CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL CHENNAI

Regional Bench – Court No. III

Service Tax Appeal No. 40992 of 2013

(Arising out of Order-in-Original No. 02/ST/COMMR/2013 15.03.2013 dated passed by the Commissioner of Central Excise, Central Revenue Building, Tirunelveli)

M/s. Bay Container Terminal Pvt. Ltd., : **Appellant**
Plot No. 2 B, World Trade Avenue,
Harbour Estate Tuticorin,
HO: 21 Swamy Sivananda Salai, Chepauk
Chennai – 600 005

VERSUS

The Commissioner of G.S.T. & Central Excise, **: Respondent**
Madurai Commissionerate,
Central Revenue Building, NGO 'A' Colony,
Tirunelveli – 627 007

APPEARANCE:
Shri. G. Thangaraj, Consultant for the Appellant

Ms. T. Usha Devi, Authorized Representative for the Respondent

CORAM:
HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. MADHU MOHAN DAMODHAR, MEMBER(TECHNICAL)

FINAL ORDER NO. 40625 / 2019

DATE OF HEARING: 29.03.2019

DATE OF DECISION: 29.03.2019

PER BENCH :

After hearing both sides we find that the issue that comes up for discussion relates to non-addition of the cost incurred by the appellant for replacement/repairs undertaken by them of damaged parts of containers used in international transportation in the taxable value. The appellant had raised invoices for such replacement/repair undertaken by them and they were paid up by the clients.

2. We find that the matter is fully covered by the appellant's own case in ***Final Order No. 43447/2017 dated 20.12.2017***. The relevant portion of the order is reproduced as under :

> *"2. The appellants are engaged in providing 'Repair and Maintenance Service' with reference to damaged sea containers meant for International Goods Transport. The repair work undertaken by the appellants is with reference to the containers which are covered by the Customs Bond intended for re-export. The lower authority denied the exemption on the material part on the ground that no supporting evidence of sale of goods during the course of providing such repair service by the appellants.*
>
> *3. The claim of the appellants was supported by the invoices raised by them. In fact, that such invoices for repair charges indicate along with details of the container numbers, labour amount and material amount separately in US$. The service tax payable on the services (labour amount) is also indicated.*
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> *4. The Ld. AR contested that the evidence of purchase of such materials along with the supply to the service recipient with full details are lacking. We note that the invoices produced sufficiently indicate the complete details of service and materials undertaken. In fact, the entry of materials used is also can be seen from the illustrated invoices submitted. In this connection, we also note the clarification issued by the Board dated 22.09.2013 referring to the very same notification and the decision of the Hon'ble Supreme Court in Jain Brothers reported as 2012 (28) STR 162 (S.C.), to state that the cost of goods supplied during repair cannot be added to the value of the taxable service in view of the said exemption. The Ld. Advocate brought to our notice that in the appellant's own case in two other units in Tuticorin and Cochin, Revenue dropped the demands on the very same issue which reached the finality.*
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> *5. In view of the above analysis, we find no merit in the impugned order. Accordingly, the same is set aside and the appeal is allowed."*

3. We do not find any new reasons or grounds to deviate from the above ratio adopted by us. In the circumstances, the impugned Order cannot survive and will have to be set aside, which we hereby do.

4. The appeal is therefore allowed with consequential benefits, if any, as per law.

(Dictated and pronounced in open court)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

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