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

ST/00098/2011

[Arising out of Order-in-Appeal No.536/2010, dated 16.11.2010 passed by the Commissioner of Central Excise (Appeals), Madurai]

M/s. COMMISSIONER OF CENTRAL EXCISE, MADURAI APPELLANT

Versus

M/s. P.A.P. CHIDAMBARA NADAR RESPONDENT

Appearance:

For the Appellant Shri R. Subramaniyan, AC (AR)
For the Respondent None

CORAM:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)

Date of hearing **05-07-2017**
Date of pronouncement 07-07-2017

FINAL ORDER NO. 41172/2017

Per Archana Wadhwa:

The appeal stands listed for disposal on merits in terms of the High Court's Order dated 10.04.2017 setting aside the Tribunal's order vide which the Revenue's appeal against the order of Commissioner (Appeals) was allowed.

2. As per facts on record, the assessee, who is engaged in trading of petroleum products of M/s. Bharat Petroleum Corporation Ltd., (hereinafter referred to as "M/s. BPCL") availed the services of individual truck owners for transportation of the product in question. Revenue by entertaining a view that the assessee is required to pay service tax on such transportation charges, on reverse charge basis, raised and confirmed the demand of Rs.32,671/- against them along

Customs, Excise & Service Tax Appellate Tribunal with confirmation of interest and imposition of penalty of identical amount under section 76 of the Finance Act, 1994.

3. On appeal against the said order, Commissioner (Appeals) set aside the impugned order of the original adjudicating authority by observing that the services so obtained by the assessee were not from the transport agency but were from individual truck owners. As such by following the Tribunal's decision in the case of *Commissioner of Central Excise & Customs, Guntur Vs. M/s. Kanaka Durga Agro Oil Products Pvt. Ltd., & Anr.* reported in *2009-TIOL-11-23-CESTAT-Bang.*, laying down that there is no liability on recipient of services in case of transportation undertaken by the individual truck operators and not by goods transport agencies, he set aside the impugned order and allowed the assessee's appeal.

4. Being aggrieved with the order of Commissioner (Appeals), Revenue filed an appeal before Tribunal. Tribunal vide its Final Order No.558/11, dated 03.05.2011 allowed the Revenue's appeal by observing that inasmuch as recipient of the services is a registered partnership firm, and not an individual, the liability to pay service tax would fall upon them. Accordingly, the Order-in-Original was restored and the department's appeal was allowed.

5. The said order of the Tribunal was challenged by the assessee before Hon'ble High Court of Madras. The Hon'ble High Court observed that since the services were received by partnership firm, their liability to pay tax would arise. However, the High Court observed that inasmuch as, the assessee's claim of benefit of exemption in terms of Notification No.32/2004-ST, dated 03.12.2004 were not examined by the Tribunal, the matter needs to be remanded

Customs, Excise & Service Tax Appellate Tribunal for examination of the said claim. Accordingly, the matter is listed today for disposal on merits.

6. Nobody appeared for the appellants. Accordingly, I have heard the learned departmental representative and I have gone through the impugned order. It is seen from the order of Commissioner (Appeals) that the benefit stands extended to the appellant on the ground that the services were provided by single truck owners and not by goods transport agency, in which case, they cannot be taxed. However, the Hon'ble High Court has observed that since the recipient of the service was a partnership firm, they are liable to pay tax. As such, I note that the said issue stand decided against the assessee by the Hon'ble High Court.

7. The matter stands remanded only for examination of the benefit of Notification No.32/2004-ST was not considered by him. As the Commissioner (Appeals) had granted relief to the assessee on the first issue itself, the second issue of notification was not addressed by him. Similarly, from the impugned Order-in-Original, I note that the Notification No.32/2004 was not considered by him. As such, I deem it fit to remand the matter to the original adjudicating authority [instead of remanding to Commissioner (Appeals)] for consideration of applicability of the notification in question. Appeal is thus allowed by way of remand.

(To be pronounced in open court on 7/7/17

7/7/17

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

Customs, Excise & Service Tax Appellate Tribunal
सत्यमेव जयते

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