IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III

DATE OF HEARING : 19/01/2017.
DATE OF DECISION : 19/01/2017.

Service Tax Appeal No. 65 of 2011

[Arising out of the Order-in-Appeal No. 123/BPL/2010 dated 08/09/2010 passed by The Commissioner (Appeals), Customs and Central Excise, Bhopal.]

M/s Sarvodaya Shramik Kalyan Samiti — Appellant

Versus

CCE, Bhopal — Respondent

Appearance

Shri Arya Bhatt, Advocate – for the appellant.

Shri Amresh Jain, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 50451/2017 Dated : 19/01/2017

Per. B. Ravichandran :-

The appeal is against order dated 08/09/2010 of Commissioner (Appeals), Bhopal. The appellants were engaged in providing service to cattle feed factory under agreement. In terms of the agreement they were to provide various services like loading, unloading of gunni bags containing raw materials received inside the factory and finished goods to be transported out of factory and various other work involving shifting of materials in the factory and forest work. Proceedings were initiated against the appellant for non-payment of service tax during the period 2004-2005 to 2006-2007 for confirmation of service tax demand under the category of Cargo Handling Service. The lower Authorities confirmed the demand of Rs. 10,43,127/-. Various penalties were also imposed under Section 76, 77 and 78 of the Finance Act, 1994.

2. The learned Counsel appearing for the appellant submitted that the services rendered by the appellant are correctly classifiable under labour supply and not as cargo handling service. He submitted they have only supplied specific number of labour in terms of the contract and the work is mainly carried out by the labourers inside the factory premises with reference to shifting of bags etc. He relied on the decision of Hon'ble Allahabad High Court in **CCE vs. Manoj Kumar** reported in **2015 (40) S.T.R. 35 (All.)** and the decision of Hon'ble Supreme Court in **Deputy Commissioner of Central Excise vs. Sushil & Company** reported in **2016 (42) S.T.R. 625 (S.C.)**.

3. The learned AR contested the appeal by referring to the rate schedule attached to the contract. It is clear that as per the rate schedule, the amount to be paid to the appellant is with reference to the calculation of cargo handling. Further, it is

pleaded that the handling of cargo is the primary work and such cargo is not only dealt with, with reference to internal movement in the factory. The cargo is unloaded from the incoming lorries and also load for dispatch to outside.

4. We have heard both the sides and perused the appeal records. We find in terms of the agreement, the amount to be paid by the appellant is with reference to the quantum of cargo handled. Though the agreement talks about supplying labour for the designated work, in essence the annexure to the agreement clearly stipulates the nature of work and the rate to be paid for such work. The nature of work indicates that the cargo is to be unloaded from the truck or loaded into the truck for inward or outward movement apart from bags to be handled for internal movement, stacking and storage. We find such nature of work is covered by the tax entry cargo handling service as held by the lower authorities. With reference to case laws relied upon by the appellant, we find the material facts are different in those cases. In **Sushil & Company** (supra) the contract is for supply of manpower and the cargo is handled by mechanical means. In **Manoj Kumar** (supra), the sugar bags were handled within the factory and were not loaded or unloaded for any movement outside the factory on public roads. As noted above, the scope of the work as listed in the schedule to the agreement brings it within the ambit of cargo handling service and we have no

reasons to interfere with the findings of lower authorities. Accordingly, the appeal is dismissed.

(Order dictated and pronounced in open court.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

PK