CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –III

Service Tax Appeal No.ST/58224/2013-ST [DB]

[Arising out of Order-in-Original No. COMMISSIONER/ RPR/ST/43/2013 dated 28/03/2013 passed by the Commissioner, Customs, Central Excise and Service Tax, Raipur]

Karta Ramesh Kumar Agarwal …Appellant

Vs.

C.C.E., Raipur … Respondent

Present for the Appellant : Mr.B.L. Narasimhan, Advocate
Mr. Narendra Singhvi, Advocate
Present for the Respondent: Mr.Ranjan Khanna, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. ASHOK K. ARYA, MEMBER (TECHNICAL)

Date of Hearing : 24/03/2017
Pronounced on : 02/06/2017

FINAL ORDER NO. 53638/2017

PER: S.K. MOHANTY

Brief facts of the case are that the appellant is a contractor, duly engaged by M/s.South Eastern Coalfields Limited (for short, 'SECL') for the purpose of transportation of coal from colliery to railway sidings. Further, M/s. SECL also engages the appellant for mechanical loading of coal into tipper by hiring of pay loaders on as and when required basis. The Department entertained the view that the said services rendered by the appellant to SECL are confirming to the definition of mining service and not GTA service, since no consignment notes were issued for the purpose. Accordingly, Show Cause Notice dated 26.03.2012 was issued to the appellant, proposing recovery of service tax and for imposition of penalties. The proposed demands in the SCN were confirmed against the appellant in the impugned order dated 28.03.2013. Feeling aggrieved with the impugned order, the appellant has preferred the present appeal before the Tribunal.

2. The ld. Advocate for the appellant submitted that the activities carried out by the appellant are limited to transportation of coal, which is already mined. Thus, he submitted that since handling of coal are post-mining activities, the same will not fall under the scope of mining service. With regard to the activity of hiring of pay loaders by SECL for loading etc. of coal into tippers, the submissions of the ld. Advocate are that such activity is very negligible in comparison with the total activities undertaken by the appellant and that such activities are only incidental to the transportation activities carried out by the appellant. The ld. Advocate further submitted that the issue arising out of the present dispute is no longer *res integra* and stands settled in favour of the appellant in the following decisions:-

i. Anupama Coal Carriers Private Limited v. Commissioner – 2013 (32) STR 41 (Tri.-Del.)
ii. Arjuna Carriers Private Limited v. Commissioner – 2016 (41) STR 632 (Tri-Del.)
iii. Commissioner v. Arjuna Carriers Private Limited – 2016 (41) STR 602 (Chattisgarh)
iv. Arjuna Carriers Private Limited v. Commissioner – Misc. Order No. MO/53679/2015, dated 08.12.2015
v. V N Transport v. Commissioner – 2016 – TIOL -1510 – CESTAT- Del.
vi. Singh Transporters v. Commissioner – 2016 –TIOL – 2610- CESTAT- Del.
vii. Commissioner v. AK Transport – 2016 – TIOL-2362-CESTAT-Del.
viii. Shree Ganraj Coal Transport Co. P. Limited v. Commissioner – 2017-TIOL -180 – CESTAT- DEL.
ix. Joginder Coal Transport P Limited v. Commissioner – Final Order No. 50013-50015/2016 dated 04.01.2017

3. On the other hand, the ld. D.R. for Revenue reiterated the findings recorded in the impugned order.

4. Heard both sides and perused the case records.

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5. On perusal of case records, we find that the appellant is basically engaged by M/s. SECL for transportation of coal from the colliery to the railway sidings and for providing the incidental and ancillary activities thereto. The issue involved in this case is no more *res integra* in view of the decisions cited by the ld. Advocate for the Appellant. The Tribunal in the said cases has held that mere handling of coal and movement of said goods from Railway Wagon through different mode of transport would not constitute cargo handling service. Thus,

in our considered view, the services provided by the appellant will not fall under the cargo handling service.

6. In view of the settled position of law, we do not find any merits in the impugned order. Accordingly, after setting aside the same, we allow the appeal in favour of the appellant.

[Pronounced in the open Court on 02/06/2017)

(ASHOK K. ARYA) **MEMBER (TECHNICAL)**	**(S.K. MOHANTY)** **MEMBER (JUDICIAL)**

Anita