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

**Appeal No.ST/488/2009**

[Arising out of Order-in-Appeal No.112/2009-ST (SLM) dt. 15.7.2009 passed by the Commissioner of Central Excise (Appeals), Salem]

Saravana Traders — Appellant

Versus

Commissioner of Central Excise,
Salem — Respondent

**Appeal No.ST/489/2009**

[Arising out of Order-in-Appeal No.113/2009-ST (SLM) dt. 16.7.2009 passed by the Commissioner of Central Excise (Appeals), Salem]

Sakthi Traders — Appellant

Versus

Commissioner of Central Excise,
Salem — Respondent

**Appeal No.ST/490/2009**

[Arising out of Order-in-Appeal No.114/2009-ST (SLM) dt. 27.7.2009 passed by the Commissioner of Central Excise (Appeals), Salem]

Sri Gounder Traders — Appellant

Versus

Commissioner of Central Excise,
Salem — Respondent

Customs, Excise & Service Tax Appellate Tribunal

Appearance:
Ms.Naveena, Advocate
For the Appellant

Shri Arul C. Durai Raj, Superintendent (AR)
For the Respondent

**CORAM :**

**Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)**
**Hon'ble Shri B. Ravichandran, Member (Technical)**

Date of hearing / decision : 13.11.2017

**FINAL ORDER No. 42910 - 42912/2017**

**Per B. Ravichandran**

All these three appeals are on identical dispute relating to service tax liability of the appellant for their activities in the client's premises with reference to loading, unloading of cement. The Revenue held a view that the appellants are engaged in taxable activity under the category of "Cargo Handling Service". Accordingly, proceedings initiated against the appellant culminated in confirmation of tax demand and interest along with penalties. The lower authorities held that the appellant did provide "Cargo Handling Service".

2. Ld. counsel appearing for all the appellants submitted that in terms of the contract, they were mainly engaged in supervising overall monitoring of loading, unloading of cement. The loading of the cement is completely mechanized and their role is mainly to ensure the smooth operation of machines. The rate collected in the contracts will itself reveal that it is only a supervisory work and not a manual loading or unloading using the labour. They are not providing cargo handling services and are more in the business of supplying qualified people to supervise and monitor loading and unloading of cement in the client's factory. She relied on the terms of the contract and also signed affidavit filed by each of the appellant explaining the processes involved in loading of cement which have connection with these activities. She relied on the decision of the Tribunal in *CCE Bhopal Vs Jagat Enterprises* - 2016 (42) STR 531 Tri-Del.) involving similar set of facts.

3. Ld. A.R reiterated the findings of the lower authorities. He submits that since the rate is per Metric Ton of the cement handled, the appellants are liable to pay service tax under "Cargo Handling Service".

4. We have heard and perused the appeal papers. The dispute is with reference to tax liability of appellant for the consideration

received by them with reference to work carried out in the cement factory. On perusal of the terms of contract as well as processes involved in loading of cement as elaborated in the affidavit, we find that the appellants are engaged mainly in the supervision of loading operation which is clearly mechanized. We note that the Tribunal examining similar circumstances in the case of *Jagat Enterprises* (supra) held that said activities cannot be taxed under 'Cargo Handling Service'. We find that the appellant's liability on cargo handling service cannot be justified in the facts and circumstances of the case as examined in the appeal papers. Accordingly, we set aside the impugned orders and allow the appeals with consequential relief, if any, as per law.

(dictated and pronounced in court)

**(B. Ravichandran)** 13/11/?
**Member (Technical)**

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

gs