

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

Dated: 03/12/2012

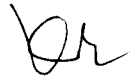
To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/722-723/2012-CU[DB] dated 12/11/2012

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.


Asstt. Registrar(CUSTOMS Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	ST/Stay/1690/2011 ST/811/2011	SUBHASH KHANDELWAL CONSTRUCTION (P) LTD. 6/1, N.E.B. HOUSING BOARD, ALWAR, RAJASTHAN.

St/1270/10

Name and Address of Respondent

2	C.C.E. JAIPUR I N.C.R. Building, Statue Circle, "C" Scheme, jaipur 302005.
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Copy To

3 Advocate(s) / Consultant(s):

**Krishna Kant, Adv
Verma Kant & Associates
704, Nilgari Appartment
9, Barakhamba Road
New Delhi – 110 001**

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4 Bar Association, CESTAT, Delhi

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

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, 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, Satellite Road, Ahmedabad-15

10 LAWCRUX Advisors Pvt. Ltd., LAW House, I-8, Sector-10, Faridabad 121003 (Haryana)

11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

13 C.D.R. 14 Office Copy 15 Guard File


Asstt. Registrar(CUSTOMS Appeal Branch)

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

Service Tax Appeal No.ST/811/2011-CU[DB]

[Arising out of Order-in-Appeal No.75(DKV)/ST/JPR-I/2011 dated 01.03.2011 passed by the Commissioner of Central Excise (Appeals), Jaipur].

Subhash Khandelwal Construction (P) Ltd. ...Appellant

Vs.

CCE, Jaipur-I ... Respondent

Service Tax Appeal No.ST/1270/2010-CU[DB]

[Arising out of Order-in-Appeal No.226(DKV)/ST/JPR-1/2010 dated 10.06.2010 passed by the Commissioner of Central Excise (Appeals), Jaipur].

Subhash Khandelwal Construction (P) Ltd. ...Appellant

Vs.

CCE, Jaipur-I ... Respondent

Present for the Appellant : Shri.Krishna Kant, Advocate
Present for the Respondent : Shri.N. Pathak, DR

**Coram: HON'BLE MR.D.N.PANDA, JUDICIAL MEMBER
HON'BLE MR. MATHEW JOHN, TECHNICAL MEMBER**

Date of Hearing: 12.11.2012

Final ORDER NO. 57/A/722-723/12en DATED: _____

PER: D.N.PANDA

The precise issue in these appeals are whether packing, labelling, loading and unloading of the goods in question shall

amount to cargo handling service. Shri Kanth, Ld. Counsel explains that ~~the main activity is that~~ oil can only be handled upon packing & labelling which is considered to be ~~principal~~ ^{principal} activity. Such an activity according to Excise Tariff amounts to manufacture. Therefore, the adjudication shall not sustain to tax the appellant as a cargo handling service provider.

2. Revenue denies averment of the appellant.
3. Heard both sides and perused the record.
4. The precise issue stated by the appellant is depicted in para 10 of the adjudication order available in appeal case No.ST/811/2011. The issue was whether the services provided by the appellant to M/s.Regional Oilseeds Grower's Co-Operative Union Ltd., Alwar and M/s. Dhara Vegetable Oil Foods Ltd., Alwar for packing,labelling,loading and unloading of their finished goods in the factory premises of the service recipient and amount received thereon, is subject to service tax under the category of cargo handling service or otherwise. Once the issue was very clear in the mind of Id. Adjudicating authority, we are able to appreciate that cluster of activities carried out by Appellant resulted in composite services being preceding and succeeding. Such observation enables to understand that the preceding activity which gave rise to succeeding activity in the composite activities decides the dominant character of the service. It appears from the issue framed by Id. Adjudicating authority that packing and labelling was the primary activity while secondary activity was

movement of the packed goods. Therefore, following the rules of classification enacted in Finance Act, 1994 the activity of packing amounting to manufacture by Central Excise Tariff Act 1975 shall not be "cargo handling service" while reading Section 65 (19) of Finance Act, 1994 excludes manufacturing of excisable goods from the purview of business auxiliary service and immune from service tax. This shows that legislature has recognized the activity of "manufacture" to be free from service tax.

5. It may be reiterated that when principal activity is "manufacture" according to Central Excise Tariff Act, 1975 it is not possible to hold that the said activity carried out by appellant shall be cargo handling. We could have come to rescue of Revenue, had there been proper bifurcation of the activities for taxation of the considerations received for each sub-activity carried out. But that is not the case of Revenue. Therefore, both the appeals are allowed setting aside the first appellate order.

[Dictated & Pronounced in the open Court].

(MATHEW JOHN)
TECHNICAL MEMBER

(D.N.PANDA)
JUDICIAL MEMBER

Anita