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

Service Tax Appeal No. 51665 of 2014

[Arising out of the Order-in-Appeal No. 332-333(OPD)/ST/JPR - II/2013 dated 28.11.2013, passed by Commissioner (Appeals), Central Excise, Jaipur]

Aravali Equip Pvt Ltd. **Appellants**

Vs.

CCE & ST, Jaipur II, **Respondent**

Appearance:

Shri S C Kamra, Advocate for the Appellants
Shri Vivek Pandey, AR for the Respondent

CORAM:

Hon'ble Mr. C L Mahar, Member (Technical)
Hon'ble Ms. Rachna Gupta, Member (Judicial)

Date of Hearing/ Decision: 08.08.2018

FINAL ORDER No. 52866/2018

Per Rachna Gupta:

Present appeal is filed against the order of Commissioner (Appeals) dated 28.11.13.

2. Relevant facts for the purpose of appeal are that the appellant is engaged in providing services in the mining area and has not been registered with the department under service tax . Department has

alleged that the appellants are providing services of cargo handling but have not discharged their service tax liability. Show cause notice dated 15th September, 2010 was served upon the appellant raising demand of alleged evasion. The proposed demand along with interest and penalty has been confirmed vide Order in Original No. 37/2011 and 80/2012 dated 28.5.2012. The said order has been upheld vide the impugned order which is under challenge before us.

3. We have heard S C Kamra, learned advocate appearing for the appellant and Shri Vivek Pandey, appearing for Department. It is submitted by the learned counsel for the appellant that this Tribunal in another appeal of same appellant bearing No. ST/51693/2014 vide Final Order No. 52316/18 decided on 18.6.2018, has opined that the services rendered by the appellant do not fall under the category of 'cargo handling services'. The facts of the present case are impressed upon as identical . It is prayed that the present appeal also may be decided in the same manner.

4. While rebutting the arguments learned DR has submitted that facts of the present appeal reflects upon the conduct of the appellant who rendered the services, but has not been paying any

service tax in respect thereof neither for the mining services nor for cargo handing services. He therefore, prays for appeal to be rejected.

5. After hearing both the sides and on perusal of record, we observe that period notified into this appeal is from April, 2008 to March, 2010. Thus, the appellant was providing the services of loading and unloading of material. Apparently and admittedly these services were being provided in the mining area and the mining services has been brought under the service tax act with effect from 1.6.2007. The department alleged these service of the appellant to be 'cargo handling services'. The appellant has brought earlier decisions of this Tribunal in his favour i.e. ***Final Order No. 52316 dated 18.6.18*** in appeal filed as ***Aravali Equipments Pvt. Ltd. vs. CE Jaipur*** wherein it is held as:

> ***"5. The activity undertaken by the appellant and covered by both the contracts executed with RSMML, pertain to movement of mined ore to the crushing area where the ores are crushed for the purpose of concentrating. After the crushing, the minerals are further transported within the mines to a different area. It has been argued that the activity undertaken does not fall under the definition of 'Cargo Handling Service' which essentially deals with loading, unloading and packing and unpacking of cargo.***

> ***6. We have also considered the various case laws cited by the appellant. In the case of R. K. Singhvi & Company (supra) the Tribunal has relied on various other decision of the Tribunal wherein it has been held that the activities of shifting of minerals from pithead to a specified area located within the mines will not be covered under 'Cargo Handling Service'. The other decisions relied by the appellant have taken the view that similar activities of shifting of minerals within the mines area will be more appropriately classifiable under mining service which stands included w.e.f. 01.06.2007."***

6. Keeping in view the above observations, we are of the opinion that the appellant is providing services which are taxable in nature. Apparently and admittedly, appellant has not discharged any kind of tax liability. Therefore, we find that matter needs to be considered by the adjudicating authority below for deciding the proper classification of the activity of the appellant.

7. As a result, we hereby allow the present appeal by way of remand.

(dictated and pronounced in the open Court)

(C L Mahar)	**(Rachna Gupta)**
Member (Technical)	**Member (Judicial)**

ss