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

ST/00341-00342/2012

[Arising out of Order-in-Original No.14 & 15/2012, dated 21.03.2012 passed by the Commissioner of Central Excise, Chennai-II]

M/s.UNITED CARGO TRANSPORT SERVICES APPELLANT

Versus

COMMISSIONER OF CENTRAL EXCISE, CHENNAI-II RESPONDENT

Appearance:

For the Appellant Shri S. Viswanathan, Adv.
For the Respondent Shri B. Balamurugan, AC (AR)

CORAM:

Hon'ble Shri D.N. Panda, Judicial Member
Hon'be Shri Madhu Mohan Damodhar, Technical Member

Date of hearing/decision **07-03-2017**

FINAL ORDER NO.S. 40447-40448/2017

Per D.N. Panda:

Appellant explains that it was transporter of goods of various concerns under the rate contract basis i.e. either on unit rate of weight or distance expressed in kgs or kilometers. To support this Contention, he placed reliance from page 15 to 23 of the second paper book and says that the goods carried in its transports were subjected to unit rate charge. While this is the contract between the parties, department's allegation is that the appellant was a cargo handler and provided cargo handling service. The period covered by these two appeals are 2004-05 to 2008-09. To rule out the allegation of Revenue, appellant says that section 65 (23) of the Finance Act, 1994 (hereinafter referred to as "the Act") as was in force from the date of enactment till 15.05.2008, defined cargo handling service as under:-

> 'Cargo Handling Service' means loading, unloading, packing or unpacking of cargo and includes cargo handling services provided for freight in special containers or for non-containerised freight, services provided by a container freight terminal or any other freight terminal, for all modes of transport and cargo handling service incidental to freight, but does not include handling or export cargo or passenger baggage or mere transportation of goods.

2. Thereafter, the law had undergone amendment to define the term "Cargo Handling Service" as under:

65 (23) "Cargo Handling Service" means loading , unloading, packing or unpacking of cargo and includes,—

> (a) cargo handling services provided for freight in special containers or for non-containerised freight, services provided by a container freight terminal or any other freight terminal, for all modes of transport, and cargo handling service incidental to freight; and
>
> (b) service of packing together with transportation of cargo or goods, without or without one or more of other services like loading, unloading unpacking, but does not include, handling of export cargo or passenger baggage or mere transportation of goods;

3. According to appellant if the legislative intention is examined, it would be seen that to be a cargo handler, one has to do loading, unloading and packing and unpacking of Cargo. But that was not the activity carried out by the appellant except transporting of the goods in its vehicles from one place to another. Learned adjudicating authority without examining as to the real nature the activities carried out by the appellant, in his finding, simply held that it was a Cargo Handling service provider.

4. Revenue on the other hand, supports the adjudication.

5. Perusal of the show-cause notice and adjudication finding, tested with the evidence at page 15 to 23 of the paper book does not exhibit the activity carried out by the appellant was of cargo handling

in nature. There was no enquiry or examination of the activity carried out by appellant done at the recipient's end. Cargo Handling Services has confined its scope by section 65 (23) of Finance Act, 1994 upto 15.05.2008 to loading, unloading, packing or unpacking of cargo. Appellant's activity does not begin with loading nor end with unloading. Its primary activity from the origin itself was transporting. Unit rate was fixed by the appellant to be charged from the recipient of services. Without any objective examination done by Revenue to show that the activity carried out by appellant was for packing, unpacking as well as loading and unloading, it cannot be presumed that the appellant had provided Cargo Handling Service. Therefore, adjudication fails to sustain on the first principle of law and its activities were beyond the scope of the taxing entry before 16.05.2008 and even thereafter, for which, the adjudication order is set aside. Both the appeals are thus allowed.

(Dictated and pronounced in open court)

09.03.17

(MADHU MOHAN DAMODHAR)
TECHNICAL MEMBER

8/3/2017

(D.N. PANDA)
JUDICIAL MEMBER

ksr

Customs, Excise & Service Tax Appellate Tribunal

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