did not falling under the category of cargo handling service as defined under Section 65(23) of the Finance Act, 1994 and their activity was covered under mining service ^{as} it related to mining and was carried out within the mining area and that mining service was not liable to service tax during the relevant period. They also contended that there was no suppression of facts and the details were given when asked for. They informed Revenue in writing that the service recipient (MOIL) had taken up the matter with the CBEC regarding the taxability of the activity and requested that the matter may be ^{kept} ~~got~~ pending.

4. Revenue on the other hand has contending that there was no ambiguity about the activity being squarely covered under cargo handling service as the definition given in Section 65(23) *ibid* left no scope for any confusion in this regard and that the summons issued to the appellants were not answered inasmuch as they (i.e. the appellants) did not mark their presence in response to the summons and only sent their written submission and supplied the sought

information almost three weeks after the date on which they were required to appear before the service tax officers along with the required details. So, the appellants are guilty of suppression of facts. Revenue also contended that suppression is sufficient to invoke the extended period as it is not required to be proved that suppression was with intent to evade payment of duty because the expression "with intent to evade payment of duty" does not appear in sub-clause (d) of proviso to Section 73 (1) of the Finance Act, 1994

5. We have considered the contentions of both sides and we have also perused the contract under which the service was rendered. As is evident from Para-II of the tender document for railing and transport of Maganese Ore the service involved wagon loading, truck loading, transport including stacking and de-stacking/rehandling of manganese ore. It is also seen that transport activity (excluding stacking) formed a very small part of the entire service rendered, inasmuch as while hiring of truck including stacking was @ of Rs.1,15,000 / PMT, transport excluding stacking was only Rs.10,000 / PMT, wagon loading was @ Rs.1,25,000/- PMT and truck loading @ 25,000/- / PMT and stacking/re-handling was also @ 10,000 / PMT. As the goods were loaded on to the trucks and wagons they acquired the status of cargo. Therefore the activity performed by the appellant clearly fell under the category of cargo handling service as defined in Section 65(23) *ibid.* This conclusion is in harmony with

G₂

the ratio of the judgement in the case of **Coal Carriers Vs. CCE** - 2011 (24) STR 395 (Ori.). The judgement of CESTAT in the case of **CCE Vs. Vinshree Coal Carriers Pvt. Ltd.** - 2008 (10) STR 473 (Tri.-Kolkata) holding transport of coals within the mining area not subjected to service tax under cargo handling service was passed following the judgement of the CESTAT judgment in the case of **Sainik Mining & Allied Services Ltd. Vs. CCE** - 2007 (9) STR 531 (Tri.-Kolkata) where the coal was transported inside the mine/colliery by deployment of machines and tipper trucks for transport of coal from quarry beds to surface stocks/railway siding. Thus the facts in these two cases were quite different.

6. Coming to the Revenue's appeal that extended period was rightly invoked by the primary adjudicating authority and therefore demand for extended period should be upheld and penalties restored, ^{we} ~~We~~ find that the primary adjudicating authority has taken note of the fact that the service recipient M/s Maganese Ore India Ltd. had made a representative to CBEC regarding (non) taxability of the impugned service. The service was rendered to a public sector unit which had taken up the matter with CBEC contending that it was not taxable. It is thus evident that it is not a case where the ^{appellant - assessee} ~~respondent~~ could/would have intended to suppress the fact of rendition of the impugned service. The appellants also supplied the information within about 3 weeks of the date on which they were



summoned to appear before the Central Excise officer. The Commissioner (Appeals) has taken due note of some of the judgements like in the case of **Singh Brothers** - 2009-TIOL-189-CESTAT-Del. where extended period was not invoked and penalties set aside holding at that time that the issue was interpretational. In the given circumstances, we hold that the Commissioner (Appeals) finding that the appellants are not guilty of suppression and do not deserve to ^{be penalised} ~~the penalties~~ does not warrant any appellate intervention.

7. In the light of the foregoing discussion, we dismiss the appeals filed by the appellants ^{Assessee} as well as those filed by Revenue.


(Justice G. Raghuram)
President


(R.K. Singh)
Member (Technical)

RM