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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/150 /2006 - CU[DB] Date 06/11/2008

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

To :
M/S AGRA STEEL CORPORATION

PEERA KHAR, SHAHDARA, AGRA (UP)

282006

M/S AGRA STEEL CORPORATION Appellant

Vs

THE COMMISSIONER OF CENTRAL EXCISE, Respondent
KANPUR

I am directed to transmit herewith a certified copy of **Final order No.** ST/323/08 **CU[DB]** dated 11.07.08

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

THE COMMISSIONER OF CENTRAL EXCISE, KANPUR

117/7, SARVODAYA NAGAR, KANPUR (UP)

2. Adv. / Consult
MR.S.C. KAMRA & CO.

B-2/210(BASEMENT), SAFDARJUNG ENCLAVE, NEW DELHI- 110029

3 S.D.R
4 J.C.D.R.
5 Bar association, CESTAT, New Delhi
6 M/s. Deeparchi Publications, M-93, Marg, 46, Saket, New Delhi 110017
7 M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3
8 Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 Nidheshak publications, I.P.Estate, new Delhi
11 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai
13 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 Office Copy
16 Guard file

Assistant Registrar

(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – II

SERVICE TAX APPEAL NO. 150 OF 2006

[Arising out of Order-in-appeal No. 100-CE/APPL/KNP/06 dated 27.02.2006 passed by the Commissioner (Appeals), Customs & Central Excise, Kanpur]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, 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?	
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 Departmental authorities?	

M/s. Agra Steel Corporation — Appellants

Vs.

CCE, Kanpur — Respondent

Appearance:

Shri A.K. Madan, Departmental Representative, for the Revenue;
Shri V.K. Agrawal, Advocate for the respondents;

Coram:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing: 11th July, 2008

FINAL ORDER NO. ST/323/08 **dated** 11/7

Per S.S. Kang:

Appellants filed this appeal against the impugned order whereby demand of service tax along with interest was confirmed and penalties were imposed.

2. The appellants are engaged in handling and storage of iron and steel materials of M/s. Rashtriya Ispat Nigam Ltd. as a consignment agent in respect of stock yard at Agra and Kanpur. The appellants are registered under service tax rules and paying service tax in respect of commission received from Rashtriya Ispat Nigam Ltd. Show cause notice was issued for demand service tax in respect of gross amount charged as consignment agent by the appellants. The adjudicating authority demanded service tax after taking into consideration gross amount received on account of consignment agent.

3. The contention of the appellants is that they are consignment agent of Rashtriya Ispat Nigam and they are receiving material by rail or by road and during storage of the material some allied functions were also carried out by the appellants such as cutting, bending or straightening the material. Contention is that cost of transportation is

not to be included for assessing the liability of the appellants as consignment agent for the purpose of service tax. The appellants relied upon the decision of the Tribunal in the case of E.V. Mathai & Co. vs. CCE, Cochin, reported in 2006 (3) STR 116 which was followed by the Tribunal in various decisions. Contention is that the Tribunal held that for purpose of service tax in respect of clearing and forwarding agent lorry freight charges collected on behalf of the principals are not to be included in the assessable value. The appellants also submitted that the principals is reimbursing the expenses towards loading, un-loading, etc. of the goods, therefore, these expenses are not to be taken into consideration for arriving at the liability as consignment agent. It is also submitted that cost of cutting, bending and straightening has ~~is~~ nothing to do with the service of consignment agent, therefore, the same are not includible in the gross amount for the purpose of service tax.

4. Contention of Revenue is that the appellants were appointed as consignment agent and as per terms and conditions of the agreement the appellants are to receive and clear the consignment, loading, un-loading into trucks, trailers, carrying transportation to stock yar, warehouse, etc. and thereafter the appellants were to dispatch the consignment to customers under invoices. Contention of the Revenue is that the appellants are charging the steel plants under composite bill. The appellants are providing service as consignment agent, therefore, the appellants cannot say that the charges of transportation, loading and

unloading are not part of service provided by the appellants. As the appellants are charging by a single bill for the service provided by them, therefore, contention of the appellants that the charges in respect of loading, un-loading, etc. are not includible in the gross amount chargeable to service tax is not sustainable.

5. In this case the appellants are registered with the Revenue authorities as consignment agent of Rashtriya Ispat Nigam. As per terms of the agreement which is for consignment agency the appellants are to received the goods from factory of the principal and to warehouse the goods, arranging dispatch of the goods under invoices on behalf of the principal. The appellants are also to maintain record of receipt and dispatch of the goods. We find that as per the provision of Section 65 (25) of the Finance Act, clearing and forwarding agent means any person who is engaged in providing any service, either directly or indirectly connected with clearing and forwarding operations in any manner to any other person and includes a consignment agent also.

6. The appellants as per terms of the agreement of consignment agent are performing the function of clearing and forwarding agent. The appellants relied upon the decision of the Tribunal in the case of E.V. Mathai & Co. (supra). We find in that case the Tribunal after taking into consideration that there was a separate contract for transportation of the goods and as C & F agent held that the transportation charges which are received under separate contract and separate bills were raised in

respect of transportation charges, hence these charges are not to be taken into consideration for fixing the liability as C & F agent. In the present case facts are different. In the present case there is one contract and the appellants are also charging the total consideration amount under a single bill, therefore, in these circumstances we find no merit in the contention of the appellants that the charges in respect of transportation, loading and unloading are not to be taken into consideration for fixing the liability as consignment agent.

7. In respect of cutting, bending and straightening of the material during warehousing period we find that these functions are not related to the service provided by the consignment agent. Therefore, charges in respect of cutting, bending and straightening of the material are not to be included for the purpose of fixing liability for consignment agent. The impugned order is modified to this extent only, otherwise the impugned order is upheld. The appeal is disposed of as indicated above.

(Operative part pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Dated 23rd October, 2008
RK