

FAX : 011-26108426

REGISTERED / AD

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

Dated: 20/10/2014

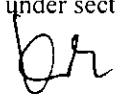
To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/53993/2014-CU[DB] dated 19/09/2014

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/194/2009	JAIN CARRYING CORPORATION, JAIN HOUSE, RANI BAZAR, BIKANER-334001, (RAJASTHAN)
		Name and Address of Respondent
2		C.C.E. JAIPUR II N.C.R.Building, Statue Circle, "C" Scheme, Jaipur 302005.

Copy To

3 Advocate(s) / Consultant(s):

V.LaxmiKumaran, Adv
5, Jangpura Extension Link Road,
New Delhi-110 014

4 Additional Party's Name & Address :

5 Bar Association, CESTAT, Delhi

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

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

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

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

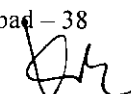
10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

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

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

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

14 C.D.R. 15 Office Copy 16 Guard File


Asstt. Registrar(CUSTOMS Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/decision: 19.09.2014

Service Tax Appeal No. ST/194/2009-CU(DB)

[Arising out of Order-in-Original No. 7/2008/ST/JP-II-Commissioner dated 17.12.2008 passed by the Commissioner of Central Excise, Jaipur]

M/s. Jain Carrying Corporation

Appellant

Vs.

CCE, Jaipur

Respondent

For approval and signature:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)

Hon'ble Shri Rakesh Kumar, Member (Technical)

1. Whether Press Reporters may be allowed to see

CESTAT (Procedure) Rules, 1982.

No

2. Whether it should 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 Departmental

authorities?

Yes

Appearance: Rep. by Shri B.L. Narsimhan, Advocate for the appellant.

Rep. by Shri Govind Dixit, DR for the respondent.

CORAM: Hon'ble Smt. Archana Wadhwa, Member (Judicial)

Hon'ble Shri Rakesh Kumar, Member (Technical)

Final Order No. 53.9.3/2014 Dated: 19/09/2014

Per Archana Wadhwa:

After hearing both the sides, we find that the appellant entered into a contract with M/s. Jain Carrying Corporation for providing services on various counts. Though there are a number of contracts entered into from time to time, for the sake of brevity, we refer to the contract dated 18.07.2002. The various services,



which are required to be provided by the appellant, were detailed separately in the said contract as under:-

- (a) Gypsum was required to be sorted (minus 20 cm size) by cleaning top bushes/decomposed substances. Sorted gypsum was to be loaded into trucks by hydraulic excavator with backhoe attachment.
- (b) The contracts emphasizes on proper loading of gypsum into railway wagons with the deployment of specific machinery i.e. Mechanical loaders Z-bar long bloom. The loading into railway wagons was to be carried out as per requirement and availability made by Railway. The loading into railway wagons was to be carried out up to the mark given and a certificate of satisfactory loading was to be obtained from the FCIAGMIL. The contractor was to make arrangement to clean gypsum spread on railway track.
- (c) The job was deemed to be completed on loading of railway wagons and payment was to be released on the basis of completed job for which weight recorded in railway receipt was to be taken as final weight.

2. The identical contracts were entered into for the rest of the period which is spread from 16.08.2002 to 31.03.2006.

3. The department by entertaining a view that the entire consolidated compensation received by the appellant for the above three activities was on account of "cargo handling services", which were liable to service tax, initiated proceedings against the appellant by way of issuance of show cause notice dated 2.8.2007 for proposing confirmation of demand of duty of Rs.97,32,167/-. The said



notice was challenged by the appellant on merits as also on limitation. However, the adjudicating authority did not find favour with the appellant's contention and confirmed the demand, as proposed in the notice along with confirmation of interest and imposed penalties under various Sections of Finance Act, 94

4. Hence, the present appeal.

5. After hearing both the sides, we find from the reproduced portion of the contract that the three different services were awarded to the appellant for undertaking the same. Admittedly, the service falling under Clause (a) is relatable to cleaning of the mining area by various activities, which service would get covered by the category of the "site formation and clearance, excavation and earth moving and demolishing services. The said services were introduced w.e.f. 16.06.2005 and were made liable to service tax from the said date. The appellant had been paying service tax on the said activities w.e.f. 16.06.2005.

6. Similarly, we find that the service under the category (b) is merely for transportation of the gypsum from one place to railway station and would appropriately may fall under the category of GTA services, which were introduced w.e.f. 1.1.2005 to the Service Tax Net. The appellant admittedly started paying service tax on the said services w.e.f. 1.1.2005 @ of 25%, after claiming the abatement in terms of notification no.32/2004-ST.

7. The service being provided under the Clause (c) of the Contract, as provided above, require the assessee to undertake the activity of loading of gypsum into railway wagons/rakes through mechanical loaders. Though Id. Advocate has shown us a number of decisions laying down that such loading of goods through mechanical loader does not amount to providing service under the category of "cargo handling service" but he submits that they have already deposited the service tax on the said consideration received for the said services, for the entire

period involved in the appeal. Further, the interest also stands paid by them and they are not claiming the refund of the said deposits.

8. Counsel for the appellant also submits that the only issue to be decided remains relatable to imposition of penalty on the said services.

9. We do not find any favour with the reasons given by the adjudicating authority, which stands reiterated by the Id. DR, which is to the effect that all the three services have to be taken collectively for treating the same as "cargo handling services", which were introduced w.e.f. 16.08.2002 and the appellant are liable to pay service tax on the full consolidated compensation received by them for the said three different services, even though in respect of the services (a) and service (b), the appellant started paying service tax from the date of introduction of the different services. The contract may be a composite contract but the services stand clearly mentioned separately with separate rates for the same as indicated against each and every service. As already observed, the first two services fall under different categories which were introduced subsequently and for which the appellant had started paying service tax from those dates, we find no reasons to hold that the said two services are part & parcel of the "cargo handling services", which according to the Revenue falls under clause (c).

10. As regards "Cargo Handling Services", our attention has been drawn to various decisions of the Tribunal laying that the loading of the goods into racks or wagons through mechanical loaders does not fall under the category of "Cargo Handling Services". For the said purpose, a reference may be made to the Rajasthan High Court in the case of **S.B. Construction Co. Vs. Union of India – 2006 (4) STR 545 (Raj.)**. However, as the appellant is not contesting the confirmation of demand under the said category on the ground that they have already deposited the same along with interest, we are not going into the details



relatable to the said category. In any case, the issue being contentious and arguable and the demand having been raised by invoking the period of limitation, we deem it fit to set aside the penalties imposed upon the appellant.

10. In a nut-shell, the impugned order is set aside except to the extent of appropriation of service tax and the interest amount already paid by the appellant.

The appeal is disposed of in the above terms.

[Operative portion already pronounced]


(Archana Wadhwa)
Member (Judicial)
16/10/14


(Rakesh Kumar)
Member (Technical)
16/10/14

Ckp.