IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –III

Service Tax CO No.57994/2013

Service Tax Appeal No.ST/509/2011-ST [DB]

[Arising out of Order-in-Appeal No.04/BPL/2011 dated 06.01.2011 passed by the Commissioner (Appeals), Central Excise, Bhopal]

CCE, Bhopal …Appellant

Vs.

Chaudhary Sales Organization … Respondent

Present for the Appellant : Mr.Sanjay Jain, D.R.
Present for the Respondent: Mr.R.K. Verma, Advocate

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. B.RAVICHANDRAN, MEMBER (TECHNICAL)

Date of Hearing/Decision: 20.01.2017

FINAL ORDER NO. __50515/2017_

PER: B.RAVICHANDRAN

The Revenue is in appeal against the order dated 12.01.2011 of Commissioner (Appeals-II), Bhopal. The respondents are engaged in providing taxable service as clearing and forwarding agents for M/s. Diamond Cements. The contract entered into by them provided that they perform various duties like clearing cement unloading from railway, stacking storage, dispatch, realising sale proceeds, maintaining records, promoting the cement sales of the client and furnishing periodical records etc. Proceedings were initiated against the respondent for non-payment of service tax in respect of certain considerations received by them from the client. These considerations were held to be part of gross value for service tax purpose for discharging service tax under the category of "clearing and forwarding agency". The Original Authority confirmed the service tax demand of Rs.38,07,077/- penalties under Section 76/78 & 77 of Finance Act, 1994. On appeal, the Commissioner (Appeals) vide the impugned order set aside the original order and allowed the appeal.

2. Aggrieved by this order the Revenue is in appeal.

3. Ld. AR elaborated the grounds of appeal filed by the Revenue. The main contention of the Revenue is that the case laws are referred to by the ld. Commissioner (Appeals) are not appropriate as there are contrary decisions.

4. The ld. Counsel appearing for the respondent, who filed the cross objection, supported the findings in the impugned order and referred to large number of decided cases which are all in line with the same finding.

5. We have heard both the sides and perused the appeal records. We note that the respondent acting as C & F agent is liable for discharging service tax on the consideration received for such work. However, incidental to such work they were, in terms of contract, obliged to carry out certain other work. The expenses for the same were reimbursed on actual basis based on documentary evidence. Since these were reimbursed

on actual basis, the impugned order held them as not to be considered for service tax purpose to tax the activity of C & F Agent. The Revenue, in grounds of appeal, relied on an interim order of the Tribunal in Ashok Aggarwal – 2008 (10) S.T.R. (Tri.-Del.). We note that the said appeal has been finally decided – 2012 (28) S.T.R. 362 (Tri.-Del.) holding against the demand on various other grounds. Similarly, the reliance placed on the decision in Amit Sales – 2009 (13) S.T.R. 165 (Tri.-Del.) is also not appropriate as the matter was referred to Larger Bench, which the Counsel for the respondent submits, was not finally decided on merit and was returned to the referring Bench.

6. In any case, we note that the valuation and tax liability of C & F agent service has been a subject matter of dispute. The Tribunal in various decisions held that if the C & F agent is carrying out certain activities incidental and claims the expenses on actual basis, the same are not includible in the taxable consideration. These expenses may be like go-down rent, carting and shifting charges, transportation, maintenance of staff and other establishment for the client etc. Reference can be made to the decision of the Tribunal in the case of Sangamitra Services Agency vs. CCE, Chennai – 2007 (8) S.T.R. 233 (Tri.-Chennai). The Tribunal held that reimbursable expenditures towards freight, labour, electricity, telephone etc. are not includible. The said decision was affirmed by the Hon'ble Madras High Court in 2014 (33) S.T.R. 137. The Tribunal in the case of Nandini Warehousing Corporation –

2007 (8) S.T.R. 511 (Tri-Bangalore) held that go-down rent, establishment expenditures, telephone call charges are to be excluded from the taxable value. Similar decisions were rendered in many other cases by the Tribunal – Rolex Logistics Pvt. Ltd. – 2009 (13) STR 147 (Tri. – Bang.). In Bhagavathi Traders – 2011 (24) STR 290 (Tri.-LB), the matter was further examined and it was held any consideration, split artificially, cannot be allowed towards reimbursable expenditure. In the present case, we note that the impugned order examined the fact relating to reimbursable expenditure and relying on the statutory provisions held in favour of the respondent.

7. Regarding business auxiliary service relating to promotion of clients business, we note the overall commission received by the respondent is subjected to tax. We are not informed about any part of commission not being subjected to tax, to be covered under BAS. In the absence of such specific finding, we are not in a position to interfere with the impugned order.

8. In view of the above discussion and finding, the appeal by Revenue is dismissed. The Cross Objection is also disposed of.

[Dictated and pronounced in the open Court)

(B. RAVICHANDRAN)	**(S.K. MOHANTY)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Anita