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

APPEAL No.ST/51973/2015-CU[DB]

(Arising out of Order-in-Original No. ST(Remand)-104/2013) 17 of 2014 dated 30/12/2014 passed by Commissioner of Central Excise & Customs, Allahabad)

M/s Vanadana Enterprises, **Appellant**

Vs.

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

Appearance:

Shri Rajesh Chhibber, Advocate for Appellant
Shri Gyanendra Kr. Tripathi, Deputy Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing : 27/02/2019
Date of Decision : 27/02/2019

FINAL ORDER NO-**70441 / 2019**

Per: Archana Wadhwa

After hearing both the sides, we find that the appellant was engaged by M/s Northern Coal Fields Ltd. for movement of coal within the mine premises, in terms of the contract entered into between the two.

2. Revenue by entertaining a view that the said activity of the appellant falls under the category of "Cargo Handling Services", initiated proceedings against them proposing confirmation of service tax along with interest and for imposition of penalties. The said proceedings initiated against

the appellant, by invocation of extended period of limitation, resulted in passing of an order by Original Adjudicating Authority, confirming the demands along with confirmation of interest and imposition of penalties. The Order of the Original Adjudicating Authority was challenged by the appellant before Tribunal, who vide Final Order No.56127-56131/2013 dated 12.04.2013 upheld the revenues contentions that the activity undertaken by them would be classifiable under the "Cargo Handling Service". However, they accepted the assessee's stand that inasmuch as the same very services have already been taxed in the hand of M/s Northern Coal Fields Ltd., by treating the same as 'Goods Transport Agency Services', the same cannot be taxed again in the hand of the assessee. The Tribunal also considered the appellant's contention of the demands being barred by limitation by observing that identical proceedings stands initiated against many of assessees similarly situate and as such there may not be any malafide on the part of the assessee. Accordingly, the matter was remanded to Original Adjudicating Authority for dealing with the said two aspects.

3. The present impugned orders stands passed by the Commissioner in remand proceedings. As regards the assessee's stand that M/s Northern Coal Fields Ltd. has discharged tax liability in respect of the same activity, on reverse charge basis, the Adjudicating Authority observed that the said fact is not relevant, inasmuch as, the appellant

has to independently discharge their tax liability by treating the activity as ‘Cargo Handling Service’. As regards the limitation, he again reiterated the same stand that inasmuch as the appellant did not inform the revenue, the extended period would be available. The said order of Commissioner is impugned before us.

4. After hearing both the sides, we note that the admittedly vide first order referred (supra) Tribunal upheld the revenue’s stands that the activity would fall under the Cargo Handling Service. However, the matter was remanded with specific directions to find out as to whether same activity has already discharged tax liability in the hands of M/s Northern Coal Fields Ltd. in which case no duty confirmation against the appellant would arise. However, the adjudicating authority instead of following the said directions of the Tribunal went against the same and confirmed the demand by observing that tax payment by the Northern Coal Filed Ltd. by treating the same activity as GTA Services is of no relevance. We are of the view that the said findings of the Commissioner are outside the directions of the Tribunal, with which he was bound.

Similarly, as regards limitation, we note that except for the fact that appellant had not disclosed the said activity to the revenue, no evidence reflecting upon any malafide on the part of the appellant stands produced by revenue. The demand for the periods 01.04.2002 to 31.03.2007 stands raised by way of issuance of show cause notice dated 10.10.2007 and for the period 01.04.2003 to 31.03.2008 stands raised by show cause notice dated 14.10.2008 i.e. by invocation of the longer period. We also note that the disputed issue was the subject matter of various assessee's similarly situate, who entered into contract with M/s Northern or Southern or Central Coal Fields and the identical activities were subject matter of litigation before the various levels. Infact some of the cases travelled up to Tribunal and finally it was held that said activity cannot be considered to be Cargo Handling Service and the same would get covered by GTA Services. Tribunal in the case of M/s Rungta Projects Ltd. vide Final Order No.70975-70976/2017 dated 17.08.2017, by referring to the Hon'ble High Court's decision in the case of Commissioner of Central Excise Vs Manoj Kumar reported as 2015 (40) STR 35 (All.) held the activity as not classifiable under Cargo Handling Services. When an issue is subject matter of litigation in respect of various parties, located all over India, it cannot be held that there was malafide intention on the part of one assessee. As such, we agree with the learned Advocate that the demand being barred by limitation, cannot be upheld.

5. Even though a part of the demand may fall within limitation but in view of the fact that M/s Northern Coal field has already discharged duty liability, the demand even within the limitation period would not be sustainable.

6. In view of the foregoing discussions, we allow the appeal with consequential relief to the appellant.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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