CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

ST/725/2008-DB

[Arising out of Order-in-Appeal No. 216/2008 dated 24/10/2008 passed by Commissioner of Central Excise (Appeals), MANGALORE.]

M/s. P. R. Nayak Associates
"Prakalpa", 34, Brindavan Layout,
Vidyanagar, Hubli
DHARWAD - 580021
KARNATAKA

Appellant(s)

Versus

Commissioner of Central Excise,
Customs and Service Tax Belgaum
NO. 71, CLUB ROAD,
CENTRAL EXCISE BUILDING,
BELGAUM - 590001
KARNATAKA

Respondent(s)

Appearance:

Mr. M. S. Nagaraja, Advocate
T. RAJESWARA SASTRY & ASSOCIATES.
1010 2ND FLOOR ABOVE CORPORATION
BANK 26TH MAIN 4TH T BLOCK JAYANAGAR
BANGALORAE - 560041
KARNATAKA

For the Appellant

Mr. N. Jagadish, AR For the Respondent

Date of Hearing: 05/06/2018

Date of Decision: 05/06/2018

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 20791 / 2018

Per : P. ANJANI KUMAR

The appellants are engaged in certain activities in relation to the factory of JSW Steel Ltd. as shown below:

Sl. No.	Description	Amount confirmed in OIO (Rs.)	Classification of service	OIO (findings)	OIA (findings)	Set aside/upheld in OIA
1.	Slime disposal	29,43,470	Cleaning Service	Para 13(a)	Sl. No.1	Set aside
2.	Loading of granulated slag in to wagons & trucks	3,54,661	Cargo Handling Service	Para 13(b)	Sl. No.2	Accepted and paid before SCN. Upheld
3.	Pig Iron Handling in Corex I & II in factory of JSW Steel Ltd.	16,872	Cargo Handling service	Para 13(c)	Sl. No.3	Upheld
4.	Granulated & Dry Slag Shifting in factor of JSW Steel Ltd.	10,87,096	Cargo Handling Service	Para 13 (d)	Sl. No.4	Upheld
5.	Hiring of DG Set	9,350	BAS	Para 13(e)	Sl. No.5	Set aside
6.	Supply and Laying of LDPE Film/Sheet on machinery/equipment	26,520	Construction Service	Para 13(f)	Sl. No.6	Upheld
7.	Loading & Shifting of pellets from pellet plant to RMHS yard within factory	3,943	Cargo Handling Service	Para 13(g)	Sl. No.7	Upheld
8.	Excavation by Poclain	82,336	Site formation clearance and excavation	Para 13(h)	Sl. No.8	Set aside
9.	Loading & shifting of pig iron within factory	19,645	Cargo Handling Service	Para 13(i)	Sl. No.9	Upheld
10.	Loading & Uploading of BOF Slag within factory	41,283	Cargo Handling Service	Para 13(j)	Sl. No.10	Upheld

2. The appellants have accepted the service tax liability for activity at Sl. No.2. The appellate authority has set aside the service tax liability on activities shown at Sl. No.1, 5 and 8.

2.1 The appellants contended that the demand of duty pertaining to Sl. No.3, 4, 7, 9 and 10 under Cargo Handling Services and Sl. No.6 under construction service and imposition of penalty under Section 78 is not correct. They were handling raw materials, intermediate products or waste and scrap material in the course of manufacture of goods in Sl. No.3 (pig iron handling in COREX I and II by using dumpers); Sl. No.4 – shifting of granulated and dry slag from COREX 1 and II by deploying excavator; Sl. No.7 loading and shifting of pellets from pellet plant to RMHS yard; Sl. No.9 – loading and shifting of pig iron; Sl. No. loading, transportation and unloading of BOF slag from Kargil area to other plants. The Department contended that all these activities fall under Cargo Handling Services as defined under Section 65(23) read with Section 61(105)(zr) of the Finance Act, 1994. The issue stands settled by the following cases:

- ***Signode India Ltd. vs. CCE: 2017 (50) STR 3 (SC)***
- ***CCE vs. Manoj Kumar: 2015 (40) STR 35 (All.)***
- ***CCE, Ranchi vs. Modi Construction Co.: 2011 (23) STR 6 (Jhar.)***

- ***Rungta Projects Ltd. vs. CCE: 2018 (9) GSTL 404 (Tri.-All.)***
- ***Gayatri Construction Co. vs. CCE: 2012 (25) STR 259 (Tri.-Del.)***
- ***CC vs. Jaspan Darshan Lal: 2016 (45) STR 156 (Tri.-All.)***
- ***Shri Ram Prakash vs. CCE: 2017-TIOL-4332-CESTAT-CHD.***

2.2 The activities undertaken by them cannot be treated as cargo handling services inasmuch as they are not meant for any transport. At the most, these activities can be considered as part of Goods Transport Agency service attracting levy of service tax under reverse charge mechanism of Rule 2(1)(d)(v) of the Service Tax Rules, 1994. Therefore, no service tax is payable to by them.

2.3 As regards the activities at Sl. No.6 of the impugned order, the appellants have only supplied 10,000 Sq. meters of LDPE sheet and film and undertook the work of laying the sheet over the machinery and equipment in July 2005. The lower authorities have classified the above activity under Construction Service. The appellants contended that by no stretch of imagination, the said work can be equated to construction work. The work order was a contract involving supply of goods and liable for laying the LDPE sheet and film. The work contract was not liable to service tax for the period prior to 1.6.2007 as held by Hon'ble Supreme Court in the case of ***Larsen & Toubro Ltd.: 2015 (39) STR 913 (SC)***. The appellants have submitted that in view of the fact that the issue relates to interpretation of classification and taxability of various activities, no deliberate suppression of facts and mala fide intention can be imputed; therefore, no justification for imposition of penalty. They have shown reasonable cause as required under Section 80 of the Finance Act, 1994. They relied upon ***Mohan Poddar vs. CCE: 2015 (38) STR 98 (Tri.-Del.)***. They have also appealed for the excess appropriated amount of Rs.6,91,075/- requires to be refunded.

3. The learned DR reiterated the findings of the Order-in-Original and Order-in-Appeal.

4. We have heard both sides and perused the records. We find force in the argument of the appellant that the activities undertaken by them at Sl. No.3,4,7,9 and 10 involved only temporary handling of the goods and shifting them from one place to another within the factory and as such, by no stretch of imagination come under the Cargo Handling Services as no transportation is involved in respect of the services discussed

above. We rely on the ratio of the judgment rendered in the case of ***Gaytri Construction Co. vs. CCE: 2012 (25) STR 259 (Tri.-Del.)*** wherein it has held as under:

> *"9. .... We find that it is now well settled by the decisions of the Courts and Tribunal discussed above that shifting of goods within the factory premises will not come within the scope of "Cargo Handling Services" as decided in the case of S.B. Construction (supra). There is no need for much discussion on the issue."*

We also find that laying of sheet on machinery cannot be equated to construction activity. Therefore, the appeal is allowed with consequential relief.

(Operative portion of the order was pronounced
in Open Court on **05/06/2018**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

rv...