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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/177 /2008 - CU[DB] Date **14/07/2011**

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

To :
M/S AKASH INDUSTRIAL SERVICES

C/O SHRI KRISHNA ROLLING MILLS (JAIPUR) LTD.
37, INDUSTRIAL AREA,
JHOTWARA JAIPUR

M/S AKASH INDUSTRIAL SERVICES Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/280/ 2011 CU[DB]** dated 07/07/11 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
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult
MR.BIPIN GARG
B-1/1289-A VASANT KUNJ
NEW DELHI

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. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Customs Appeal Bra

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.III

ST/Appeal No.177/2008

(Arising out of order in appeal No. 2/RKS/CE/JPR.I/08 dated 24.1.08 passed by the Commissioner of Central Excise (Appeals), Jaipur)

Date of Hearing: 7.7.2011

For Approval and signature:

Hon'ble Mr S.S. Kang, Vice President
Hon'ble Mr.Mathew John, Technical Member

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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 Department Authorities?

M/s Akash Industrial Services — Appellants

Vs

CCE, Jaipur — Respondent

Appeared for the Appellant: Shri Mayank Garg, Advocate
Appeared for the Respondent: Shri Fateh Singh, DR

Coram: **Hon'ble Shri S.S. Kang, Vice President**
Hon'ble Shri Mathew John, Member (Technical)

Final ORDER No. ST/280/11

Per S.S. Kang:

Heard both sides.

2. The Appellants filed this appeal against the impugned order whereby demand of service tax of Rs. 6,45,651/- along with interest is confirmed and penalties were imposed.

3. The demand is confirmed on the ground that the appellant is providing Cargo Handling Service. The contention of the appellant is that the Revenue has confirmed the demand after taking into consideration the amount received from their clients treating the same as in respect of Cargo Handling Services whereas the appellants are also undertaking the activity of transportation of material within the factory which ~~does not covers~~ is not covered under the cargo handling services. In respect of this, the appellants relied upon the copies of invoices issued to their customers. The appellant relied upon the decision in the case of Modi Construction Vs CCE reported in 2008 (12) STR 34 and Revenue's appeal against this was dismissed by the Hon'ble High Court of Jharkhand in the case of CCE Vs Modi Construction 2011 (23) STR 6 (Jhar).

4. The Appellants also relied upon the decision of Hon'ble Rajasthan High Court in the case of S.B. Construction Co reported in 2006 (4) STR 545 (Raj) to say the appellant's activities are not in respect of cargo. The contention of the applicant is that in this situation, the amount received by the appellant cannot be held to be in respect of cargo handling services.

5. Revenue relied upon the decision of lower authorities and submitted that ~~the~~ movement, ~~of~~ loading, unloading and transport of goods or shifting of goods within the factory ~~premises~~ relates to cargo handling services. The appellants unloaded the inputs which were

received in the factory and then loading the finished goods which were ~~shifted~~ sold to the customers, therefore, the demand is rightly made.

6. We find that the appellants produced certain invoices to show that the activity ~~is~~ of transportation of goods ~~only~~ and also in respect of shifting of raw material within the factory. The Tribunal in the case of Modi Construction Co.(supra) has held that shifting of goods within the factory does not come under purview of cargo handling services. Further, we find that the Hon'ble Rajasthan High Court in the case of S.P Construction Co while interpreting the "cargo handling services" held that the word 'cargo' means carriage of luggage in ship, vessel or aircraft.

7. In view of the above decision and in view of the fact ~~of~~ that certain ~~activity~~ activities are mere transportation of goods or shifting of goods within the factory which are not covered under the scope of cargo handling services, we ~~hold~~ find it is a fit case for re-consideration by the adjudicating authority afresh. The impugned order is set aside and the matter is remanded ~~back~~ to the adjudicating authority to decide afresh ~~while~~ after affording an opportunity of hearing to both the sides. The appeal is disposed of by way of remand.

(S.S. KANG)
Vice President

(MATHEW JOHN)
Technical Member

MPS*