NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

TAXC No. 8 of 2013

Commissioner, Central Excise & Customs Central Excise Building, Dhamtari Road, Tikrapara, Raipur (C.G.)

---- Appellant

Versus

M/s H.N.Transport (P) Ltd. S/o Near DGM Office, Gevra Project, Distt. Korba (C.G.)

---- Respondent

And

TAXC No. 5 Of 2013

Commissioner, Central Excise & Customs Central Excise Building, Dhamtari Road, Tikrapara, Raipur C.G.

---- Appellant

Vs

M/s Gajraj Carriers Pvt.Ltd. S/o Dipka Camp, C/o SECL Dipka Exp. Project, P.O. Chainpur, Distt. Korba C.G.

---- Respondent

And

TAXC No. 6 Of 2013

Commissioner, Central Excise, Raipur (C.G.)

---- Appellant

Vs

M/s Arjuna Carriers Pvt. Ltd., Old Dipka Project, Gevra, Distt. Korba (C.G.)

---- Appellant

And

TAXC No. 7 Of 2013

Commissioner, Central Excise & Customs Central Excise Building, Dhamtari Road, Tikrapara, Raipur (C.G.)

---- Appellant

Vs

M/s Korba Coal Carriers (P) Ltd., MGR Railway Siding, Gevra Project, Distt. Korba C.G.

---- Respondent

And

TAXC No. 9 Of 2013

Commissioner, Central Excise Raipur (C.G.)

---- Appellant

Vs

M/s Chhattisgarh Coal Transport Pvt.Ltd., P.O. Gevra Project, Distt. Korba (C.G.)

---- Respondent

And

TAXC No. 10 Of 2013

Commissioner, Central Excise & Customs Central Excise Building, Dhamtari Road, Tikrapara, Raipur (C.G.)

---- Appellant

Vs

M/s Kusmunda Coal Transport Pvt.Ltd. Kusmunda, Distt. Korba (C.G.)

---- Respondent

And

<u>TAXC No. 11 Of 2013</u>

Commissioner, Central Excise & Customs Central Excise Building, Dhamtari Road, Tikrapara, Raipur (C.G.)

---- Appellant

Vs

M/s Shivam Coal Carriers (P) Ltd., SECL, Manikpur Project, Distt. Korba (C.G.)

---- Respondent

And

<u>TAXC No. 12 Of 2013</u>

Commissioner, Central Excise & Customs Central Excise Building, Dhamtari Road, Tikrapara, Raipur (C.G.)

---- Appellant

Vs

M/s Shree Ganraj Coal Transport Pvt. Ltd., Behind CGM Office, SECL, Kusmunda, Distt. Korba (C.G.)

---- Respondent

And

<u>TAXC No. 13 Of 2013</u>

Commissioner, Central Excise & Customs Central Excise Building, Dhamtari Road, Tikrapara, Raipur (C.G.)

---- Appellant

Vs

M/s Gevra Coal Transport Pvt.Ltd. P.O. Gevra Project, Distt. Korba (C.G.)

---- Respondent

And

TAXC No. 15 Of 2013

Commissioner, Central Excise & Customs Central Excise Building, Dhamtari Road, Tikrapara, Raipur (C.G.)

---- Appellant

Vs

M/s V.N. Transport Pvt. Ltd., Opposite Excavation Workshop, Gevra Project, Distt. Korba (C.G.)

---- Respondent

And

TAXC No. 16 Of 2013

Commissioner, Central Excise & Customs Central Excise Building, Tikrapara, Raipur C.G.

---- Appellant

Vs

M/s G.L. Coal Carriers Pvt. Ltd. SECL Dipka Expansion Project, P.O. Chainpur, Distt. Korba (Chhattisgarh)

---- Respondent

And

TAXC No. 53 Of 2012

Union Of India Through Commissioner, Central Excise & Custom, Central Excise Bhawan, Dhamtari Road, Tikarapara, Raipur C.G.

---- Appellant

Vs

- M/s J.K. Trasport (Proprietor Smt. Swaroop Bai Nahar) 01 Malviya Nagar Durg

---- Respondent

And

TAXC No. 52 Of 2012

Union Of India Through Commissioner, Central Excise & Custom, Central Excise Bhawan, Dhamtari Road, Tikarapara, Raipur C.G.

---- Appellant

Vs

M/s Dilip Construction Co. Main Raod, Dalli-Rajhara Dist. Durg C.G.

---- Respondent

And

TAXC No. 40 Of 2017

Commissioner, Central Excise Customs & Service Tax Bilaspur, At Central Excise Bhawan, Tikrapara, Dhamtari Road, Raipur, Chhattisgarh

---- Appellant

Vs

M/s A.K. Transport Camp- Kusmunda, South Eastern Coalfields Limited, District Korba, Chhattisgarh

---- Respondent

And

TAXC No. 63 Of 2012

Union Of India Through- Commissioner, Central Excise & Custom, Central Excise Bhawan, Dhamtari Road, Tikarapara, Raipur C.G.

---- Appellant

Vs

M/s Singh Transporters 78, Shanti Nagar, Ameri Road, Near MPEB Power Station, P.O. Mangla, Bilaspur- 495001

---- Respondent

And

TAXC No. 69 Of 2012

Union Of India Through Commissioner, Central Excise & Customs, Central Excise Building, Dhamtari Road, Tikrapara, Raipur C.G.

---- Appellant

Vs

M/s Anupama Coal Carriers Pvt.Ltd. Near East MTK-OB Dump, Camp Gevra Project, Gevra, Dist. Korba C.G.

---- Respondent

And

TAXC No. 54 of 2012

Union Of India Through Commissioner, Central Excise & Customs, Central Excise Building, Dhamtari Road, Tikrapara, Raipur C.G.

---- Appellant

Vs

M/s Mahabir Traders, Main Road, Sahid Chowk, Dalli-Rajhara Dist. Durg, C.G.

---- Respondent

TAXC No. 64 of 2012

Union Of India Through Commissioner, Central Excise & Customs, Central Excise Building, Dhamtari Road, Tikrapara, Raipur C.G.

---- Appellant

Vs

M/s R.K. Transport Company, Navkar Parisar, Pulgaon Naka, Durg Dist. Durg, C.G. 491001

---- Respondent

For Appellants	:	Shri Vinay Pandey, Advocate
For Respondents	:	Shri L. Badri Narayanan, Smt. Smiti Sharma, Shri Raja Sharma, Shri Vinay Jain, Shri Rahul Tamaskar, and Shri Abhiyuday Singh, Advocates

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. These matters are 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 respective respondents 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 appearing for the respondents is that these appeals are 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 Revenue and the respondents 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 respondents with SECL, SAIL, BALCO,

HINDALCO etc. 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 these appeals at the instance of the Revenue are not maintainable under Section 35G of the Central Excise Act.

4. In the result, holding that they are not maintainable under Section 35G of the Central Excise Act, these appeals are dismissed without prejudice to the right of the appellants to seek appropriate remedy in accordance with law.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(Sharad Kumar Gupta)
Judge

Kishore