4

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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/404 /2007 - CU[DB] Date **12/01/2012**

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

To :
M/S R.K. PALIWAL, PRESENTLY OF SMT. URMILA
DEVI PALIWAL
374, ARYA NAGAR, FIROZABAD

M/S R.K. PALIWAL, PRESENTLY OF SMT. URMILA DEVI PALIWAL Appellant

Vs

C.C.E. KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.**ST/A/24/ **2012 CU|DB|** dated 29.09.11 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. KANPUR
117/7, SARVODAYA NAGAR,
KANPUR 208005.

2. Adv. / Consult
MR.R. SANTHANAM
C-3/210, JANAK PURI, NEW DELHI - 110 058.

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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No. 2, R.K. Puram, NEW DELHI

COURT No. III

Service Tax Appeal No.404 of 2007

Date of Hearing : 29.09.2011.

[Arising out of Order-In-Appeal No.74/CE/Appl/KNP/2011, dated 27.02.2007 issued by CCE, Kanpur]

For approval and signature:
Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. 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?	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 R.K.Paliwal — Appellant
Presently of Smt. Urimila Devi Paliwal
Versus
CCE, Kanpur — Respondent

Coram: Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Rakesh Kumar, Technical Member

Present for the Appellant - Shri R.Santhanam, Adv.
Present for Respondent - Shri K.K.Jaiswal, DR

Final **Order No.** ST/~~A~~/24/12-Cus **Dated :**__________

Per Ms. Archana Wadhwa:

The demand of service tax of Rs.3,85,032/- stands confirmed against the applicant appellant along with imposition of penalties under Section 76 of the Finance Act, 1994 for the period 1.09.99 to 9.07.04 on the findings that during the said period, the appellant has rendered the services of 'clearing & forwarding agents'. In addition penalty of Rs.500/- stands imposed u/s 75 of and Rs.5,500/- u/s 77 of the Finance Act, 1994.

2. As per the facts on record, the appellant was providing services of coal merchants and were financing the ~~projects~~ purchase of coal on behalf of their customers. The payments were being made by the appellant to the principal coal agent on behalf of coal buyers and pre-paid railway receipts were being prepared by them and they were depositing freight in advance on behalf of their customers. For the said activities, they were receiving commission from their customers.

3. Revenue by entertaining the ~~plea~~ belief that said services were falling under the category of 'clearing & forwarding agent services', which was taxable from 16.07.97, issued two Show Cause Notices dtd. 15.04.05 and 15.07.05 proposing confirmation of service tax under the category of 'clearing & forwarding agents'.

4. The said SCNs were contested by the appellant by submitting that they were not covered under definition of clearing & forwarding agents category as they have provided only financial assisti~~ng~~ance in arranging supply of goods from Coal India Ltd. to their clients. They have not acted as the agents of the coal and in fact working as sub-agents of the agents of Coal India Ltd. They have never physically dealt with principal goods and as such cannot be

held to be providing any clearing & forwarding services. They also assailed the impugned order on the point of limitation.

5. The lower authorities did not find ~~fact~~ favour with the above submissions of the assessee and accordingly ~~cleared~~ confirmed demands and imposed penalties. The order passed by the original adjudicating authority stands confirmed by the Commissioner(Appeals), hence the present appeal.

6. We have heard Shri R.Santhanam, ld. Advocate appearing for the appellant and Shri K.K.Jaiswal, ld. DR appearing for the Revenue.

7. It is a fact that the appellants ~~were~~ subsequently got registered under the category of 'business auxiliary service' w.e.f. 1.09.04. Such registration stands accepted by the Revenue and the appellants were discharging their service tax liability accordingly.

8. Without going into the detailed discussion, we note that an identical dispute was the subject matter of the Tribunal's decision in the matter of Hanuman Coal Co. vs. CCE, Kanpur reported in 2011(22)STR350(Tri.Del.). After observing that the reliance has been made by the lower authorities on the Tribunal's decisions in the case of Prabhat Zarda Factory (India) Ltd. reported in 2002(145)ELT222(Tri.) which was not appropriate in as much as the said decision stands overruled by the Larger Bench of the Tribunal in the case of Larsen & Toubro Ltd. reported in 2006(3)STR321(Tri.-L.B.), the Tribunal observed that the activity

of financing the price of coal got by the various persons and arranging the transportation of the same ~~that~~ by paying the freight and arranging the issuance of railway receipts etc. cannot be held to be activity covered under the category of clearing & forwarding agent.

9. In as much as present case, we find that the lower authority has relied on the Tribunal's decision in the case of Prabhat Zarda Factory (India) Ltd. as also the activity ~~is~~ carried out by the appellant is identical to the activity carried out in the case of Hanuman Coal Co., by following the said decision of the Tribunal, we hold that the appellant can't be said to have rendered the services under the category of clearing & forwarding agent.

10. Apart from above, we also note that the in the case of Hanuman Coal Co. the Tribunal observed that in as much as the appellant in that case were subsequently registered under the 'business auxiliary service' w.e.f. 1.09.04, Revenue cannot contend that prior to said registration, they were providing clearing & forwarding agent services. In the present case also, the appellants are registered under the category of business auxiliary service w.e.f. 1.09.04. As such on above ground also, they are entitled to relief.

11. Apart from above, the Tribunal in the case of Hanuman Coal Co. also held demand barred by limitation which plea is also available in the present case.

12. We also note that in subsequent judgement in case of Kavery Coal Suppliers vs. CCE, Kanpur reported in 2011(23)STR35(Tri.Del.), the identical issue was held to be not covered by the definition of clearing & forwarding agent.

13. In view of the fact that the issues stands covered by the above two decisions of the Tribunal, we set aside the impugned order and allow the appeal with consequential relief to the appellant.

(Pronounced in the Open Court on 12/1/12)

(Archana Wadhwa)
Judicial Member

(Rakesh Kumar)
Technical Member

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