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

ST/117/2008

(Arising out of Order-in-Original No. 19/2008 dated 29.02.2008 passed by the Commissioner of Service Tax, Chennai).

M/s. APL (India) Pvt. Ltd. : Appellant

Vs.

CST, Chennai : Respondent

Appearance

Shri Prasad Paranjape, Adocate,
For the appellant

Shri K. P. Muralidharan, AC, (AR),
For the respondent

CORAM

Hon'ble Shri D.N.PANDA, Judicial Member
Hon'ble Shri MADHU MOHAN DAMODHAR, Technical Member

Date of Hearing/Decision: **01.02.2017**

FINAL ORDER No. 40145/2017

Per: D.N.Panda,

Preliminarily when the show cause notice available at page No. 29 of the appeal folder is read with para 13.1 of the adjudication order available at page-59 that exhibits a wide variation in respect of cause and effect of the cause. SCN provides foundation which specifically alleges what is sought to be taxed and gives opportunity of defence. There is no whisper in the SCN whether the additional copies of import/export documents and delivery note/delivery order etc., supplied to the shippers collecting certain charges was sought to be taxed. But adjudication order does so.

2. SCN has depicted what was intended tobe taxed was under the "Business Auxiliary Service" without the material facts demonstrating such taxation. The taxation made by Para 13.1 of the adjudication order does not find place in any of the paragraphs of the SCN. It can therefore be stated that the adjudication has travelled beyond SCN and the adjudication has been made on a completely new ground which was not the allegation in the SCN. It may further be stated that consent of the parties does not confer jurisdiction and does not create liability because the appellant was registered to provide BAS w.e.f. 14.03.2006. That shall not *ipso facto* fasten liability on the appellant under the head 'Business Auxiliary Service' for the period 01.07.2003 to 31.03.2006. Therefore, there is no reason to uphold the adjudication order. Accordingly, that is set aside and appeal is allowed.

(Dictated and pronounced in open Court)

06/02/2017

(MADHU MOHAN DAMODHAR)
TECHNICAL MEMBER

3/2/2017

(D.N. PANDA)
JUDICIAL MEMBER

BB

Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति / Certified True Copy
16/02/17
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (CESTAT)
चेन्नै / Chennai