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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/659, 660, 661/2008 - CU[DB], ST/CO/93/09 WITH ST/COD/106/09 — Date **19/01/2012**

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

To : M/S DILIP CONSTRUCTION CO.,
MAIN ROAD, DALLI RAJHARA,
DISTT. DURG, (C.G.) 491 228.

M/S DILIP CONSTRUCTION CO., — Appellant

Vs

C.C.E. RAIPUR — Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/50-52/ 2012 CU[DB]** dated 18.01.2012 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. V.L. KUMARAN,
B-6/10, SAFDERJUNG ENCL.
NEW DELHI – 110 029.

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
14. **M/S. J.K. TRANSPORT,**
01, MALVIYA NAGAR,
DURG. CHHATISGARH.
15. **M/S MAHABIR TRADERS**
MAIN ROAD SHAHID CHOWK,
DALLI RAJHARA,
DISTT. DURG, (C.G.) 491 228.

Assistant Registrar
(Customs Appeal Branch)

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

Date of hearing/decision 10.01.2012

ST/CO/106/09, ST/CO/93/2009

Service Tax Appeal Nos. 659, 660 & 661 of 2008
(Arising out of Order in Original No. Commissioner/ RPR/51 – 53 /2008 dt. 16.7.2008, 17.7.2008 and 18.7.2008 respectively passed by the Commissioner, Central Excise, Raipur).

Appellant

M/s Dilip Construction
M/s J.K. Transport
M/s Mahabir Traders

Vs.

Respondent

CCE, Raipur

Appearance: Rep. by Sh. B.L. Narasimhan, Advocate for the appellants.
Rep. by Sh B.L. Soni, DR for the respondent.

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

Final ORDER NO. ST/A/50-52/12-Cu

Per: Shri D. N. Panda:

Learned Counsel says that reading of para 9 of the adjudication order demonstrates that the activity carried out by the appellant was within the mining area and the goods transported within mining area cannot be called as cargo handling. This can be appreciated if the sample copy of the contract dated 02.12.2003 is examined. Following the decision of the Hon'ble High Court of Jharkhand in the case of **CCE, Ranchi vs. M/s Modi Construction Company reported in 2011 (23) STR 6 (Jhar.)** the activity of the appellant cannot be called as cargo handling service and Appellant shall succeed.

2. Opposing the contention of the Revenue, learned representative of Revenue says that the activity of the appellant squarely falls under the category of cargo handling service. This can be

appreciated reading the decision of Hon'ble Hgh Court of Orissa in the case of **Coal Carriers vs. CCEC &ST, Bhubaneswar reported in 2011 (24) STR 395 (Ori.)** He further submits that the appellant's contentions are baseless when they carried out the activity of cargo handling service.

3. Heard both sides and perused the record.

4. To call an activity to be cargo handling service there should be an activity of movement of cargo from one place to another place without any internal movement within the mining area. Neither handling service outside the mining area is evident from para 9 of the adjudication order nor destination outside such area has come to record. Therefore, when the factual evidence demonstrates movement of the excavated iron within the mining area from one place to another that operation cannot be called as cargo handling service. Accordingly, appellants succeed in all the three appeals.

5. There is a delay in filing of cross objection for which application for Condonation of delay has been filed. Since the appeal has been disposed of in above terms, both cross objection and condonation applications get dismissed.

6. In the result, all the three appeals, C.O. and COD applications gets disposed of accordingly.

(Dictated and pronounced in the open Court)

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

Pant