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 : 01/12/2016.
DATE OF DECISION : 01/12/2016.

Service Tax Appeal No. 1047 of 2010

[Arising out of the Order-in-Appeal No. IND-I/074/2010 dated 24/03/2010 passed by Commissioner (Appeals), Customs & Central Excise, Indore.]

For Approval and signature :
Hon'ble Shri S.K. Mohanty, Member (Judicial)
Hon'ble Shri V. Padmanabhan, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:
3.	Whether their Lordships wish to see the fair copy of the order?	:
4.	Whether order is to be circulated to the Department Authorities?	:

CCE, Indore — Appellant

Versus

M/s Trimurti Goods Transport Co. — Respondent

Appearance

Shri Govind Dixit, Authorized Representative (DR) – for the appellant.

None – for the Respondent.

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

Final Order No. 56450/2016 Dated 01/12/2016

Per. S.K. Mohanty :-

Revenue filed this appeal against the impugned order dated 24/03/2010 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Indore holding that the agreement entered between the appellant (respondent herein) and the fertilizers companies are for providing transportation of goods by road and other activities related to labour and other things, which are also part of the contract, are ancillary to the principal activity. The grievance of the Revenue in this appeal is that the activities undertaken by the respondent pursuant to the contract with the fertilizer company conform to the definition of Clearing & Forwarding (C&F) services and hence will be liable to service tax under that service.

2. Heard the learned DR Shri Govind Dixit for the Revenue. None appeared for respondent, despite notice. For arriving at the conclusion that the appellant provides GTA service to the fertilizer companies, the learned Commissioner (Appeals) has analyzed the conditions of the contract. The terms and conditions of the contract are mentioned at page 14 of the impugned order. After analyzing the contract vis-à-vis the definition of C&F Agent service and Goods Transport Agent service, the learned Commissioner (Appeals) has arrived at the conclusion that the services are conforming to Goods Transport Agency service. The relevant paragraph recorded in the impugned order is extracted herein below :-

> "In furtherance I observe that all the contracts/ agreements entered between appellant and Fertilizer Companies are for the transportation of fertilizers from the railheads to various destination as instructed by the companies. It leaves no doubt that the essential character of the service being provided by the appellant is transportation of goods. On observation of the contracts/ agreement entered between appellant and fertilizer companies, it is amply clear that the activity of transportation is the main and dominant feature of the contract. Other activities loading/unloading and its resultant stacking/de stacking are part and parcel of the contract for the principal service of "handling the transportation" by road from railhead to various destinations as instructed by the companies. Loading/unloading and its resultant stacking/de stacking involving labor are support services. These services are necessary for the Transportation from point to point. **It is clear from the contract that the resultant activities are not being provided by the appellant independently but are the part and parcel of the contract for "handling the transportation" from the rack point to the contracted place/premises. These activities, being part of the composite contract of the principal service of 'transportation', are ancillary in nature**".

3. On perusal of the impugned order, we find that the findings of the Commissioner (Appeals) are in consonance with the definition of both the services provided in the Finance Act, 1994 and also conforms to the clarification of CBEC issued in order No. 2/1/2002-ST dated 24/04/2002.

4. In view of above, we do not find any infirmity in the impugned order passed by the learned Commissioner (Appeals). Therefore, we dismiss the appeal filed by Revenue.

(Order dictated and pronounced in the open court.)

(S.K. Mohanty)
Member (Judicial)

(V. Padmanabhan)
Member (Technical)

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