

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

Service Tax Appeal No. 52477 of 2015

[Arising out of the Order-in-Appeals No. UDZ-EXCUS-000-COM-0022-14-15 dated 31.03.2015, passed by Commissioner of Central Excise , Udaipur]

M/s. R K Carriers India P Ltd.

Appellants

Vs.

CCE & ST, Udaipur

Respondent

Appearance:

**Shri Manish Gaur & Ms Poorvi, Advocates for the Appellants
Shri G R Singh, AR for the Respondent**

CORAM:

**Hon'ble Mr. Justice Dilip Gupta, President
Hon'ble Mr. C L Mahar, Member (Technical)**

Date of Hearing/ Decision: 01.01.2019

FINAL ORDER NO. 50066/2019

Per: Mr. Justice Dilip Gupta:

This appeal arises out of an order dated 31 March, 2015 passed by the learned Commissioner by which the demand of service tax on 'cargo handling services' during the period 1 April, 2008 to 31 March, 2012 has been confirmed and penalty has also been imposed.

The Appellant is registered with service tax department for providing the Service of Business Auxiliary Service, supply of Tangible Goods Service and Goods Transport Agency services. A show cause notice dated 21 October 2013 was issued to the appellant mentioning therein that it appeared to the Department that the appellant had not paid service tax under 'Business Auxiliary Service' and 'Cargo handling services' and therefore, contravened the provisions of section 65 A, 66, 67, 68 and 69 of the Finance Act, 1994. This was for the reason that while scrutinizing the balance sheet, it was observed that the appellant was engaged in providing various services to M/s. Rajasthan State Mines & Minerals Ltd. (RSMML) from a perusal of the work orders, it appeared to have willfully suppressed the facts of non-inclusion of the amount charged and collected by them from M/s. RSMML on account of services classified under the category of 'Business Auxiliary Service' and 'Cargo handling services' with an intent to evade payment of service tax.

2. The Learned Commissioner has accepted the contention of the appellant that the activity conducted by the appellant could not be classified under 'Business Auxiliary Service'. However, the learned Commissioner held that the activity carried out by the appellant for loading of various types of ores into trucks / tippers, transportation of

loaded trucks /tippers from one place to another place within the mining area would fall within the definition of ‘Cargo handling services’.

3. Learned Counsel for the appellant has urged that neither in the show cause notice nor in the impugned order, it has been observed that the activity of loading and unloading of transportation of ore was not within the mining area. It is his contention, based on various decisions to which we shall refer to, that in view of definition of ‘Cargo handling services’, the ores shifted within the mining area, will not be covered by the definition of ‘Cargo handling services’.

4. The Hon’ble Allahabad High Court in *Commissioner of Central Excise vs. M/s. Manoj Kumar and Arvind Kumar [2015 (40) STR 35 (All)]* examined whether the transportation of goods namely, sugar bags within the factory premises of the assessee loading / unloading, packing, unpacking, stacking, restacking and shifting of bags from floor of mills, from one godown to another, would be included in the definition of ‘Cargo handling services’. After referring to various decisions and meaning of word ‘Cargo’ the Court held that services would not be included in the ‘Cargo handling services’. The Jharkhand High Court in *CCE, Ranchi vs. Modi Construction Company reported in [2011 (23) STR 6 (Jhar)]* took a similar view. This is what was also held by the Principal Bench of the Tribunal at New Delhi in *Singh Transporters vs. CCE, Raipur [2012 (27) STR 488 (Tri-Del)]*.

5. In the present case, the work orders have been referred to in the Show cause notice, and same are reproduced as follows:

“(1) **Work Order dated 12.03.2007** (Letter of Acceptance)

Scope of work as under:-

(a) Crushing of Rock Phosphate ore into (-)1/2 “size gitties, then screening of above crushed rock phosphate to segregate into (-) 1/2 “ & (+) 1/2” size, re-circulation of (+)1/2 “ size gitties through crushing system to get the final product of (-) 1/2 “ size, as per the requirement of company as ascertained by Engineer-in-charge from time to time. Separate stacking of different heaps of finished crushed products and homogenization and /or mixing and /or blending thereof, from time to time as per the instruction of Engineer-in-Charge, requirement of company, terms & conditions of the tender document and specifications of the contract. Part of finished crushed product shall be required to be shifted / transported up to the maximum distance of 500 meters from the crushing plant to the designated ore stockyards / locations specified by the Engineer-in-charge from time to time including unloading, stacking , dozing mixing, homogenization, blending etc. for subsequent dispatch. Rate of work is Rs.39.70 PMT.

(b) Loading of different types of finished crushed products from different crushed Ore stacks located at Crushing unit installed by the assessee. Shifting /transportation of finished crushed products up to the maximum distance of 500 meters from the crushing plant to designated ore stockyards locations including unloading, stacking, dozing, mixing, homogenization, blending etc and other preparatory allied work. Rate of work is Rs.18.00 PMT.

(2) **Work Order dated 17.07.2009** (Letter of Acceptance)

Scope of Work as under:

Loading of various types / grades of ore from different ore stacks located around HGO Crushing plants (by using front end loaders) into the Trucks / Tippers, transportation of loaded Trucks / Tippers to an average lead of approximately 0.50 Kms and unloading into HGO Crushing Plant hoppers including all preparatory and Allied works pertaining thereto and/or relating to this work. Loading of different types of finished crushed products from different crushed Ore stacks located at crushing unit installed by the assessee. Shifting / transportation of finished crushed products up to the maximum distance of 500 meters from the crushing plant to designated ore stockyards locations including unloading, stacking dozing mixing,

homogenization, blending etc and other preparatory allied work.

Rate of work is determined Rs.13.90 PMT.

(3) **Work Order dated 15.07.2009** (Letter of Acceptance) : Scope of work as under:

(a) Installation of crushing and screening plant, crushing of rock phosphate ore into (-) 1/2 “ size gitties, then screening of above crushed rock phosphate to segregate into (-) 1/2” & (+) 1/2” size, re-circulation of (+) 1/2 “ size gitties through crushing system to get the final product of (-) 1/2 “ size. Separate stacking of different heaps of finished crushed products and homogenization and/or mixing and / or blending thereof, etc. in conformity to the requirement of company, Loading of different types of ore from different ore stacks located around Crushing plants into the trucks / tippers, transportation of loaded trucks/ trippers to maximum average lead of approximately 1.0 (one) KMs and unloading into crushing plant hoppers. Rate Rs.39.30 PMT.

(b) Loading of different types of finished crushed products from different crushed or stacks located at Crushing Unit installed by you. Shifting / transportation of finished crushed products up to the maximum distance of 500 meters from the crushing plant to designated or stockyards/ locations including,

staking dozing, mixing, homogenization, blending etc. as per the terms & conditions Rs.17.60 PMT.

(4) Work order dated 23.06.2010 (Letter of Acceptance):
Scope of work as under:

Loading of various types of ore from different ore stacks located around LGO Crushing Plants into trucks / tippers; transportation of loaded trucks / tippers to an average lead of approximately 0.50 KMs and unloading into the hopper of LGO Crushing Plant hoppers. Rate of work is determined Rs.9.94 PMT plus Rs.5.00 PMT for additional KM. ”

6. It is clear from the aforesaid work order that the activity that was conducted by the appellant was loading of different types of finished crushed products from the place of crushing located in the crushing unit and shifting/ transportation of the finished crushed product up to a maximum distance of 500 meters from the crushing plant to the designated place within the mining area.

7. We have therefore, no hesitation in accepting the contention of the learned counsel for the appellant that the transportation of the ores located at different locations within the mining area would not fall within the definition of ‘Cargo Handling services’.. The decision relied

upon by the learned representative of the department in the case of *Gangadhar Bulk Movers Pvt. Ltd. vs. CCE, Nagpur [2012 (27) STR 258 (Tri-Mum)]* would not come to the aid of the department as a distinction has clearly been made between the separate work order and composite work orders.

8. Thus, for the reasons mentioned above, we are unable to uphold the impugned order dated 31 March 2015. We accordingly, set aside the same. The appeal is accordingly, allowed.

(Dictated and pronounced in the open court)

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

ss

(**Justice Dilip Gupta**)
President