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

ST/252/2010

(Arising out of Order-in-Appeal No. 23/2010 (SLM) dated 26.2.2010 passed by the Commissioner of Central Excise (Appeals), Salem)

Commissioner of Central Excise, Salem Appellant

Vs.

M/s. Thirumala Enterprises Respondent

Appearance

Shri R. Subramaniyam, AC (AR) for the Appellant
Ms. Cynduja Crishnan, Advocate for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **09.11.2017**

Final Order No. 42908/2017

Per Bench

The facts of the case are that M/s. Thirumala Enterprises, the respondents herein, had entered into an agreement with M/s. MALCO to carry out mining services, namely, excavation / raising of factory grade bauxite by doing drilling, deep hole blasting, removal of overburden, breaking of larger boulders to the required size, blending of bauxite,

Customs, Excise & Service Tax Appellate Tribunal loading of the blended bauxite into trucks, maintenance of approach roads, screening of silica rich bauxite, maintenance of garland rains and silt dam etc. Department took the view that these activities would fall within the fold of business auxiliary service and in proceedings initiated against the respondent, confirmed the tax liability of Rs.1,95,426/- with interest thereof and imposition of penalties against them. In appeal, Commissioner (Appeals) set aside the adjudication order on the ground that the activity falls under mining activities. Hence department has filed this appeal.

2. Ld. AR Shri R. Subramaniyam reiterated the grounds of appeal.

3. On the other hand, ld. counsel Ms. Cynduja Crishnan submitted that this Tribunal in the respondent's own case vide Final Order No.42686/2017 dated 6.11.2017 has set aside the demand for the earlier period as the activities of the respondent would fall only under mining activities. She also submitted that the Tribunal in the case of Thiriveni Earthmovers Pvt. Ltd. Vs. Commissioner of Central Excise, Salem – 2009 (15) STR 393 (Tri. Chennai) had held that activity of loading and transportation of limestone and rejects from mine head to crushing premises undertaken within mining area and covered by Mines Act, 1952 would not be taxable under Business Auxiliary Service. The appeal against the said

decision was dismissed by the Hon'ble Supreme court as reported in 2016 (45) STR J142 (SC). She submits that the very same services was again held as falling under mining services in the judgment of the Hon'ble High Court of Chattisgarh in Union of India Vs. M/s. Spectrum Coal Power Ltd. – 2016 (41) STR 592 (Chattisgarh).

4. Heard both sides.

5. We find that the issue is squarely covered by the ratio of the Tribunal's decisions and High Court /Supreme Court judgments relied upon by the ld. counsel. This Tribunal vide Final Order No. 42686/2017 dated 6.11.2017, in the respondent's own case, has set aside the demand for the earlier period. Hence, we do not find any infirmity in the order passed by Commissioner (Appeals), the same is upheld and the department's appeal is dismissed.

(Operative portion of the order was pronounced in open court)

Sulekha Beevi

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

Rex

Customs, Excise & Service Tax Appellate Tribunal

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