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

Appeal No. ST/289 /2006 Date 13/03/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
THE COMMISSIONER OF CENTRAL EXCISE JAIPUR I
NCR BUILDING, C-SCHEME, JAIPUR-I

THE COMMISSIONER OF CENTRAL EXCISE JAIPUR I Appellant

Vs

M/S LAKSHMI TRADING COMPANY Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/41/08 **Customs** dated 18.02.08

passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
   M/S LAKSHMI TRADING COMPANY, P.O- Indergarh.
   DISTT. BUNDI (RAJASTHAN)
2. Adv. / Consult

3. S.D.R.
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publictions (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI, COURT NO.1
SERVICE TAX APPEAL NO. 289 OF 2006

[Arising out of order-in-appeal No.27(MPM)ST/JPR-I/2006 dated 26.4.2006 passed by the Commissioner of Central Excise s (Appeals), Jaipur]

Date of Hearing/Decision: 18.2.2008

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

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 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

CCE, Jaipur-I
Applicant
[Rep.by: Mr.B.K. Singh, Authorized Representative(DR)]

Versus

Laxmi Trading Co.
Respondent
[Rep. Written Submission]

Coram: Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final **ORDER** ST/41/08

Per M. Veeraiyan (For the Bench):

This is an appeal filed by the Department. Heard the learned Departmental Representative. We have perused the written submissions filed on behalf of the respondent.

2. The respondent has undertaken a series of activities like mining, loading, transporting and unloading of limestone from the mines belonging to ACC on the basis of a contract entered into with them. The Commissioner (Appeals), after taking into account the evidence placed before him, came to a conclusion that the appellant raised bills for transportation of lime stone and the work of loading/unloading was

incidental to the transportation of lime stone and accordingly dropped the demand of Rs.36,799/- and set aside the penalty imposed by the original authority.

3. Learned Departmental Representative submits that out of Rs.70.05 per MT received by the respondent Rs.49.01 per MT relates to mining activities, Rs.8/- per MT is for loading of lime stone etc. He contends that inasmuch as Rs.8/- per MT is clearly identified as attributable to loading charges, the same should be treated as charges received for the service of cargo handling. According to him, the definition of the term cargo handling includes the activities of loading, unloading, packing etc. of cargo.

4. We have carefully considered the submissions. At the outset, we note that the contract is for a series of activities starting from mining to delivery of the lime stone to the designated place of the client. The findings of the Commissioner (Appeals) that the loading is incidental to mining and transportation, appears reasonable. We feel that the respondent cannot be considered as an agent in the context of rendering the service of cargo handling. The cargo handling, even if taken as a separate service rendered, the same is rendered to the respondent himself in completing the entire work assigned to the respondent by the contract. In the circumstances, we do not find any reason to interfere with the decision of the Commissioner (Appeals).

5. The appeal is therefore, rejected.

[Dictated and pronounced in the open Court]

[Justice S.N. Jha]
President

[M. Veeraiyan]
Member (Technical)

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