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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/1281/2010 - CU[DB] Date **15/05/2012**

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 SPECTRUM COAL WASHERIES LTD., Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/376/ 2012 CU[DB]** dated 20.04.2012 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 SPECTRUM COAL WASHERIES LTD.,
FORMERLY: ST-CLI COAL
WASHERIES LTD. VILLAGE-
RATIZA, TALUKA-KATGHORA,
DISTT-KORBA (C.G.)

2. Adv. / Consult

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-3
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 Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing : 20.4.2012

Service Tax Appeal No. 1281 of 2010

[Arising out of the Order-in-Appeal No. 08(ST)/RPR-I/2010 dated 11.3.2010 passed by the Commissioner (Appeals), Customs & Central Excise, Raipur]

For Approval & Signature :

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

1.	Whether Press Reporter 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?	NO
3.	Whether their Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	NO

CCE, Raipur Appellant

Vs.

M/s Spectrum Coal Washeries Ltd. Respondents

Appearance:

Appeared for Appellant : Shri B.L. Soni, A.R.

Appeared for Respondent : None

CORAM: Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

Final Order No. ST/A/376/12-Cus dated............

Per **Mathew John :**

The respondents are engaged in the business of providing services of loading and unloading of washed coal as well as rejected coal in various mines. They were also engaged in activities in relation to beneficiation/washing of coal and they were registered under the category of 'business auxiliary services' for paying tax on the activity relating the beneficiation and washing of coals. They were also receiving some payments towards loading and unloading charges of rejected coal. Revenue was of the view that ~~such charges received by~~ the Respondents should have paid service tax on such consideration received by them on the coal mines. Accordingly, a Show Cause Notice was issued demanding service tax on amounts received for loading and unloading of coal during the period July 2006 to December 2006. The said Show Cause Notice was adjudicated confirming service tax demand of Rs.7,29,472/- along with interest and penalties. Aggrieved by the order, the Respondents filed appeal with the Commissioner (Appeals) who waived the penalty imposed on them under Section 78 of the Act by exercising powers under Section 80 of the Act. Aggrieved by the order of the Commissioner (Appeals), Revenue filed this appeal praying that penalty should have been imposed on the Respondents under Section 78 of the Finance Act 1994 and the Commissioner (Appeals) has erred in waiving such penalty.

2. The ld. A.R. for Revenue submits that the Commissioner (Appeals) has upheld demand invoking the extended period of time and thus upholding the fact that there was suppression on the part of the Respondents and in such a situation penalty should not have been waived. It is the submission of A.R. that Commissioner (Appeals) has not recorded sufficient reason for waiving the penalty under Section 80 of the Finance Act.

3. The Respondents' ~~submit~~ case is that they were in fact ~~had~~ carrying on the activity of loading and unloading only within the mines and at no stage the goods could be treated as cargo.

4. We have considered arguments on both sides. We note that the Rajasthan High Court in **S.B. Construction Corporation Vs. CCE** - 2006 (4) STR 545 (Raj.) ruling that goods when moved within a factory cannot be considered as cargo. This is applicable for shifting of goods within mines also. Further the scope of the entry for cargo handling service was under dispute in the case of many assesses and there was bonafide reason for the Respondent to believe that such tax was not

payable. A large number of decisions of the Tribunal in favour of assesses similarly situated as the present Respondent also supports the case of Respondent. At this stage the Respondent is not challenging the tax amount confirmed. ~~They are only challenging~~ the appeal filed by Revenue praying for imposition of penalty, only is under consideration.

4. Considering the history of the dispute about the scope of the entry for cargo handling service in many cases that has come up before the Tribunal, we are convinced that this is a fit case for waiver of penalty invoking provisions under Section 80 of the Finance Act 1994. Therefore we do not want to interfere with the order of the Commissioner (Appeals). Accordingly the appeal filed by Revenue is rejected.

(Pronounced in Court)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

RM