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

ST/534/2011 & ST/CO/7/2012

(Arising out of Order-in-Appeal No. 90/2011 (M-ST) dated 16.06.2011 passed by the Commissioner of Central Excise (Appeals), Chennai).

CST, Chennai-I : Appellant

Vs.

M/s. Ultratech Concrete : Respondent

Appearance

Shri S. Govindarajan, AC (AR)
for the Appellant

Shri D. Santhana Gopalan, Advocate,
for the Respondent.

CORAM :

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of Hearing/Decision: **03.07.2018**

FINAL ORDER No. **<u>41962/2018</u>**

Per Madhu Mohan Damodhar

After hearing both sides, we find that the issue in dispute concerns on whether the "Transit Mixer" used by the respondents to transport the "ready mix concrete" manufactured by them to their customers would attract the mischief of levy of service tax under GTA services. In proceedings initiated against the respondent had culminated in an order dated 11.08.2010 by the adjudicating authority where the adjudicating authority had confirmed the demand of Rs. 29,44,961/- with interest thereon and imposed penalties under various provisions of law holding that the respondents are liable to discharge service tax on GTA services as alleged in the SCN. However, in appeal, the Commissioner (Appeals) vide the impugned order dated 15.06.2011 held that the said "Transit Mixer" cannot be said to be a service by GTA and that it would more appropriately be covered under "Supply of Tangible Goods" service. On these conclusions the lower appellate authority allowed the appeal in favour of the respondents. Aggrieved Revenue is in appeal before this forum.

2. Today when the matter came up for hearing, on behalf of the appellant, Ld. AR Shri S. Govindarajan, AC, reiterated the grounds of appeal. In particular the Ld. AR contends that no evidence or proof was produced by the assessee with regard to the transfer of any tangible goods by the truck owner for the use by the assessee. As the transfer and use by the assessee are not proved, findings of the Commissioner (Appeals) in respect of classification of the service rendered by the assessee under "Supply of Tangible Goods" are without any legal basis. The ownership of the vehicles vests with the transporter only. Hence, the said order requires to be set aside.

3. On the other hand, on behalf of the respondent, Ld. Advocate Shri D. Santhana Gopalan draws our attention to the Cross objection in ST/CO/7/2012 filed by them to point out that as per the agreement between the Popular Cargo Movers and the respondent, that the "Transit Mixer" were only hired for three years and there was no GTA relationship between the respondent and the Popular Cargo Movers. He also draws our attention to page 26 of the agreement to highlight that the "Transit Mixer" would function under the supervision and control and it vests only with the respondents. Ld. Advocate also places reliance on the ratio laid down by the Hon'ble High Court of Andhra Pradesh in the case of *G.S. Lamba & Sonss Vs. State of AP* – 2015 (324) ELT 316 (AP), which involved identical issue relating to hiring of "Transit Mixer" to Grasim Industries. He further draws our attention to para-42 of the judgment where the Hon'ble High Court has held that "full control on the method, manner and time of using the "Transit Mixer owned by the petitioner's vests absolutely in Grasim".

4. Heard both sides and have gone through the facts.

5. It is seen that the respondent right from the stage of adjudication by the original authority have been contending that the vehicles are only been hired and that no GTA service have been provided to them. Para-5.1 of the order dated 11.08.2010 of the original authority has taken note of Article-1 of the

agreement whereby brand new and totally dedicated fleet of Transit Mixers were to be provided on hire and shall be placed in the ready mix plant". Even in the proceedings before the lower appellate authority, appellants have submitted that they had entered into an agreement with Popular Cargo Movers to hire "Transit Mixer" and not for receiving transportation service. On perusal of the agreement between the respondent and the Popular Cargo Movers, it becomes evident that the "Transit Mixer" have only been hired, for a period of 3 years with full possession and control vesting with the respondents. Viewed in this light, we are unable to find any infirmity with the conclusions arrived at by the lower appellate authority.

6. In the event, no merit is found in the appeal filed by the department, for which reason it is dismissed. In consequence, the cross-objections filed by the respondent which is in the nature of written submissions are also disposed of.

(Order dictated and pronounced in the open Court)

(P.DINESHA)
MEMBER (JUDICIAL)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

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