**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI**
**PRINCIPAL BENCH, COURT NO. IV**

**Appeal No. ST/433/2012-CU(DB)**
[Arising out of Order-in-Appeal No. 02/2012/ST/JPR-II-Commissioner dated 27.01.2012, passed by the Commissioner of Central Excise, Jaipur II]

**M/s R.K. Singhvi & Company ....Appellant**

**Vs**

**C.C.E,Jaipur-II ....Respondent**

**Appearance**:
Ms. Rinki Arora, Advocate for the Appellant
Sh. Govind Dixit, DR for the Respondent

**CORAM**:
**Hon'ble Shri S.K. Mohanty, Member (Judicial)**
**Hon'ble Shri V. Padmanabhan, Member (Technical)**

**Date of Hearing: 28.11.2016**

**FINAL ORDER NO. 56457 /2016-CU[DB]**

**Per V. Padmanabhan**

The appellants are engaged in the business of providing mining services and transportation activities within the mining area under agreement with M/s Wolkem Industries Ltd and M/s Wolkem India Limited from June 2007. They have been paying service tax under mining services, which became taxable from 01.06.2007.

2. They also do activities of shifting of minerals from pithead to a specified area located within the mines and also removing over burden at mining sites to other location within mining area and were not paying service tax on such activities. Revenue issued a Show Cause Notice dated 11.09.2009 demanding service tax for these activities for the period 15.04.04 to 31.05.2007 along with interest and penalties. The SCN is adjudicated confirming tax demand of Rs 64,63,967/- along with interest and penalties by classifying the activity as "cargo handling service" defined in Finance Act, 1994.

3. With the above background we heard Ms. Rinki Arora, ld. Advocate for the appellant and Shri Govind Dixit, ld. DR for the respondent.

4. The ld. Counsel for the appellant submitted that when the goods are moved within the mining area such goods cannot be considered as cargo. He relied upon the decision of the Tribunal in the case of **Sainik Mining & Allied Services Ltd Vs. Commissioner of Central Excise, Cus. & S.T., BBSR 2008(9) S.T.R. 531 (Tri.- Kolkata),** in which it has been decided that movement of material within the mining area does not come under the purview of Cargo Handling service. In the case of **Thriveni Earthmovers Pvt. Limited Vs. Commissioner of C. Ex., Salem 2009(15) S.T.R. 393 (Tri.- Chennai)** has held that movement of limestone in the mining area will be covered by the entry of "Mining

of mineral, oil, gas service" which cannot be taxed under "Cargo Handling Service" for the period prior to introduction of the levy under the category of mining w.e.f. 01.06.2007. He also submitted that the appellant has already started paying Service Tax under mining services w.e.f 01.06.2007.

5. Ld. DR reiterated the findings in the impugned order.

6. The Activities undertaken by the appellant include shifting of minerals from pit head to a specified area located within the mines. They have also undertaken the removal of over burden at mining sites to other locations within the mining area. We find that the issue is squarely covered by the two decisions of the Tribunal referred to by the ld. Counsel. Hence, the issue is no more *res integra* and is covered in favour of the appellant.

7. In view of the above discussions, the impugned order is set aside and the appeal allowed.

[Dictated and pronounced in the open court]

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| **(S.K. Mohanty)** | **V. Padmanabhan** |
| **Member (Judicial)** | **Member (Technical)** |

Ritu S.