

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

Appeal No. : ST/471/2008-CU[DB]

Dated: 13/08/2012

Assistant Registrar

C.E.S.T.A.T. New Delhi

To,

**ARYAN COAL BENEFICATIONS
PVT. LTD.**

C-102, LGF, SURYA ENCLAVE, NEW
MULTAN NAGAR, NEW DELHI-
110056.

ARYAN COAL BENEFICATIONS PVT. LTD.

(Appellant)

VS

C.S.T. DELHI

(Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **ST/A/540/2012-CU[DB]**,
Stay/MISC Order No. and dated **09/08/2012** 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.S.T. DELHI

17-B, I.P. Estate, IAEA House, New
Delhi.

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

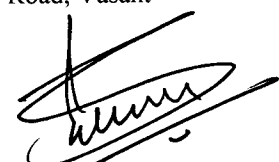
9. Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Above Star India Bazar, Satellite Road,
Ahmedabad-15

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. 471 of 2008-ST(BR)

Date of Hearing: 14.3.2012

Date of decision: 9.8.2012

[Arising out of Order-in-Original No. 44/VKG/ 2008 dated 30.4.2008
passed by the Commissioner of Service Tax, New Delhi]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)

Hon'ble Mr. Mathew John, Member (Technical)

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?

Yes

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. Aryan Coal Benefications Pvt. Ltd.

Appellants

Vs.

Commissioner of Service Tax
New Delhi

Respondent

Appearance:

Shri S.K. Pahwa, Advocate for the Appellants

Shri R.K. Gupta, DR for the Respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)

Hon'ble Mr. Mathew John, Member (Technical)

Final ORAL ORDER NO. ST/A/540/12-Cus

Per Archana Wadhwa(for the Bench):

The issue required to be decided in the present appeal is as under:-

(i) Whether the beneficiation of coal activity carried out by the appellant is covered by the category of Business auxiliary services, thus making the appellant liable to pay Service Tax.

(ii) Whether the activity of loading /unloading of the coal carried out by the appellant for bringing the coal into washery fall under the category of cargo handling services.

(iii) Whether the show cause notice issued on 7.9.06 for the period 16.8.02 to 31.3.06 is barred by limitation.

2. The Commissioner vide his impugned order has confirmed the demand of Rs.16,53,19,593 (Rupees Sixteen crore fiftythree lakh nineteen thousand five hundred nintythree only) against the appellant by holding that the activity of washing the coal falls under the Business auxiliary services. Another amount of Rs. 85,97,773/- (Rupees Eightyfive lakh ninetyseven thousand seven hundred seventythree only) stand confirmed in respect of cargo handling services. In addition, penalties of equal amount stand imposed under section 78 of the Finance Act along with imposition of penalties under Section 75A, 76 and 77 of the Finance Act.

3. The said appeal was heard along with the appeal of M/s. Spectrum Coal wherein an identical issue was involved. Tribunal's vide its order No. ST/A/521/12 dated 5.7.2012 has referred to the earlier decision of the Tribunal in the case of Aryan Energy P. Ltd. [2009 (13) STR 42 (Tri)] and has held that the activity of beneficiation of washery and raw coal is activity of mining which was introduced for the purpose of Service Tax with effect from 1.6.07. As such, it was held that prior to the said period no Service Tax was leviable on beneficiation. For better appreciation, we reproduce relevant para of the said decision of the Tribunal in the case of Aryan Energy P. Ltd. :

“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) SCC 201, the Apex Court has observed that the definition of mineral 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 recognized 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.”

Following the above decision of the Tribunal in the case of Aryan Energy P. Ltd., demand of duty in the case of M/s. Spectrum Coal and & Power Ltd. was set aside. Inasmuch as the period involved in the present appeal is prior to 1.6.07 by following the earlier order, we hold that confirmation of Service Tax on the activity of beneficiation of coal was not liable to Service Tax during the relevant period. The demand accordingly, is set aside along with setting aside of penalty.

4. As regards confirmation of demand on the activity of cargo handling service, the appellants contention is that they are not engaged in the business of handling cargo and as such are not covered by the definition of said services, as defined in clause (zr) sub clause (65) (106) of the Finance Act. They are loading and/or unloading the coal by employing casual labour for the purpose of shifting the goods to its washery and were charging the loading / unloading and transportation charges from their clients but were reimbursing the same to the agency hired by them for undertaking the said activity. They were not making profits out of the said activity and as such, cannot be held to be cargo handling agency. For the above proposition, they have relied upon Rajasthan High Court decision in S B Construction Company vs. Union of India [2006 (4) STR 545 (Raj)].

5. On the other hand, Commissioner has confirmed the demand by holding that agency need not necessarily be an organisation or commercial concern engaged in loading / unloading of the cargo and it can be any 'person' who is engaged in cargo handling operation and undertakes the services in contract with a principal. Inasmuch as the appellant is engaged in loading and /or unloading of coal at its washery and at other places the said activity has to be held as falling under the category of cargo handling.

6. The facts of the case are not in dispute. The appellants main job is beneficiation of coal. They have entered into a contract with their customers from whom they receive raw coal and transporting the same to their coal washery. For bringing the coal to their washery, the same are required to be loaded by customers ^{premises and} ~~to his transport~~ ^{same} ~~of the appellant~~ and unloaded at washery. The loading and unloading charges stand claimed by the appellants separately from their customers. As per the appellants, the said activity is incidental activity which is required to be undertaken by them for bringing the coal to their washery. The same cannot be considered as independent activity inasmuch as they are not primarily engaged in the said activity and cannot be held to be cargo handling agency. The service tax is liable to be paid only when services are provided by cargo handling agency in relation to cargo handling services. The loading, transportation and unloading activity is being done by them by hiring independent labour and the charges so made by them are reimbursed to the labours.

7. After carefully considering the submissions made by both the sides, we find that the appellants contract with various customers was mainly for beneficiation of coal. Definitely the coal which is required to be washed, has to be brought to the washery. For the said purpose, the same is required to be loaded transported and unloaded at the washery. As such, it can be safely concluded that the said activities are a part of entire mining contract with the customers.

8. The cargo handling services require providing of service by a cargo handling agency to another person. Whether the appellant can be held to be a cargo handling agency or not is the issue to be decided in the present appeal. Another issue required to be decided is as to whether the appellant has provided said services to another person. Admittedly the appellant has entered into a contract with their customers for the purpose of beneficiation of coal, which would also include bringing the raw coal to their washery and supply the washed coal to their customers. As such, it cannot be held that the appellant is cargo handling agency providing services to another person. Further, the said loading /unloading is required to be done by the appellant for himself. Such service is not being provided by him to any other person. It is for the purpose of undertaking the job of beneficiation of coal itself that the coal is required to be brought to the washery. This fact leads to the conclusion that coal is being brought by the appellant to washery for undertaking the job of beneficiation and such activity is for himself and not for any other person. It cannot be said that the appellant was

providing service to its customers by bringing the raw material from its premises and by supplying the final washed coal to the customers. The said activity is so integrally connected with the activity of beneficiation of coal that the same cannot be segregated and it cannot be held that the same was a different and separate activity falling under the definition of cargo handling services inasmuch as neither the appellant can be called as cargo handling agency nor the services can be held to have been provided by them to any other person. As such, we are of the view that confirmation of demand under the cargo handling agency is also not required to be upheld, the same is accordingly set aside.

9. Inasmuch as the appeal has been allowed on merits, we do not deem it fit to deal with alternative argument of limitation.

10. As the demand has been held as not sustainable, the question of imposition of any penalty does not arise.

11. In view of the foregoing, the impugned order is set aside and appeal is allowed with consequential relief to the appellant.

(Pronounced in the open court on 9/8/ 2012)

(~~Archana~~ Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)