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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/892 /2009, ST/S/3118/[illegible], ST/COD/39/10, ST/CO/33/10 Date **07/04/2011**

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

To :
M/S ALOK COAL AGENCIES LTD.

NEAR PNB MAIN ROAD, RAMGARH CANTT.
DISTT-RAMGARH. JHARKHAND-829122.

M/S ALOK COAL AGENCIES LTD. Appellant

Vs

C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/149 2011 CU[DB]** dated 05.04.11

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/214/11

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. RAIPUR
CENTRAL EXCISE BUILDING,
DHAMTARI ROAD, TIKRAPARA,
RAIPUR 492001.

2. Adv. / Consult
MR.KARTIK KURMY, ADV.
WWWW/17,AREA 7&8, CIVIL
TOWNSHIP, ROURKELA,ORISSA-769004

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
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,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
Court No.IV

ST/Stay No.3118/10, ST/Appeal No.892/10
COD/39/10, Cross Objection No. 33/10

(Arising out of order in original No.Comm/RPR/49/09 date 21.7.09 passed by the Commissioner of Central Excise, Raipur)

Date of Hearing: 14.3.2011

For Approval and signature:

Hon'ble Mr D.N. Panda, Judicial Member
Hon'ble Mr.Mathew John, Technical Member

1.	Whether Press Reporters may be allowed to see The order for publication as per Rule 27 of the CESTAT(Procedure) Rules, 1982?	Yes
2.	Whether it would 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 Department Authorities?	Yes

M/s Alok Coal Agencies — Appellants

Vs

CCE, Raipur — Respondent

Appeared for the Appellant: Shri Kartik Kurmy, Advocate
Appeared for the Respondent: Shr Amesh Jain, SDR

Coram: **Hon'ble Mr D.N. Panda, Member (Judicial)**
Hon'ble Mr. Mathew John, Member (Technical)

Stay order No ST/214/11
Final ORDER No. ST/149/11

Per D.N. Panda:

This matter came up for stay hearing today.

2. We find that the adjudication order is not in conformity with the show cause notice. The learned Counsel says that 15 contracts were subject matter of adjudication. Out of that, two contracts were divisible and clearly demonstrated the liability. If liability is worked out for these two contracts that shall be Rs. 20,000/-. The appellant has no hesitation to discharge that amount. So far as the other 13 contracts are concerned, the Appellants argue that the totality of the contracts demonstrated that there were no Cargo Handling Services done by the appellant. The service that was done was only loading and transporting of coal supplied from the mines. Such activity would not be taxable under "Cargo Handling Service" following the judgment of Bombay High Court in Wardha Coal Transport Pvt Ltd Vs Union of India reported in 2009 (13) STR 409 (Bom). While arriving at the judgment in Wardha Coal, the Hon'ble High Court has taken note of the Tribunal's decision in Sainik Mines and Allied Services Ltd in 2009 (9) STR 531.

3. When we find that the nature of service done under each contract is not analysed to decide on the classification for charging service tax, the question whether charges for any service is towards any exempted service or for any service with lower incidence of duty is to be examined. We find the order to be

cryptic and therefore, we are not expressing any opinion on the merits of the issue. It is established principle of law that a summary order cannot be passed when the allegation in respect of each contact is distinct and different.

4. The learned DR states that if the matter is re-examined, the entire observation of the Tribunal will be addressed.

5. Heard both the sides.

6. We are unable to find any scope to keep the matter pending. Therefore, dispensing the pre-deposit, we remand the matter to the learned Adjudicating authority who shall look into the details stated in the show cause notice and also give fair opportunity to the appellant to give submissions and then give his findings considering each of the contracts and judgements in the matter and pass appropriate order.

7. In view of our decision aforesaid, cross objection stands disposed of so also the application for condonation of delay in filing the appeal. The appeal itself is disposed of by way of remand.

(Order dictated and pronounced in the open Court.)

(D.N. PANDA)
Member (Judicial)

(MATHEW JOHN)
Technical Member

MPS*