## CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

## SOUTH ZONAL BENCH

## CHENNAI

## ST/451 to 454 /2009

(Arising out of Order-in-Appeal No.95/2009 (SLM) ST dated 10.6.2009 passed by the Commissioner of Customs and Central Excise (Appeals), Salem)

Commissioner of Central Excise, Salem — Appellant

Vs

M/s.Thriveni Earthmovers Pvt Ltd, Salem — Respondent

Appearance

Shri.A.Cletus, ADC — 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 : **7.08.2017**

**FINAL. ORDER No.** 41609 – 41612/2017

**Per Bench**

1.a. The respondents in the aforesaid appeals were awarded with the Work Order from M/s.Larsen & Toubro Ltd., for Drilling, Blasting and Transporting of yellow Bound-quarrying works at Chikli, Narayanakere, Chickenahalli, Sanikere and Soolivara sites/quarries.

1.b. 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 HANDLING SERVICES , hence, liable for payment of service on the above activities. Accordingly, 4 show cause notices were issued invoking suppression, pertaining to four different work orders executed by the respondents demanding service tax of Rs.90,76,861/-. Notices also proposed to demand interest as applicable along with proposals for demand of Penalties under sec. 76, 77 & 78 of the Finance Act.

1.c. The said show cause notices were adjudicated vide Common Orders in Original Nos. 3 to 6 / 2008 dated 11.03.2008, wherein the demands proposed in the aforesaid show cause notices were confirmed along with applicable interest and penalties viz., Rs.200/- per day or 2% of service tax in terms of sec.76 of FA, Rs.1000/- under Sec.77 for non filing of ST 3 returns and Rs.1,81,53,642/- under sec.78 of Finance Act. Aggrieved by the said adjudication orders, the respondent herein filed appeals before Commissioner (Appeals). The Commissioner (Appeals) vide his Order in Appeal No.95/2009 dated 10.06.2009 allowed the appeals filed by the respondent and set aside the impugned order. Department being aggrieved by the Order of the Commissioner (Appeals) has filed this present appeals.

2. On behalf of department, the Ld.AR reiterated the findings in the grounds of appeal.

3. The Ld.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 Ch)

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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 judgements cited by the Ld.Counsel for appellant and also by the judgement in the appellant's own case Commissioner Vs Thriveni Earthmovers 2016 (45) STR J 142 (S.C.). Following the same, we find no grounds to interfere with impugned orders.

6. In the result, the department appeals are dismissed.

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

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

Sulekha Beevi

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

vsr

Customs, Excise & Service Tax Appellate Tribunal

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