

**IN THE CUSTOMS, EXCISE & SERVICE TAX  
APPELLATE TRIBUNAL  
West Block No. 2, R.K. Puram, New Delhi - 110066.**

**Date of Hearing/Decision: 04.12.2018**

**Appeal No. ST/50294/2016-CUS (DB)**

(Arising out of Order-in-Appeal No. BHO-EXCUS-002-APP-253-15-16 dated: 30/11/2015 passed by the Commissioner of Service Tax-BHOPAL)

Khanduja Coal Transport Co.

Appellant

Vs.

CGST C.C & C.E-Jabalpur

Respondent

**Appearance**

Shri H. Bansal, Advocate

for the appellant

Shri G.R. Singh, DR

for the respondent

**CORAM: Hon'ble Mr. Anil Choudhary, Member (Judicial)  
Hon'ble Mr. C.L.Mahar, Member (Technical)**

**Final Order No. 53422 /2018**

**Per: C.L.Mahar**

1. The brief facts of the matter are that the appellant is engaged in Goods Transporter Agency Service and for which they are duly registered with Service Tax Department. As per the various agreements entered by the appellant with M/s Western Coal Field Ltd. the appellant has been provided work contract for transportation of coal from mining area either to washery or to the railway siding by employing tippers and trucks for this purposes. The scope of work included loading of the coal from mining area to the washery or to the railway siding, transportation thereof and thereafter unloading of the coal either at washery or at the railway siding. The Department has entertained a view that loading and unloading of the coal for mining area and transport of the same within the mining area is more

appropriately classifiable under the category of “Cargo Handling Service”, and therefore, same should have been classified by the appellant under the “Cargo Handling Services” rather than Goods Transport Agency Service. A Show Cause Notice dated 18/10/2013, came to be issued to the appellant demanding a service of tax of Rs. 35,19,423/- of Section 43(1) of Finance Act, 1994, along with provisions of penalty under Section 77 and 76 have also been invoked. The matter has been adjudicated by Ld. Joint Commissioner vide his order dated 31<sup>st</sup> July 2014, whereunder the charges as labelled vide the aforesaid Show Cause Notice has been confirmed and penalties has provided under Section 76 and 77 have also been imposed on the appellant. The appellant has approached Commissioner(Appeal) who has deoed the order of Joint Commissioner vide his order dated 30<sup>st</sup> November 2015 and now the appellant is before us against the above mention Order-in-Appeal.

2. The basic issue before us for adjudication is that whether the department is correct in holding a view that the service provided by the above mentioned appellants falls under the category of cargo handling services as defined under section 65 (105) (zr) read with section 105 (23) of the Finance Act, 1994 or whether the service tax has correctly been paid by recipient of the service under Goods Transportation Agency service on reverse charge basis. In this regard, it will be appropriate to have a look at the sample contracts which the appellant has entered with the service recipient, namely, M/s W.C.F. Ltd.

LOA No. WCL/KAN/SO(M)/P 175/2012-985 dated 6.01.2013

Description of work	Qty	Rate/Unit	Amount(Rs)
JOB No.1) Transportation of coal form Bunker of Tandsi, mines to Nandan Washery by hiring of trippers including mech.unloading. Weighment of tripping trucks will be done at Tandsi & Nandan Washery <b>Lead of 20-20 Kms. (Average)</b> Daily rate of transportation: 800 tonnes.			
JOB No.2) (a) Loading of coal from bunker of Tandsi 1 & 2 and 3 & 4 under gravity by6 hiring of equipment such a trippers and transportation to ground stock and unloading. Lead 0 to 1.00 KM(Avg. 0.349 KMs.) As and when required,	40000 Tonnes	115.53/Te.	4621200.00
JOB No. 2(b) Loading of coal into tippers by hiring of equipment such as pay loader for transportation of coal to Nandan Washery. As and when required(Transportation part is included in Jon No.1) (The weighment will be done at loading point at Tandsi & unloading at Nandan Washey	(a +b) 4000 te.	9.22/Te.	36880.00
			4658080.00

Description of work	Qty	Rate/unit	Amount
Hiring of pay loader and trippers for laoding and Transportation Coal from Takia Nallah OC Stock yard to Hiragarh Siding, Kanhan Area. Minimum Daily rate of transportation 1000 Tonnes. Distance: 12.7 KMs.	0.80 Lakh Tonnes	Rs. 62.40	Rs. 4999200.00
(Rupee Forty Nine Lakhs Ninety Nine Thousand Two Hundred only)			

3. It can be seen from the above mentioned terms of the contract that rates which have been provided to the appellant is based on the distance for which transportation of the coal is to be undertaken by the service provider i.e. the appellant in these cases. The relevant prices as mentioned above is also subject to escalation of the transportation rates as per changes in the fuel price for the relevant period. This basically signifies that the rates are pre-dominantly for transportation of cargo rather than for handing of cargo. However, before proceeding further the relevant section 65 A of Finance Act, 1994 need to be looked into in detail for classification of the service rendered by the appellant. The provisions of section 65A provides as follows:-

**SECTION 65A. Classification of taxable services – (1) For the purposes of this Chapter, classification of taxable services shall be determined according to the terms of the sub-clause (105) of Section 65;**

**(2) When for any reason, a taxable service, is prima facie, classifiable under two or more sub-clauses of clause (105) of section 65, classification shall be effected as follows:**

**(a) the sub-clause which provides the most specific description shall be preferred to sub-clauses providing a more general description;**

**(b) composite service consisting of a combination of different services which cannot be classified in the manner specified in clause (a), shall be**

*classified as if they consisted of a service which gives them their essential character, in so far as this criterion is applicable;*

*(c) when a service cannot be classified in the manner specified in clause (a) or clause (b), it shall be classified under the sub-clause which occurs first among the sub-clauses which equally merit consideration.]*

4. It can be seen from a plain reading of 65A (2)(b) that the classification in the case of combined service is to be decided by analyzing the fact as to which service gives essential character to the service being performed. As can be seen from the above contract that the essential character of the service for which contract has been entered by the service provider is that the service received are for transportation of coal for mining area to the railway siding and the activity of loading/ unloading mechanically or otherwise is in our view, is only incidental to the activity of transportation of the cargo in these cases.

5. In view of the above, we hold that the service provided by the appellants have rightly been classified in the Goods Transportation Agency service.

6. We also feel that this issue has already been examined by the Hon'ble Supreme Court in their decision in the case of *CCE & ST Raipur Vs Singh Transporters [(2017 (4) GSTL 3 (SC)]* wherein the Hon'ble Supreme Court has held that activity undertaken by the assessee of transporting of coal from the pithead of the mines to railway siding is more appropriately classifiable under service head of Transport of Goods by road services. The relevant extract of the above judgment is reproduced herein below:

*“6. Be that as it may, even if the relied upon judgment in the case of Arjuna Carriers (supra) is of no consequence to the present case, we are of the view that the activity undertaken by the respondent i.e. transportation of coal from the pit-heads to the railway sidings within the mining areas is more appropriately classifiable under Section 65(105)(zzp) of the Act,*

*namely, under the head “transport of goods by road service” and does not involve any service in relation to “mining of mineral, oil or gas” as provided by Section 65(105)(zzzy) of the Act.”*

7. In view of above, we find no merit in the impugned order, the same is set-aside and the appeal is allowed with consequential relief, if any.

(Dictated and pronounced in open court)

**( Anil Choudhary )**  
**Member (Judicial)**

**( C L Mahar )**  
**Member (Technical)**

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