NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

TAXC No. 38 of 2013

M/s Gayatri Coal Carriers Pvt Ltd OCM Baroud, Raigarh Area, SECL, Raigarh Area, District Raigarh (Chhattisgarh)

---- Appellant

Versus

Commissioner, Customs And Central Excise, Central Excise Building, Dhamtari Road, Tikrapara, Raipur (Chhattisgarh)

---- Respondent

For Appellant	:	Shri Abhiyuday Singh, Advocate
For Respondent	:	Shri Vinay Pandey, Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice

Hon'ble Shri Sharad Kumar Gupta, Judge

Order On Board

Per Thottathil B. Radhakrishnan, Chief Justice

27.07.2017

1. This matter is presented under Section 35G of the Central Excise Act challenging the decision of the Customs, Excise, Service Tax Appellate Tribunal (for short 'CESTAT') holding that the activities of the appellant do not fall within the definition of the cargo handling service as defined in Section 65(23) of the Finance Act, 1994 for the purpose of levy of service tax.

2. The preliminary objection of the learned counsel for the respondent-Revenue is that this appeal is not maintainable since the issues raised are matters which fall under Section 35L of the Central Excise Act and hence excluded from the purview of the Section 35G of that Act, which

provides for appeal to the High Court. We have heard the learned counsel for the appellant and the learned counsel for the Revenue on this issue.

3. Section 65(105)(zr) of the Finance Act, 1994 defines the provider of taxable service in relation to cargo handling services thereby making such activity a taxable service. The question as to whether the different transactions of the appellant with SECL would form taxable services is predominantly a question of fact and cannot by themselves give rise to any substantial question of law to be determined and decided as one such. However, it appears to fall within those matters which get excluded from the purview of Section 35G of the Central Excise Act by the specific exclusion contained in Subsection 1 of Section 35G of the Central Excise Act. This is also reflected by Clause (b) of 35L of the Central Excise Act which deals with appeals to the Supreme Court. We are therefore, of the view that this appeal at the instance of the appellant is not maintainable under Section 35G of the Central Excise Act.

4. In the result, holding that it is not maintainable under Section 35G of the Central Excise Act, this appeal is dismissed without prejudice to the right of the appellant to seek appropriate remedy in accordance with law.

Sd/- Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

(Sharad Kumar Gupta)
Judge

Kishore