IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Service Tax Appeal No. 1221 /2011
Service Tax CO No. 31 /2012
ST/COD/66/2012

[Arising out of Order-In-Appeal No. IND/03/2011 dated 12.1.2011, passed by Commissioner of (Appeals) Indore]

Pati Ram Sharma **Appellants**

Vs.

Commissioner of Customs
Central Excise & ST, Indore **Respondent**

Appearance:

Shri Sandeep Mukherjee, Advocate for the Appellants
Shri Sanjay Jain, DR for the Respondent

CORAM:

Hon'ble Ms Archana Wadhwa, Member (Judicial)
Hon'ble Mr. B Ravichandran, Member (Technical)

Date of Hearing/ Decision: 30.01.2017

FINAL ORDER NO . 50663 /2017

Per B Ravichandran :

Considering that the reasons for delay in filing the appeal has been explained satisfactorily, we condone the delay and allow the application for Condonation of delay in filing the appeal.

2. The appeal is against order dated 13.1.11 of Commissioner (Appeals), Indore. The appellants are engaged in providing services to M/s. Nepa Limited, Nepa Nagar. In respect of these services provided by these appellants, service tax liability was sought to be confirmed under the category of 'cargo handling services' and "management, maintenance or repair service". The lower authorities confirmed the service tax liability of the appellant and imposed penalties under section 76, 77 and 78 of the Finance Act, 1994.

3. Learned Counsel for the appellant submitted that they have entered into contract with M/s. Nepa Limited to provide services inside the premises of the factory manufacturing paper. He explained with reference to the contract dated 29.10.02 various set of works undertaken by the appellant. Briefly stated, the work relates to unloading of four wheeler wagons of coal and trucks of steam and slack coal and stacking of same or to feed it directly to crusher hopper, after segregating of stones and shales and breaking of coal in proper sizes as required, including watering and keeping the track clean; feeding steam and slack coal to the crusher hopper; maintaining 10% moisture before feeding to the hopper; keeping the power house clean; removal of coal ash from old boilers and transporting the ash in tractor trolleys by dumping about 400 mtrs away. Learned Counsel submitted that these are carried out in

connection with manufacturing process of the client, and cannot be taxed under cargo handling services and are maintenance services.

4. Learned AR reiterated the findings of the lower authorities and submitted that the appellant is engaged in unloading of the coal in trucks which is an essential part of cargo handling service.

5. We have heard both the sides and perused the records. We have examined the work order dated 29.10.2002 which is subject matter of dispute. On perusal of the same, we find that though the appellant is engaged in unloading of coal from the rail rake, inside the factory of the client, predominantly operation of their work order deals with various other activities like breaking of coal picking of stones, keeping the track clean, keeping the coal moisturized by 10% before feeding to the hopper within the appellants factory. We find that the work order is mainly linked with the activity undertaken by the appellant in the factory and in relation to production process. Unloading of coal is only incidental operation in work, that cannot be only reason to categories the work order for taxing under 'cargo handling service'. In this connection, reference can be made to the decision of the Tribunal in ***N Rajashekhar & Co. vs. CCE, Mysore [2008 (12) STR 760 (Tri-Bang)], Narayan Builders vs CCE Jaipur [2013 (31) STR 174 (Tri-Del)], and Dilip Construction vs. CCE Raipur [2013 (30) STR 668 (Tri-Del)].***

6. Having examined the impugned order and the work order executed by the appellant, we are of the opinion that nature of work done by the appellant did not come in the category of cargo handling service for service tax purpose.

7. There is demand against the appellant under the category of management and maintenance or repair service. The quantification of demand was done on the basis of income tax form 16 of the service recipient. Learned Counsel for the appellant submitted that they have not rendered any separate management, maintenance or repair service to M/s. Nepa and there is no other agreement to that effect. However, the impugned order specifically states that it is a case of cargo handling service and maintenance or repair service. At this juncture learned counsel states that even if they are liable to service tax under this category, the quantum of consideration received by them is very meager and they would be eligible for exemption provided to small scale service provider. This aspect needs to be considered by the original authority before decision.

8. In view of the above discussions and findings, we set aside the demand under the category of cargo handling service. Regarding the service tax liability under management, maintenance or repair service, the original authority shall examine the submissions made by the appellant for a fresh decision.

9. The appeal is disposed of in the above terms. Cross objection filed by the Revenue is also disposed of.

(Pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

(B Ravichandran)
Member(Technical)

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