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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/200 /2007 - CU[DB] Date **17/02/2011**

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

To :
M/S HANUMAN COAL COMPANY,
S.N.ROAD, FIROZABAD (U.P.)

M/S HANUMAN COAL COMPANY, Appellant

Vs

C.C.E. KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/39/ 2011 CU[DB]** dated 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. KANPUR
117/7, SARVODAYA NAGAR,
KANPUR 208005.
2. Adv. / Consult
MR.ANIL SINGH SISODIA
76,SHIVAJI NAGAR, SHAGANJ, AGRA-10
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 (Harvana)
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/Appeal No. 200/07

(Arising out of order in appeal No.613/CE/Appl/KNP/06 dated 30.11.2006 passed by the Commissioner of Central Excise (Appeals), Kanpur)

Date of Hearing: 18.1.2011

For approval and signature:

Hon'ble Mrs Archana Wadhwa, Member (Judicial)
Hon'ble Mr M. Veeraiyan, Member (Technical)

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982? — No
2. Whether it should be released under Rule 27 of the CESTAT(Procedure) Rules, 1982 for publication in any authoritative report or not? — No
3. Whether Their Lordships wish to see the fair copy Of the order? — Seen
4. Whether Order is to be circulated to the Departmental Authorities? — Yes

M/s Hanuman Coal Co. — Appellants

Vs

CCE, Kanpur — Respondent

Appeared for the Appellant: Shri K.K. Anand, Advocate
Appeared for the Respondent: Shri Fateh Singh, SDR

Coram: **Hon'ble Mrs Archana Wadhwa ,Member (Judicial)**
Hon'ble Mr. M. Veeraiyan, Member(Technical)

Final ORDER No. ST/39/11

Per Archana Wadhwa:

Demand of service tax of Rs. 1,33,869/- stands confirmed against the appellants alongwith confirmation of interest and imposition of penalty of identical amount each under Section 76 of the Finance Act, 1994 and Section 78 of the act. In addition, penalty of Rs. 500/- stands imposed under Section 78 of Rs. 7,000/- under Section 77 of the Finance Act. The said tax stands confirmed and penalty imposed by holding the appellants as service providers under the category of clearing and forwarding agents.

2. As per facts on record, the appellants are engaged in the clearing and forwarding activities. They made payments for the price of coal bought by various persons and arranged the transportation of the same by paying the freight and arranged issuance of railway receipts etc. The said activity undertaken by the appellants has been held to be covered by the definition of clearing and forwarding agent services for the period 9.7.2001 to 9.7.2004. In fact, it is on record that the appellants subsequently applied for registration under the heading of business auxiliary services on 26.8.04 which was granted to them on 1.9.04. Thereafter, they are paying service tax under the said category of business auxiliary services.

3. However, for the period prior to their registration, Revenue felt that the services undertaken by them were falling under the C&F agent services for which a show cause notice was issued on 12.7.05 proposing confirmation of the demand and imposition of penalty. The said show cause notice culminated in issue of the impugned order by the original adjudicating authority which stands upheld by the Commissioner (Appeals).

4. After hearing both the sides, we find that the lower authorities have relied on the Tribunal's decision in the case of Prabhat Zarda

India Ltd reported in 2002 (1245) ELT 22 (Trib). However, the said decision stands over-ruled by the Larger Bench judgment of the Tribunal in the case of Larsen & Toubro Vs CCE. Apart from the above, we also note that the Commissioner has held that the appellants indirectly dealt with the goods and as such has to be held as clearing and forwarding agent. It stands held by the larger Bench that the expression 'directly or indirectly' cannot be from the activity of clearing and forwarding operations. Thereafter, there are a number of decisions of the Tribunal which hold that such type of services would not be covered by the clearing and forwarding agent services.

5. Apart from the above, the appellants are now registered under the business auxiliary services. The Revenue cannot contend that prior to such registration, they were providing clearing and forwarding agent services. We also note that the demand is for the period 9.7.01 to 9.7.04 having been raised on 11.7.05 is barred by limitation. For all the above reasons, we set aside the impugned order and allow the appeal with consequential relief to the appellants.

(ARCHANA WADHWA)
Judicial Member

(M. VEERAIYAN)
Technical Member

MPS*