14

TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Mail : cestat08@gmail.com

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

Appeal No. : ST/461/2007-CU[DB]

Dated: **13/07/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
SPECTRUM COAL & POWER LIMITED
FORMERLY ST-CLI COAL WASHERIES LTD, CORP. OFFICE-
2202, CYBER HEIGHTS, ROAD NO 2,
BANJARA HILLS, HYDERABAD

SPECTRUM COAL & POWER LIMITED (Appellant)

VS

C.C.E. RAIPUR (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **ST/A/521/2012-CU[DB]**, Stay/MISC Order No. and dated **05/07/2012** passed by the Tribunal under section **01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.**

Assistant Registrar
CUSTOMS Appeal Branch

Copy To,
1. **Respondent**
C.C.E. RAIPUR
Central Excise Building, Dhamtari Road,
Tikrapara, Raipur 492001.
2. **Advocate(s) / Consultant(s):**
S. K. Pahwa
Marwah & Pahwa, 45, Aradhana Sector
13, R. K. Puram, New Delhi-110066.
3. **C.D.R**
4. Bar Association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications 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. Gaurd File

Assistant Registrar
CUSTOMS Appeal Branch

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI

PRINCIPAL BENCH, COURT NO. III

Service Tax Appeal No.461 of 2007 ~~& 471 of 2008~~

[Arising out of Order-In-Original No.Comm/RPR/31/07, dated 24.05.2007 issued by CCE, Raipur]

For approval and signature:
Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Mathew John, 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 Spectrum Coal & Power Ltd. — Appellants
Vs.
CCE, Raipur — Respondent

Coram: Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Mathew John, Technical Member

Appearance:
Shri S.K.Pahwa, Advocate for the Appellants
Shri R.K.Gupta, AR for the Respondent

Date of Hearing : 14.03.2012

Final **ORDER NO. ST/A/521/12-Cus**

Per : Ms. Archana Wadhwa

After hearing both the sides, we find that the appellant entered into an agreement with 'Gujarat State Electricity Corporation Ltd., Maharashtra Electricity Generating Company and Reliance Energy Ltd., Mumbai' for executing the work of benefication/washing of raw coal at its coal washery situated at Ratiza, distt. Korba. After washing of raw coal, the cleaned coal and rejects are returned to the said parties for their captive consumption.

2. Proceedings were initiated against the appellant by way of issuance of a Show Cause Notice (SCN) dtd. 30.08.06 proposing confirmation of service tax of Rs.5,57,81,545/- on the allegation that by undertaking the above activity of benefication/washing of raw coal, they have provided taxable service falling under category of 'business auxiliary services'. In addition, service tax of Rs.17,14,573/- was proposed to be confirmed on the taxable value of the 'cargo handling services' undertaken by the appellant during the period 01.04.04 to 30.03.06. Notice also proposed imposition of penalties. The said SCN culminated into impugned order passed by Commissioner(Service Tax) confirming demand as proposed in the notice along with confirmation of interest. In addition penalty of identical amount stands imposed u/s 78 of the Act along with imposition of penalties u/s 76 and 77 of Finance Act, 1994.

3. The activity undertaken by the appellant as detailed in para 5 & 6 of the impugned order are reproduced below :-

> *"5. M/s ST-CLI receives raw coal in its aforesaid coal washery on behalf of different linked consumers of South Eastern Coalfield Ltd. (SECL), Gevra Area of Distt.-Korba (C.G.), having size ranging from 1 to plus 250 mm. Then, it sizes the raw coal upto maximum 50 mm with the help of crusher. The crushed raw coal is then conveyed to the stacking tube and then it is drawn from the staking tube through variable speed vibrator-feeders and conveyed to the Coal Preparation Plant (CPP). In CPP, the raw crushed coal is*

dry screened at 13 mm size and (-) 13 mm sized coal is bypassed as clean coal (optional depending on wash ability characteristics). (+) 13 mm coal is again wet screened at 2 mm size so as to de-slime it of any fines which might be sticking to coarser coal. Over flow from this screen is sent to the Heavy Media Sump wherein it is mixed with slurry of predetermined specific gravity. The slurry is then pumped into a Heavy Media Cyclone, wherein separation of coal takes places at a characteristically sharp cut point. Clean coal and reject comes out and clean coal obtained from the overflow is then dewatered, rinsed of magnetite and dried in centrifuges before being blended to the by passed fines. Then the clean coal and reject coal are collected separately in bunker through separate belt. It also appears that during the course of washing, no chemicals are added as the coal benefication plant is natural media washing plant. The chemical viz. Plocculants are used to handle the slurry in thickener and as well as in belt press to separate the coal fines and clean water.

6. The raw coal, which it receives from the coal mines of SECL for washing purposes is of 'F' grade, having ash content in the range of average 40-42% and size ranging from 1 to 250 mm. After crushing screening and washing, the clean coal size ranges from 1 to 50 mm and ash content ranges from 32 to 34% hence clean coal is having higher calorific value as compared to raw coal, that if has washed. Thus it appears that by above process, it only beneficiates *the raw coal by reducing ash content through washing. Thus the activities undertaken by ST-CLI include crushing of raw coal, screening of crushed coal and washing of coal with the help of water."*

4. The Commissioner has confirmed the above activity to be falling under the category of 'business auxiliary services' as the appellant has been producing / processing the coal on behalf of their clients and as the said activity does not amount to manufacturing activity.

5. At this stage, we find that the issue stands decided by the Tribunal in the case of Aryan Energy P.Ltd. reported in 2009(13)STR42(Tri.). It was held that the benefication/washing of raw coal is the activity of mining which was introduced for the purpose of service tax w.e.f. 01.06.07. As such it was held that prior to the said period, no service tax was leviable on benefication activity by treating the same as 'business auxiliary services'. For better appreciation, we reproduce relevant para of the said order:-

"15. It was also held that the coal that is extracted from the coal mine is crushed into pieces and thereafter it is washed to remove its impurities and ash contents to make the coal fit for sale. After the coal is washed, it assumes the form of coke, which is sold to consumers. The washery, wherein the process of washing coal is carried on, for the purpose of preparing the coal for sale is an integral part of a mine as it involves ancillary process. Washery is included within the definition of mine under the Mines Act, 1952. In the decision of the Apex Court in the case of State of West Bengal v.

Kesorm Industries & Others - 2004(10)SCC201, the Apex Court has observed that the definition of mine is wide. Coal washing plants or coking coal or quarries coal mines and washed coal slurry, and cokes of different grades would also come within the definition of coal. In view of the above observations we are of the considered view that the beneficiation of coal carried out by the appellant is definitely a part of mining activity. The service provided by to any other person is relating mining or case has been brought under the ambit of service tax w.e.f. 1.6.2007. As washing of coal is recognised as a part of mining activity in the enactment relating to mining, in our view the washing or beneficiation of coal would be liable to service tax only w.e.f. 1.6.2007. In the case under appeal the period is prior to 1.6.2007 and therefore our conclusion is that for the relevant period the activity carried out by the appellant would not be liable to service tax as mining service.

6. In as much as the identical issue stands decided by the Tribunal in the above referred judgement, by following the same we hold that the activity of benefication of coal is a part of the mining which came into existence w.e.f. 01.06.07. The period involved in the present appeal is upto 31.03.06, as such we hold that no service tax was leviable on above activity prior to 01.06.07. Accordingly, we set aside the confirmation of service tax on the said count along with setting aside of penalties on the above counts.

7. We further find that an amount of Rs.17,14,573/- stands confirmed against the appellants on the findings that they have rendered 'cargo handling services' during the relevant period in as much as they have executed the job of loading, unloading and transportation of goods and unloading coal and coal rejects as its coal washery. The said charges were shown separately in the work order and even in the bills raised for benefication/washing of coal.

We find from the impugned order of Commissioner that the appellants have accepted their tax liability in respect of 'cargo handling service' and have deposited the entire tax liability. As such we uphold the said part of the impugned order of the Commissioner.

8. As regards penalty of Rs.17,14,573/- imposed for non-payment of said demand on 'cargo handling services', we find that said services were being provided by the appellants as an excelsior to the impugned services of benefication of coal. As such, there could be a doubt on the part of the appellants that service tax is not payable on the same. As such by extending the benefit of Section 80 of Finance Act, 1994, we set aside the penalty imposed on the appellants.

9. Appeals are disposed of in above terms.

(Pronounced in the open Court on 5/7/12

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)