IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI
[COURT : Division Bench B1]

Appeal No.: ST/00167/2012

[Arising out of Order-in-Appeal No. 350/2011 dated 30.11.2011 passed by the Commissioner of Central Excise (Appeals), Madurai]

The Commissioner of G.S.T. & Central Excise, **: Appellant**
Madurai Commissionerate

Versus

M/s. Chettinad Earth Movers (P) Ltd., Unit-I **: Respondent**
Rani Meyyammai Nagar, Karikali Village,
Guziliamparai, Dindigul Dt. – 624 703

Appearance:-
Shri. B. Balamurugan, AC (AR)
for the Appellant
Shri. R. Parthasarathy, Consultant
for the Respondent

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

Date of Hearing: 03.12.2018

Date of Pronouncement: 14.12.2018

Final Order No. 43112 / 2018

Per P. Dinesha :

Brief facts leading to the present appeal filed by the Revenue *inter alia* are that the assessee is assigned the work of handling of raw materials like coal and slag at the factory premises of M/s. Chettinad Cement Corporation Ltd. ('M/s. CCCL' for short); that for the above work, the assessee is paid pay-loader hire charges by M/s. CCCL; that such payment includes fuel cost, operator wages, maintenance cost, etc.; that the work should be carried out as per directions of M/s. CCCL with the help of the assessee's mining materials within a specified time, etc. It is an admitted fact by both the Revenue-appellant and the assessee-respondent that for such loading of coal and slag, the same is put into tippers for transportation of the same within the factory premises of M/s. CCCL.

2.1 A Show Cause Notice dated 15.03.2010 was issued proposing to classify the above services of the assessee under the category of 'Cargo Handling Services' under Section 65 (23) of the Finance Act, 1994. Not satisfied with the assessee's reply, the adjudicating authority confirmed the proposed demands along with appropriate interest and penalties. The adjudicating authority has gone by the work order in his Order and also has referred to "Mining Services" introduced with effect from 01.06.2007, has also referred to an Order of the Kolkata Bench of the Tribunal in the case of ***Gajanand Agarwal Vs. Commissioner of Central Excise, BBSR – 2009 (13) S.T.R. 138 (Tri. – Kol.)*** to hold that the service rendered by the assessee as a pay-loader is nothing but Cargo Handling Service.

2.2 The Commissioner of Central Excise (Appeals), Madurai in the appeal filed by the assessee against the aforesaid adjudication Order vide Order-in-Appeal No. 350/2011 dated 20.11.2011, while following the decision of the Bangalore Bench of the Tribunal in the case of ***M/s. ITW India Ltd. Vs. Commissioner of Central Excise, Hyderabad – 2009 (14) S.T.R. 826 (Tri. – Bang.)*** has held that the activity of transportation which is essential to Cargo Handling Service was absent in the case on hand and hence, the classification and demand of service tax under Cargo Handling Service was unsustainable. Aggrieved, the Revenue has come in appeal before this forum.

3. Today when the matter came up for hearing, Ld. AC (AR) Shri. B. Balamurugan appeared on behalf of the Revenue-appellant while Ld. Consultant Shri. R. Parthasarathy appeared on behalf of the assessee-respondent.

4. We have heard the rival contentions, gone through the materials placed on record and also gone through the various decisions referred to during the course of arguments.

5. The dispute relates to the period from 01.04.2005 to 30.04.2008.

6.1 The definition of 'Cargo Handling Service' as per Section 65 (23) ibid. reads as under :

[(23) "cargo handling service" means loading, unloading, packing or unpacking of cargo and includes, —

(a) cargo handling services provided for freight in special containers or for non-containerised freight, services provided by a container freight terminal or any other freight terminal, for all modes of transport, and cargo handling service incidental to freight; and

(b) service of packing together with transportation of cargo or goods, with or without one or more of other services like loading, unloading, unpacking,

but does not include, handling of export cargo or passenger baggage or mere transportation of goods;]

6.2 On a careful consideration of the above definition, we notice that Cargo Handling Service has two parts : -

(i) 'means' part; and

(ii) 'includes' part.

Further, the 'includes' part has two limbs :

a. Cargo handling specifically; and
b. Handling of cargo or goods.

6.3 Admittedly, the word 'cargo' is not defined under the Act. The discussion of the adjudicating authority in the Order-in-Original makes it clear that as per the work order issued by M/s. CCCL to the assessee, the work assigned was handling of materials as per directions of M/s. CCCL within the factory premises of M/s. CCCL for loading raw materials such as coal and slag on to tippers for transportation. The above activity undertaken by the assessee is clearly on the goods as part of the production process.

6.4 The ‘means’ part of the definition of ‘Cargo Handling Services’ relates exclusively to cargo which gives an indication that loading, unloading, packing or unpacking could only be of the finished products and not the goods or raw materials and this is duly supported from the introduction of clause (b) to Sub-clause 23 of Section 65 by the Finance Act, 2008, whereby the Cargo Handling Service shall include service of “packing together with transportation of cargo or goods ….”. Viewed in this light, the impugned service in the case on hand will not fall within the fold of Cargo handling Service since admittedly, the assessee was only assisting in loading raw materials and is not involved in the transportation of any final products as transportation is a must in the case of Cargo Handling.

7. We also note that mere supply of men and materials *per se* coupled with the scope of work which limited to the work assigned by M/s. CCCL inside the factory premises, cannot be considered to be a service under Section 65 (23) ibid. We also note that our view is supported by the Order of the Bangalore Bench of the Tribunal in

the case of *M/s.ITW India Ltd.(supra)* which is also relied upon by the first appellate authority which in fact, has also been upheld by the ***Hon'ble High Court of Andhra Pradesh in its Order in C.E.A. Nos. 49.2009, 15/2010, 18/2010, 20/2010 and 38/2010 dated 14.03.2011.*** For the above reasons, we do not find any infirmity in the Order of the Commissioner (Appeals) and hence, we do not intend to interfere with the same.

8. The Revenue's appeal is therefore dismissed.

*(Pronounced in open court on **14.12.2018**)*

(P Dinesha)	**(Madhu Mohan Damodhar**)
Member (Judicial)	Member (Technical)

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