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

Appeal No.ST/609/2011

[Arising out of Order-in-Original No.08/2011-ST ADJ dt. 26.08.2011 passed by Commissioner of Central Excise, Tiruchirappali]

Thiru Arooran Sugars Ltd. Appellant

Versus

Commissioner of Central Excise, Tiruchirapalli Respondent

Appearance :

Ms. P. Jayalakshmi, Advocate
For the Appellant

Shri K. Veerabhadra Reddy, ADC (AR)
For the Respondent

CORAM :

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

Date of hearing / decision : 06.02.2019

FINAL ORDER No. 40257 / 2019

Per Madhu Mohan Damodhar

The facts of the appeal at hand are that assessee are manufacturers of sugar molasses, rectified spirit and denatured spirit. Investigations by departmental officers indicated that appellants were allegedly supplying man power required by farmers namely Agriculturists registered with them, in consideration of charges received from them. Department took the view that appellants were therefore engaged in supply of man power and are required to register with the department under that category which they did not; that they are required to discharge tax liability as a service provider which also they did not. Hence SCN dt. 08.04.2011 was issued to the appellant inter alia proposing demand of an amount of Rs.5,23,57,493/- for the period October 2005 to September 2010 with interest thereon and also imposition of penalties under various provisions of law. In adjudication, the Commissioner vide the impugned order dt. 26.08.2011 confirmed the tax demand with interest as proposed in the SCN, imposed equal penalty under Section 78 of the Finance Act, 1994 and under Section 77 ibid. Hence this appeal.

2. Today when the matter came up for hearing, on behalf of the appellants, Ld. Counsel Ms. P. Jayalakshmi submits that the matter is no longer *res integra*. She draws our attention to the decision of the CESTAT Chennai in the case of *The Amaravathi Co-operative Sugar Mills Ltd. Vs CCE & ST, Coimbatore* - 2018 (7) TMI 1837-CESTAT Chennai. She submits that as the facts of the matter in that decision is *pari materia* to the facts of their appeal and in the present case also, the sugarcane farmers only have requested the appellant to arrange persons to cut sugarcane for the mills and accepted the proposals for deducting the cost incurred towards labour charges payable. She also placed reliance on the following case laws :

(i) Shankarrao Mohite Patil Sarva Seva Sangh v CCE Pune III 2017-TIOL-327-CESTAT-MUM.

(ii) CC, CE & ST v Godavari Khore Cane Transport Company Pvt. Ltd. 2015-TIOL-253-HC-MUM-ST

(iii) Godavari Khore Cane Transport Company Pvt. Ltd. and Ganesh Arpit Sugarcane Transport Pvt. Ltd. Vs CCE Aurangabad 2013-TIOL-1986-CESTAT-MUM.

3. On the other hand, Ld. A.R Shri K. Veerabhadra Reddy supports the impugned order, in particular paras 19 to 21 thereof.

4. Heard both sides. We find that the Ld. Advocate is correct in her assertion that the issue is now covered by the decision cited by her. As per narration in para-4 of the SCN we find that the factory supplied man power to the farmers based on their request. So also, in para-11 of the notice, it is mentioned that supply of Cane Harvest labourers by the factory is done only in cases where the farmers make a specific request for the same. This being so, we find that ratio of the earlier decision of this Tribunal in *The Amaravathi Co-operative Sugar Mills Ltd.* cited by Ld. Advocate supra, as also the other decisions cited by her will apply on all fours to the facts of the appeal at hand. In view thereof, the impugned order cannot then sustain and will require to be set aside, which we hereby do. Appeal is allowed with consequential benefits, if any, as per law.

(dictated and pronounced in court)

(P. Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

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