IN THE CUSPTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:20.12.2016

Service Tax Appeals No.ST/399, ST/405 and 406 of 2011-(DB)

[Arising out of Order-in-Appeal No.428(DKV)ST/JPR-I/2010 dated 14.12.2010, Order-in-Appeal No.422(DKV)ST/JPR-I/2010 dated 9.12.2010 and Order-in-Appeal No.424(DKV)ST/JPR-I/2010 dated 09.12.2010, all passed by the Commissioner (Appeals-I), Customs & Central Excise, Jaipur]

M/s. Shreenath Enterprises Pvt. Ltd. Appellants
M/s.Kanhiyalal Remeshwar Das
M/s.Bundi Silica Sand Supply Company

Vs.

CCE, Jaipur-I Respondent

Appearance:

Rep. by Shri Vijay Kumar, Advocate for the appellants.
Rep. by Ms. Neha Garg, DR for the respondent.

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

Final Orders Nos.56404-56406/2016

Per S.K. Mohanty:

The issues involved in all these appeals are identical and as such, they are taken-up together for hearing and a common order is being passed.

2. Demand of service tax under taxable category of "Cargo Handling Service" is the subject matter of present dispute. The appellants are basically engaged in selling of Silica Sand from the mines or from their yards to the customers. The loading of goods on trucks and transportation is arranged by the appellant at the request of their customers and for that purpose, the appellants only arranged the labours for loading the goods on the trucks for on behalf of their customers. The

said activity of the appellants was considered by the Department as "Cargo Handling Services" and accordingly, service tax demand was confirmed along with interest and penalty.

4. Ld. Advocate submitted that since the appellants are not the Cargo Handling Agents, the activities undertaken by them should not be considered as Cargo Handling Service. The ld. Advocate has relied upon the Circular No.B11/1/2002-TRU dated 1.8.2002 issued by CBEC and the judgement of Hon'ble Supreme Court in the case of **Dy. Commissioner of Central Excise Vs. Sushil & Company – 2016 (42) STR 625 (SC)** to support such argument.

5. Heard both the sides and perused the appeal records.

6. We find that on similar set of facts, the Ho'ble Supreme Court, by placing reliance on the Circular dated 1.8.2002, has held that mere supply of labour shall not amount to taxable service under the category of "Cargo Handling Service". It is also confirmed in the impugned order that the appellant is only engaged in the activity of supplying labour for facilitating delivery of goods to their customers. Therefore, we do not find any merit in the impugned orders and after setting aside the same , we allow the appeals in favour of the appellants.

[order dictated & pronounced in open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.