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

ST/529/2009

(Arising out of Order-in-Appeal No.135/2009 (SLM) dated 31.8.2009 passed by the Commissioner of Central Excise (Appeals), Salem)

Commissioner of Central Excise, Salem Appellant

Vs.

M/s. Thriveni Earthmovers Pvt. Ltd. Respondent

Appearance

Shri S. Govindarajan, AC (AR) for the Appellant
Ms. S. Sridevi, 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: **09.08.2017**

Final Order No. 41567/2017

Per Bench

The respondents in the above appeal has carried out the activities of loading and unloading for transportation of lime stone/ screen earth / rejected stones etc. from the mines of M/s. Chettinad Cement Corporation Ltd. and M/s. Larsen & Toubro Ltd., situated at various places and also at their own mines on contract basis. For the above activities, the department issued show cause notice stating that the activities under taken by the respondent is in the nature of Cargo

Customs, Excise & Service Tax Appellate Tribunal

Handling Services, hence, liable for payment of service on the above activities. Accordingly, show cause notice was issued proposing to demand service tax along with interest and to impose penalties. The said show cause notices were adjudicated and the adjudicating authority confirmed the demand along with interest and penalties. Aggrieved by the said adjudication order, the respondent herein filed appeals before Commissioner (Appeals). The Commissioner (Appeals) vide the order impugned allowed the appeals filed by the respondent and set aside the impugned order. Being aggrieved by the Order of the Commissioner (Appeals), the department has filed this present appeal.

2. On behalf of department, the learned AR Shri S. Govindarajan reiterated the findings in the grounds of appeal.

3. The learned counsel for respondent Ms.S.Sridevi submitted that the predominant nature of the activities undertaken by the assessee under the contract is one of transportation of waste/ores to specified location in the mines and in few cases upto factory and not beyond. Further, she relied upon the assesses own case vs. CCE, Salem vide Tribunal's Final Order No.404/2009 dated 02.04.2009 reported in 2009 (15) STR 393 (Tri. Chen.) allowed the appeals of the respondent herein. In the said decision, the Tribunal has held that movement of limestone and rejects was not transportation of goods. It is held that movement of limestone and rejects in

the mining area undertaken by the appellants are covered by the entry 'mining of mineral, oil, gas' and the said activity cannot be taxed under 'cargo handling service for the period prior to introduction of the levy under the category of 'mining of mineral, oil, gas' on 01.06.2007. Further, she relied upon the decision of N.Rajasekhar & Co reported in 2008 (12) STR 760 wherein it was held that the main purpose of contract that of breaking and crushing of limestone boulders into jelly – loading and unloading of boulders are only incidental to mining activity. Also relied upon M/s.B.K.Thakkur Vs. CCE, Bhubaneswar 2208 (9) STR 542.

4. Heard both sides.

5. The issue whether loading / unloading of limestone and rejects in mining area would fall under 'Cargo handling services' is covered by the judgments cited by the learned counsel for appellant and also by the judgment in the appellant's own case Commissioner Vs. Thriveni Earthmovers 2016 (45) STR J142 (SC). Following the same, we find no grounds to interfere with impugned orders.

6. In the result, the department appeal is dismissed.

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

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

Sulekha Beevi

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

Rex

Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति/Certified True Copy

सहायक पंजीकार/Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर
अपील अधिकरण/(CESTAT)
चेन्नै/Chennai