CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Service Tax Rectification of Mistake Application No. 50063 of 2020
(on behalf of the respondent)
in Service Tax Appeal No. 52948 of 2016
(Arising out of Final Order No. 51549/2019-CU(DB) dated 26.11.2019 passed by the Tribunal, New Delhi.

M/s Synergy Baxi Logistics Pvt. Limited **Appellant**
A-12, Baxi Cottage, Burmese Colony
Jawahar Nagar by Pass
Jaipur, Rajasthan.

VERSUS

Commissioner of Central Excise and Customs, Central Goods and Service Tax, **Respondent**
NCR Building, Statue Circle, 'C' Scheme
Jaipur, Rajasthan- 302005.

APPEARANCE:

Sh. Nikhil Gupta, Advocate for the appellant
Sh. Rakesh Kumar, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

MISCELLANEOUS ORDER NO. 50313/2022

DATE OF HEARING/DECISION: 10.06.2022

ANIL CHOUDHARY:

Heard the parties on the Rectification of Mistake application filed by the Revenue. Learned Authorised Representative appearing for the Revenue pointed out that in the Final Order this Tribunal has failed to consider the three important case laws, relied by Revenue, which are as follows:-

i) **Singh Trading Company -2017-TIOL-3602-CESTAT-Del**., which squarely covered the issue in favour of the Revenue

ii) **Steel Authority of India Ltd., vs. STO, Rourkela -2008 (5) SC 281**, wherein it was held that reason is heartbeat of every conclusion. It introduces clarity in a order and without the same it becomes lifeless.

iii) **HPCL -2015 (323) ELT 609 (Tri. Mum.),** wherein this Tribunal held that non consideration of written submission would amount to an error apparent on record.

2. The grievance of the Revenue is that the Tribunal has considered and relied on the ruling of Single Member of this Tribunal in the case of **E.V. Mathai - 2003 (157) ELT 101 (Tri. Bang.)** in preference to the ruling in the case of Singh Trading Company by DB.

3. The issue in this appeal was whether the same assessee, who is providing two different services under two different contracts namely C&F Activity and GTA services, whether both can be clubbed under the head C&F service for levy of service tax. This Tribunal has categorically held as follows:-

> "8. On reading of the terms and conditions of the two agreements, it is evident that the second agreement is offer for GTA service for the first time after execution of the second agreement which is specific to the transportation of the goods of the principal as per their direction. Therefore, the first agreement cannot be treated as a part of the second agreement as contended by the Revenue. In this regard, we also find that both the agreement has to be read in whole which is complete in itself. The first agreement relates to C & F Agent service. The CBEC trade notice No. 87/97 dated 14/07/1997 clarified that C & F agent normally undertakes following activities:
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> a. Receiving the goods from factory or premises of the principal of the agent;
> b. Warehousing these goods; 17
> c. Receiving dispatch orders from the principal;
> d. Arranging dispatch of goods as per the direction of the principal by engaging transport on his own or through the authorised transporters of the principal.

9. The above trade notice makes it clear that the C & F agent's responsibility is restricted to arranging dispatch of goods as per the direction of the principal by engaging transport on his own or through third party transporter as authorised by the principal. Thus, the activity of C & F agent is primarily responsible for delivery and forwarding and not the transport activities as such. As per the agreement in case of exigency the appellant was to arrange for the transportation of consignments on behalf of the principal from the approved transporters. It is a clear admission on part of the appellant that no such transportation has ever been arranged by them on behalf of their principal till the second agreement was executed between them, which was specifically for transportation of the goods.

10. It has been held in the cases including those by Hon"ble Supreme Court that C & F agent services and GTA services are distinct and the transportation would not be part of C & F agent service".

4. We find that this Tribunal has rightly followed the ruling of the Hon'ble Supreme Court in the case of **Coal Handlers – 2015 (35) STR 897 (SC)**. Further, it is admitted fact that the assessee had entered into separate contract for service under the C&F service. Subsequently, appellant entered into second contract for transportation services. The appellant was providing two distinct services and raising separate bills for the same. We find that the issue is squarely covered by the ruling of Hon'ble Supreme Court in the case of **Coal Handlers** (supra). We find no merit in the rectification of mistake application. Accordingly, the RoM application is dismissed.

(Dictated and pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

(P. V. Subba Rao)
Member (Technical)

Pant