IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

ST/699/2010

(Arising out of Order-in-Appeal No. 108/2010-ST (SLM) dated 16.08.2010 passed by the Commissioner of Central Excise (Appeals), Salem).

CCE & ST, Salem : Appellant

Vs.

M/s. Thriveni Earthmovers Pvt. Ltd. : Respondent

Appearance

Shri K.P. Muralidharan, AC (AR)
for the appellant

Ms. S. Sridevi, Advocate,
for the Respondent.

CORAM:

Hon'ble Shri V. Padmanabhan, Member (Technical)
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of Hearing/Decision: **31.05.2018**

FINAL ORDER No. **41693/2018**

Per: V. Padmanabhan

The present appeal is filed by the Revenue against the OIA No. 108/10-ST dated 16.08.2010.

2. The respondent is engaged in mining/quarrying contracts. After scrutiny of the documents of the respondent, Revenue was

of the view that the respondent has failed to pay service tax in respect of certain activities ie., "Drilling & Blasting to remove weathered rock, which is transported to dump yard in the mine. SCN was issued dated 23.09.2009 covering the period 10.09.2004 to 31.03.2006, demanding service tax under the categories of BAS as well as Sight formation and clearance service. Even though the service tax demand of Rs. 10,24,738/- was upheld by the adjudicating authority, the same was set aside in the impugned order under the ground of time bar. Aggrieved by the decision, Revenue has filed the present appeal.

3. In this connection we heard the Ld. AR, Shri K.P.Muralidharan, AC for the Revenue and Ld. Advocate, Ms. S. Sridevi for the appellant.

4. It is the submission of the Ld. AR that the activities undertaken by the appellant does not amount to manufacture and hence service tax is liable to pay under BAS. He justified the order passed by the original authority and submitted that the same maybe restored.

5. The Ld. Advocate pressed for upholding the impugned order which has dropped the demand on the ground of time bar.

6. We have carefully considered the submissions made by both sides and perused the records.

7. The demand has been dropped by the Commissioner (Appeals) on the ground of time bar. It is seen from the record that the Revenue has already raised for the same period for the services rendered to the same clients, demand for service tax under the category of Cargo handling service, Such demand was raised after detailed investigation in which the statement of Shri Balasubramanian, Director was recorded on 17.05.2007 and subsequently SCN dated 29.06.2007 was issued but was dropped by the Tribunal on the ground of limitation. In view of the above, we find no infirmity in the view taken by the Commissioner (Appeals) that the demand raised afresh for the same period in a different category of service is hit by time bar. In this connection, the Hon'ble Supreme Court decision in the case of Nizam Sugar Factory –CCE – 2006 (197) ELT 465 (S.C.) is squarely applicable to the facts of the present case.

8. In view of the above, the impugned order is upheld and the appeal filed by the Revenue is rejected.

(Order dictated and pronounced in the open Court)

(P. DINESHA)
MEMBER (JUDICIAL)

(V. PADMANABHAN)
MEMBER (TECHNICAL)

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