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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/428 /2010 - CU[DB]
ST/S/718/10

Date 05/08/2010

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

To :
M/S R.K.SINGHVI & CO. ,

SINGHVI HOUSE, 6, RESIDENCY ROAD, UDAIPUR
(RAJ.)

M/S R.K.SINGHVI & CO. , Appellant

Vs

C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/45/ 2010 CU[DB] dated 28.07.10 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Alongwith Stay Order No ST/129/10

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent

   C.C.E. JAIPUR II

   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult : Sh. Bipin Garg, Adv
   B-1/1289-A Vasant Kunj New Delhi

3 S.D.R
4 J.C.D.R.
5 Bar association. CESTAT. New Delhi
6 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
10 Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
11 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
12 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
13 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
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Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block 2, R.K.Puram,New Delhi-110066
Principal Bench, New Delhi.

ST/S/718/10 in
ST/428/10

M/s. R.K.Singhvi & Co. Appellant

Versus

CCE, Jaipur-II Respondent

Appearance
Sh. Bipin Garg, Adv. For Appellant

Sh. Vijay Kumar, DR for Respondent

Coram: Hon'ble Mr. D.N.PANDA, MEMBER JUDICIAL
Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of decision: 28.7.2010
Final Order No. ST/45/10
Stay order No. ST/129/10

Per D.N.Panda:

Service Tax of Rs.64,63,967/- has been imposed on the appellant holding that the appellant has provided cargo handling service. The adjudication has tried to note principles relating to classification of the taxable service in para 10 & 11 of the impugned order and has eliminated the service provided from scope of transport contract in terms of para 9 of the order. The authority went on examining the matter in para 12 of the order further. When the appellant pleaded that the service may be falling under mining of mineral oil or gas service, the authority has looked the issue from that angle also. But there is no conclusion that the appellant activities shall fall in that category. It was also his view that in view of the relevant period in question is that from 15.4.04 to May'07, the service is not coming under the mining service. The authority in terms of para 11 came to the conclusion that the appellant provided Cargo Handling Service. In para 9 of the order it is clear observation of the authority that essential character of contract is Excavation and loading/removal of over burden and minerals from the mining site to dumping site and unloading thereof.

2. While the factual matrix stand as above, Learned Counsel submits that contract was awarded by Wolkem Inds. Ltd. in terms of pages 51 to page 63 of the appeal folder and transportation of the extracts was made to the dumping grounds. Therefore, the appellant is covered by the decision of the Tribunal in the case of Sainik Mining & Allied Services Ltd. s CCE & ST.,BBSR reported in 2008(9)STR.531. So also he relies on the decision of the Tribunal in the case of CCE, C&ST, Bhubaneswar-II vs Vinshree Coal Carriers Pvt. Ltd. reported in 2008(10)STR.473 and the decision in the case of Thriveni Earthmovers Pvt. Ltd. vs CCE, Salem reported in 2009(15)STR.393(Tri.-Chennai). Accordingly the appellant succeeds and pre-deposit may be waived.

4. Per contra, Revenue's submission is that the case of the appellant shall fall under category of cargo handling service in terms of the decision made by the Tribunal in the case of Gajanand Agarwal vs CCE, BBSR reported in 2009(13)STR.138(Tri.-Kolkata). So also learned DR relies on the Board's circular No.232/2/2006-CX.4 dt.12.11.07. His precise submission is that when there was lifting of the goods from one place to the other, irrespective of the place of lifting and place of dumping, the goods lifted shall be cargo and handling thereof shall bring the activity to the category of cargo handling service.

5. Heard both sides and perused the record. We notice the features brought out by the learned adjudicating authority in terms of the impugned order. It appears that there is series of confusion from para 9 to 12 of the order of the adjudication by the adjudicating authority. Nowhere we could notice about analysis of the contract in substance for drawing proper conclusion by the learned adjudicating authority. We are helpless to come to the conclusion about the real nature of the activity carried out by the appellant when the contracts executed were not threadware examined by the order, while huge amount of the demand has been raised and the order lacks evaluation of evidence. Therefore, we do not consider proper to simply dispose stay application but decided to remit back the matter to the learned adjudicating authority to decide properly about the taxability of the contract examining the nature of each contract in minute detail and classify the service properly keeping in view the charge framed by the show cause notice.

6. Learned Counsel submits that the adjudication has also suffered from time bar. But having noticed that a reasoned and speaking order has not been passed to meet judicial scrutiny. We do not intend to cause prejudice to any any side by an own assessment merely disposing stay application. Therefore, dispensing the pre-deposit we send the matter back to the learned adjudicating authority who shall thread ware examine the case in question and find out the character of service provided by the appellant whether was taxable service and if so, the category to which such service shall be classified. If a reasoned and speaking order is passed, that shall resolve grievance of both sides and huge amount of revenue having been involved, it will be preferable to direct the appellant to appear before the

learned adjudicating Commissioner on 16.9.2010 and file an application for fixing the date of hearing. In view of the interest of both the sides, no adjournment should be granted and the matter shall be heard on the date fixed. Since we have not expressed our opinion on the merits of the case except noticing certain features of the order, the appellant shall adduce proper evidence and may also raise all questions of law which while shall be considered by the authority while passing the order in accordance with law within three months of hearing of the matter. While deciding the matter, learned authority shall not ignore the decisions cited by both sides and and Board's circular cited by Revenue.

Order dictated in the open Court.

(D.N.Panda)
Member Judicial

(Rakesh Kumar)
Member Technical

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