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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/352-363 /2008 - CU[DB] Date **12/03/2012**

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

To :
M/S ANUPAMA COAL CARRIERS PVT. LTD.
CAMP: GEVRA PROJECT, GEVRA,
DISTT. KARBA (C.G.)

M/S ANUPAMA COAL CARRIERS PVT. LTD. Appellant

Vs

C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/143-154 2012 CU[DB]** dated 06.03.2012 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
C.C.E. RAIPUR
CENTRAL EXCISE BUILDING,
DHAMTARI ROAD, TIKRAPARA,
RAIPUR 492001.

2. Adv. / Consult
MR.S.N.KAPOOR
170, NEW COLONY, NAGPUR-1

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)

(*) Please see rest of the addresses at back.

M/s Shree Ganraj Coal Transport (P) Ltd Behind CGM Office Secl kusmunda Distt Korba (CG)	ST/353/08
M/s Arjuna Carriers (P) Ltd Excavation Workshop Oid Dipka Project Gevra Distt Korba (CG)	ST/354/08
M/s Kusmunda Coad Transport (P) Ltd Kusmunda Distt Korba (CG)	ST/355/08
M/s Chhattisgarh Coal Transpsort (P) Ltd Secl Old Dipka Project PO : Gevra Project Distt Korba (CG)	ST/356/08
M/s Gujraj Carriers (P) Ltd Dipka Camp, C/O SECL Dipka Exp Project PO : Chainpur Distt Korba (CG)	ST/357/08
M/s VN Transport (P) Ltd Opp. Excavation Workshop Gevra Project Distt Korba (CG)	ST/358/08
M/s Gevra Coal Transport (P) Ltd Opp. Excavation Workshop Gevra Project Distt Korba (CG)	ST/359/08
M/s H.N. Transport (P) Ltd Near DGM Office, Gevra Project Distt Korba (CG)	ST/360/08
M/s Shivam Coal Carriers (P) Ltd ManikPur Project Distt Korba (CG)	ST/361/08

M/s G.L.Coal Carriers (P) Ltd
SECL Dipka Expansion Project
PO : Chainpur
Distt Korba (CG)

M/s Korba Coal Carriers (P) Ltd
MRG Railway Siding
Gevra Project
Distt Korba (CG)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066

COURT NO. II

Service Tax appeal Nos. 352 to 363/2008

[Arising out of Order-in-Appeal No. Commissioner/RPR/24/2007 dated 13.3.2008 passed by the Commissioner of Customs & Central Excise (Appeals), Raipur].

Date of Hearing/decision: 23rd February, 2012

For approval and signature:

Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Rakesh Kumar, 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?	
2	Whether it should 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 Departmental authorities?	

M/s. Anupam Coal Carriers Pvt. Ltd.,
M/s. Shree Ganraj Coal Tpt. Pvt. Ltd.,
M/s. Arjuna Carriers Pvt. Ltd.,
M/s. Kusmunda Coal Tpt. Pvt. Ltd.,
M/s. Chhattisgarh Coal Tpt. Pvt. Ltd.,
M/s. Gajraj Carriers Pvt. Ltd.,
M/s. V.N. Transport Pvt. Ltd.,
M/s. Gevra Coal Transport Pvt. Ltd.,
M/s. H.N. Transport Pvt. Ltd.,
M/s. Shivam Coal Carriers Pvt. Ltd.,
M/s. G.L. Coal Carriers Pvt. Ltd.,
M/s. Korba Coal Carriers Pvt. Ltd., Appellants

Versus

CCE, Raipur Respondent

Present for the Appellant : Shri S.N. Kapoor, Advocate
Present for the respondents : Shri B.L. Soni, D.R.

Coram: Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Rakesh Kumar, Technical Member

FINAL ORDER NO ST/A/143-154/12-Cus.

Per D.N. Panda:

Learned Counsel mentions that during the time of passing stay order factual matrix was considered by the Tribunal and it was viewed that cases of the present appellants shall be covered by the decision of Tribunal in the case of Sainik Mining & Allied Services Ltd. vs. Commr. Of Central Excise, Customs & Service Tax, BBSR reported in 2008 (9) STR 531 (Tri. - Kolkata). Accordingly, waiver of pre-deposit was allowed.

2. It is the grievance of the appellants that service provided by the appellants to the recipient of the service was for movement of coal from mine surface to tip head within the mine area. Such an activity was also examined by South Eastern Coal Fields Ltd. and that concern being recipient of service clarified by a communication dated 13th March, 2008 that mechanical transportation of coal into tippers was at face and transportation was from mine face to surface. Such an activity was carried out within the mine i.e. before tip head. When the activity carried out by the appellants is clear from the above communication the appellant cannot be denied benefit of decision of the Tribunal in the case of Sainik Mining & Allied Services Ltd. (supra). Accordingly, his prayer is to allow the appeals.

3. Learned Representative for Revenue objects to the prayer of the appellants on the ground that the appellants loaded the coal on different places and transported to different places for unloading. Such an activity shall come under 'Cargo Handling Service' category. Learned D.R. relies upon the decision of Hon'ble Orissa High Court in the case of Coal Carriers vs. CCE, Cus. & S.T., Bhubaneswar, reported in 2011 (24) STR 395 (Ori.). He specifically relies on Para 22 to 24 of the decision to state that appellants are not permitted to get the benefit of decision of Tribunal in the case of Sainik Mining & Allied Services Ltd. (supra).

4. Heard both sides and perused the record.

5. Since the Revenue's position is as above we have re-examined the factual aspect in all these appeals. We took the sample case of Anupam Coal Carriers Pvt. Ltd. in ST/352/2008 on 12.4.2007. While issuing show cause notice in that case, copy of loading agreement dated 18.4.2005, entered into between the parties was examined by the investigating authority. The said authority in Para 3 and 4 of the notice clearly described the nature of activity as under:-

"On scrutiny of documents tendered by M/s. ACCPL, it appears that M/s. ACCPL has entered into an agreement with M/s. SECL on 18.04.2005, for executing the work of loading of coal from various quarries, faces, surfaces and stocks of SECL by deploying its own payloaders. The general terms and conditions of the said agreement inter alia mention the obligations of the contractor viz. M/s. ACCPL apart from the task of loading of coal into the tipper trucks by its own payloaders. Some of them are re-produced below:

i) The Ex-Servicemen Transport Company shall load coal into tippers from various quarries, faces, surfaces and stocks of the Company i.e. SECL with their own payloaders. The quantity of coal loaded is approximate and may vary in actual practice.

ii) The Ex-Servicemen Transport Company shall employ only competent, skillful and orderly men to load the coal.

iii) The Ex-Serviceman Transport Company shall furnish the details of equipment and persons deployed by them to the Chief General Manager/ General Manager of the Company before commencing the work.

iv) The Ex-Servicemen Transport Company shall at all times exercise reasonable precautions for the safety of persons and property of the Company and shall comply with all applicable provisions of the Safety Laws drawn up by the State or Central Government or Municipal authorities or other authorities in India.

v) The Ex-Servicemen Transport Company shall deploy the payloaders owned by them and the payloaders, which are registered in the name of ex-servicemen individually, or direct dependants of ex-servicemen.

vi) If the management desires, the Ex-Servicemen Transport Company has to load from any other site/stock and such order/ advice shall be binding upon the Ex-Servicemen Transport Company.

vii) The Ex-Servicemen Transport Company shall make their own arrangements at their own cost for all materials, tools, staff and stores required for the execution of work to the satisfaction of the Company.

viii) The Ex-Servicemen Transport Company must load athe minimum daily and monthly quantity of coal offered to them by the Company's concerned colliery, which would be intimated by the colliery or by the Chief General Manger.

ix) The Ex-Servicemen Transport Company must load the minimum guaranteed quantity.

x) The Ex-Servicemen Transport Company shall use all payloaders exclusively for loading of coal from the collieries of the Company. They shall not use the said payloaders for any other work.

xi) The time allotted for execution of the loading of coal stipulated in this connection will be strictly observed by the Ex-Servicemen Transport Company. The loading work shall be carried on by the Ex-servicemen Transport Company throughout the stipulated period of the contract with due diligence.

xii) The Ex-Servicemen Transport Company shall be paid on the basis of weight as recorded at the weighbridge at the colliery. In case the weighbridge goes out of order, the payment will be made on volumetric measurement taken at the respective colliery.

xiii) The Ex-Servicemen Transport Company shall not sublet the work to any other person/ agency/ loader.

xiv) The Ex-Servicemen Transport Company shall comply with all the provisions of the Contract Labour (Regulation & Abolition) Act, 1970 and the rules framed thereunder.

xv) The Ex-Servicemen Transport Company shall pay their employees engaged by them under the contract such wages, dearness allowances, bonus etc. as may be applicable under relevant laws.

xvi) The Ex-Servicemen Transport Company shall in addition to above make all payments provided in the relevant laws and especially in the labour laws including leave pay, railway fair, maternity benefit, compensation under Industrial Disputes (Amendment) Act and sick leave wages, wages paid for holidays as per the rules, agreements awarded or relevant laws applicable to Coal Industry as the case may be.

6. Para 4 of show cause notice shows that there was a scrutiny done by the authority to the terms of agreement dated 18.4.2005. This clearly indicates that the activity of loading

coal was from various querries, faces, surfaces and stock yards of South Eastern Coal Yards Ltd., deploying payloaders. The obligation of the appellant and the coal field was examined with the liability of each other. clause (i) aforesaid shows that the contents of Para 4 of show cause notice was one of the obligations. In order to discharge such obligation use of loaders and manpower was the obligation. It was agreed between the parties by clause (viii) aforesaid under Para 4 of show cause notice that agreed quantum of loading was responsibility of the appellants. The appellants were required to confirm the quantum of loading by volumetric measurement.

7. Reading of relevant clauses of agreement extracted in show cause notice does not throw light that loaders were let out by appellant with the concurrent obligation of loading of coal. When there was no letting out of loaders, entire activity was to discharge the obligation of loading of coal within the mining area as is observed aforesaid. Mere loading of coal within the mining area does not amount to Cargo Handling Service as has been held in the case of Sainik Mining & Allied Services Ltd. (supra) and there is no instruction from Revenue whether that order of Tribunal has been reversed or stayed by any higher court.

8. Since Shri Soni has raised grievance that the case of Revenue is governed by the judgment of Hon'ble High Court of Orissa in Coal Carrier (supra), we have looked into the factual background of that case appearing in Para 6 of the order. The

appellant in that case was engaged in letting out payloaders on hire basis for mechanical transportation of coal into railway wagons at different railway sites of MCL. This was the averment in that case. Coal that was carried to railway site were transported by other contractor from different parts of mine and dumped at railway siding. The appellants in that case had also undertaken operation, maintenance and upkeep of payloaders. In para 22 of the judgment Hon'ble High Court has examined the contents of the work order dated 29.4.2003 in Coal Carriers case (supra) and observed that the factual aspect in that case called for decision was whether there was Cargo Handing Service provided. The decision of Sainik Mining & Allied Services Ltd. (supra) was not at all cited before the Hon'ble High Court. Since the appellants in that case did not plead the benefit of decision of Sainik Mining & Allied Service Ltd. case, on the factual matrix before the Hon'ble Court, the appeal was decided against the appellants.

9. In the present batch of appeals the appellants have specifically pleaded that they are governed by the decision of Sainik Mining & Allied Services Ltd. (supra). Once the decision in that case has reached its finality, these appellants cannot be dealt unequally under the law. Since the basis of allegations in the show cause notice was as aforesaid and that is same in all the cases, the decision in the present batch of appeals shall not be different as that was held in Sainik Mining & Allied Services Ltd. (supra).

10. Shri Soni, learned D.R. also raised the plea that Para 8.3 of the show cause notice comes to rescue of Revenue. We have perused that paragraph. We are satisfied that the said paragraph does not contradict the salient features of the agreement contained in Para 4 of the show cause notice. It was not shown to us that railway sidings were away from mining area and does not come within the geographical territory thereof. Had there been siding elsewhere outside the mining

decision would be different.

area. Show cause notice did not bring out the fact of situation of railway siding outside mining area. Therefore, our decision shall not be different from Sainik Mining & Allied Services Ltd. case.

11. In view of the aforesaid, we allow all the appeals setting aside the demands in question.

<u>Per Rakesh Kumar:</u>

12. While I fully agree with the conclusion arrived at by my learned brother, I would like to point out that in Para 22 of the judgement of Hon'ble Orissa High Court in the case of Coal Carriers (supra) relied upon by learned D.R. it has been held

is

that Cargo Handling Service ~~should be~~ an adjunct service to the actual transportation of goods and it would cover pre-

packing, loading and post transport activity like

transportation activity like ~~unloading~~ and on this basis the

unpacking, unloading etc.

Hon'ble High Court in that case held that loading of coal on wagons at the railway siding would be covered by the Cargo

classifying

Handling Service. Thus for ~~clarifying~~ an activity as Cargo Handing Service it must be shown that it is a service adjunct to the actual transportation of goods i.e. services just before transportation of goods and post transportation services when cargo has been discharged. The movement of goods within a factory from one point to another or within a mine from one place to another would not ~~cover~~ be covered by Cargo Handling Service unless it is shown that such activity is adjunct to the actual transportation. In this case neither in the show cause notice nor in the impugned order there is any finding that the appellants were engaged in loading of coal at the railway siding. Just bringing the coal to railway siding would not be covered by Cargo Handling Service. In view of this, we are of the view that the judgment of Orissa High Court in the case of Coal Carriers (supra) does not support the department's view.

(Pronounced in the open Court)

(D.N.PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

RK