IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.ST/53090/2014-CU[DB]

(Arising out of Order-in-Original No. 26/COMMR./LKO/ST/2013-14 dated 19/02/2014 passed by Commissioner of Central Excise & Service Tax, Lucknow)

M/s Tinna Overseas Ltd., **Appellant**

Vs.

Commissioner of Central Excise & S.T., Lucknow **Respondent**

Appearance:

Shri R.P. Jindal, Advocate for Appellant
Shri Mohammad Altaf, Assistant Commissioner (AR), for Respondent

CORAM:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 04/09/2018
Date of Decision : 04/09/2018

FINAL ORDER NO-**72142 / 2018**

Per: Archana Wadhwa

The present appeal stands filed against Order-in-Original No.26/Commr/LKO/ST/2013-14 dated 19.02.2014 in terms of which service tax demand of Rs.50,12,301/- was confirmed alongwith interest and penalties on the ground that the appellants provided management maintenance or repair service to Indian Oil Corporation on which they did not pay service tax.

2. The appellants have contended that they were given the task of operation and maintenance of the Indian Oil Corporation's Crumb rubber modified bitumen plant within the premises of Mathura refinery. The scope of work was to operate and maintain the said plant to produce Crumb rubber modified bitumen. The appellants contended that they basically provided job work to Indian Oil Corporation within their factory premises and therefore they were not covered under the scope of management, maintenance or repair service.

3. The learned A.R. stated that as recorded by the Adjudicating authority the appellants had not availed of the notification No.214/1986-CE which is meant for job workers and therefore they cannot be said to be providing job work.

4. We have considered the contention of both sides. We find that the appellants were given the task of operating one of the plants of Indian Oil Corporation for producing crumb rubber modified bitumen. The learned A.R. agreed that the process amounted to manufacture. As for as non availment of Notification No.214/86-CE is concerned, it is to state that notification permits removal of goods without payment of duty from the premises of the job worker when the premises of the job worker is away from the premises of

the main manufacturer. In the present case because the job work was done within the factory of IOC, the question of availment of the Notification No.214/86-CE simply does not arise. It is incorrect to hold that a job worker necessarily has to avail of the exemption Notification No.214/86-CE. Further, as the process done by the appellants amounted to manufacture, the job work done by them did not fall in the category of service.

5. We also find that the issue is covered by the decision of this Tribunal in the case of M/s Jubilant Industries Ltd. Vs Commissioner of Central Excise, Ghaziabad reported at 2013 (31) S.T.R. 181 (Tri.-Del.) laying down that where the activity is a manufacturing activity carried out by using the plant and machinery of their principle, no service tax liability would arise against the appellant. To the same effect is the Tribunal decision in the case of M/s CMS (I) Operations & Maintenance Co. P. Ltd. Vs Commissioner of Central Excise, Pondicherry reported at 2007 (7) STR 369 (Tri.-Chennai) where the power plant was required to be maintained and used by the assessee on contract basis, it was held that no service of maintenance and repair was provided by the assessee and there would not be any liability of service tax.

6. In the light of above decisions, we find no merits in the revenue's stand. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief.

(Pronounced in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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