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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/568 /2007 - CU[DB] Date 16/03/2009

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

To :
C.C.E. RAIPUR
CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.

C.C.E. RAIPUR Appellant

Vs

M/S SCRAP MATERIAL HANDLING CO Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/101 2009 CU[DB]** dated 24/2/09

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 SCRAP MATERIAL HANDLING CO
16, LIGHT INDUSTRIAL AREA, BHILAI, DURG(CG)
2. Adv. / Consult : LP Asthana, Adv
R-163 2^{nd} Floor GK Part – 1
New Delhi

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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-DB

Service Tax Appeal No.568/2007

[Arising out of Order-in-Appeal No.14-ST/RPR/APPL-II/2007 dated 04.07.2007 passed by the Commissioner (Appeals), Raipur].

Date of Hearing:24.02.2009

Commissioner, Customs & Central Excise ...Appellant

Vs.

M/s. Scrap Material Handling Co. ... Respondent

Present for the Appellant :Shri Bhaskar D.R.
Present for the Respondent :Shri Abhishek Jaju, Advocate

Coram: Hon'ble Mr.D.N.Panda, Judicial Member
Hon'ble Mr. Rakesh Kumar, Technical Member

Final **ORDER NO.** 57/10/09 **DATED:24.02.2009**

PER: D.N.PANDA

Ld. DR submits that the first appellate order should not have made the adjudication order unsustainable. Ld. Appellate authority simply holding that the term "Cargo" has not been defined under the law held that mere transportation of goods for the purpose of recovery and processing within the plant shall not be cargo-handling service. Therefore, the order of adjudication may be restored.

2. Ld. Counsel Shri.Abhishek Jaju submitted that the order passed by the ld. Appellate authority below is correct in law. He placed reliance on the judgement of the Tribunal in the case of Modi Construction Co. Vs. CCE, Ranchi reported in 2008 (12) S.T.R. 34 (Tri. – Kolkata).

3. Heard both sides and perused the record.

4.1 We have seen that the order of Adjudicating Authority has described nature of the activity. In the brief facts of the case, the authority noticed that the respondent was realising material handling charges from their customers. This should bring them to the fold of the law under the category of "Cargo handling service". From the various discussions made by the ld. Adjudicating authority under para 4, 5 & 6, we are convinced that the major portion of the work is loading and unloading and which was not made by the appellant under the category of cargo handing service. The Tribunal has already held that mere transportation will not amount to "cargo handling" unless loading, unloading packing or unpacking of cargo and handing of such cargo is the primary object of the contract between the parties. We are unable to notice any specific finding in the order of the adjudication which goes against the respondent.

4.2 Ld. Commissioner (Appeals) has examined the issue thoroughly which is apparent from para 6 & 7 of the order and has passed an appropriate order. We do not find any legal infirmity in the order passed by the ld. Commissioner (Appeals). But that is in conformity with the Tribunal's order in Modi Construction Co. (supra). Therefore, we dismiss the revenue's appeal.

[Pronounced in the open Court during the course of hearing].

(D.N.PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

Anita