CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Service Tax Appeal No. 808 of 2012

(Arising out of Order-in-Appeal No. 08-ST/RPR-II/2012 dated 30.03.2012 passed by the Commissioner (Appeals) Customs, Central Excise & Service Tax, Raipur-II)

DATE OF HEARING : 15.02.2017
DATE OF DECISION : 15.02.2017

CCE, Raipur …. **Appellant**
(Rep. by Sh. Sanjay Rai, DR)

VERSUS

M/s Central India Associates …. **Respondents**
(Rep by Sh. B.L. Narsimban, Adv.)

CORAM : **HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT**
HON'BLE MR. V. PADMANABHAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 51971/2017

PER JUSTICE (Dr.) SATISH CHANDRA :

The present appeal is filed by the Department against the impugned order-in-appeal no. 08-ST/RPR-II/2012 dated 30.03.2012 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals-II), Raipur. The period in dispute is 07th September, 2009 to 30th September, 2009.

2. The brief facts of the case are that, during the period under consideration (October 2003 to November 2005), the assessee-

Respondents were entrusted by M/s FSNL, Bhilai and M/s SAIL, Bhilai Steel Plant, Bhilai, for providing various services. These services are covered by seven contracts entered into by the assessee-Respondents with M/s FSNL, Bhilai and M/s SAIL, Bhilai Steel Plant, Bhilai. All these contracts are in the form of purchase/work orders issued to the assessee-Respondents. The Department raised the demand of Service Tax under the 'Business Auxiliary Service" under Section 65(105)(zzzb) and under "Cargo Handing Service" under Section 65(105)(zr) for various activities undertaken by the assessee-Respondents. By the impugned order, the demand was dropped by the Commissioner (Appeals) by holding that the activities of the assessee-Respondents were in the nature of processing of the goods which became taxable w.e.f. 16.06.2015 and that handling of goods within the factory premises is not in the nature of "Cargo Handing Service". Being aggrieved, the Department has filed the present appeal.

3. With this background, we have heard Shri Sanjay Jain, learned DR for the Department and Shri B.L. Narsimhan, learned counsel for the assessee-Respondents, and perused the written submissions.

4. After hearing both sides and perusal of record, it appears that this issue had come up for consideration before this Tribunal in the case of **Ferro Scrap Nigam Ltd. vs CCE, Raipur,** 2014 (36) STR 955 (Tri.-Del), wherein it was observed that :

> *"8.........As regards the expression "production of goods", we note that the same was amended in June 2005 and was substituted by the expression - "processing" of goods. As such it is clear that prior to the amendment and in the absence of the words "processing" the same has to be interpreted in a manner that the activity results in production of goods. We may here observe that every production may not amount to manufacture but admittedly*

every manufacturing activity involves production of goods, inasmuch as the term "manufacture" would include production though every production may not include the manufacturing activity. Inasmuch as the Commissioner in his order dated 21-9-2006 has held that the said activity does not amount to manufacture and such order stands accepted by the Revenue, it has to be held that there was no production of goods. As such we agree with the ld. Advocate that the first criteria of the definition is not satisfied."

This issue was decided in favour of the assessee-Respondents.

5. Regarding the second issue pertaining to the "Cargo Handing Service", it appears that the same is squarely covered in favour of the assessee-Respondents by the ratio laid down in the case of **Commissioner of Central Excise vs Manoj Kumar,** 2015 (40) STR 35 (Alld.), wherein it was observed that :

"14. In common parlance 'cargo' means load, which is to be carried by ship, aeroplane, rail or truck. The handling of transportation of goods, by itself unless it is an organised activity, which is connected with carrying cargo (load) by ship, aeroplane, rail or truck is involved would not fall within the definition of cargo handling service. The definition specifically excludes handling of export cargo or passenger baggage or mere transportation of goods.

15. In the present case the transportation of goods namely the sugar bags is within the factory. The respondent firm was engaged for loading, unloading, packing, unpacking, stacking, re-stacking and shifting of bags from floor of mills, from godowns and from one godown to another. The firm with its partners and other labourers handled bags of sugar under a contract, within the factory premises. The sugar bags were not to be loaded or unloaded for any movement outside the factory on public roads, *on any ships, aeroplane or trucks for onward movement to any destination. The activities will fall within the meaning of transportation of goods, and would certainly not be included in the definition of 'Cargo Handling Service ', which is the service exigible to Service tax."*

6. By following the ratio laid down (supra), we find no reason to interfere with the impugned order. Hence, the order passed by the Commissioner (Appeals) is hereby sustained along with the reasons mentioned therein.

7. In the result, the appeal filed by the Department is dismissed.

(Dictated & pronounced in the open court)

(V. PADMANABHAN)
MEMBER (TECHNICAL)

(JUSTICE Dr. SATISH CHANDRA)
PRESIDENT

Golay