IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

BENCH-DB

COURT –III

Service Tax Appeal No.ST/55425/2013-ST [DB]

[Arising out of Order-in-Original No.36/2012/ST/JPR-II-Commissioner dated 12.10.2012 passed by the Commissioner of Central Excise, Jaipur-II]

CCE, Jaipur-II …Appellant

Vs.

M/s.Basant Prabha Jain … Respondent

Present for the Appellant : Mr.Sanjay Jain, D.R.
Present for the Respondent: Ms.Rinki Arora, Advocate.

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

Date of Hearing/Decision: 11/04/2017

FINAL ORDER NO.52868/2017

PER: B.RAVICHANDRAN

The appeal is against Order dated 12.10.2012 of Commissioner of Central Excise, Jaipur-II. The respondents were engaged in providing taxable services under the categories of cargo handling service and mining services. The dispute in the present appeal relates to non-inclusion of value of diesel supplied by the recipient of service in the taxable value for discharging service tax by the respondent. The impugned order held that the respondent paid service tax on the contracted value and there is nothing more received by them, as a consideration. The diesel supplied by the recipient of service has no relevance to the taxable value. It is recorded that in terms of a contract, the service provided ended at the point of providing various cargo handling equipments to the service recipient . As such, the original authority held that the value of diesel whether supplied to the recipient or not has no relevance in determining the taxable value for the respondent.

2. Heard both sides and perused the appeal records. Admittedly, similar disputes came before the Tribunal in earlier appeals and some of them are as follows:-

(i) C.C.E, Bhopal vs. M/s.S.B. Earth Movers Pvt. Ltd. & M/s. S.B. Construction Pvt. Ltd. vs. CCE, Bhopal reported in 2014-TIOL-1654-CESTAT-DEL.

(ii) M/s. S.V. Engineering Constructions vs. CCE & ST, Guntur- 2016 (44) S.T.R. 319 (Tri.- Bang.)

(iii) M/s. AMR India Ltd. vs. Commr. of C.Ex., Cus., and S.T., Hyderabad-II. – 2016 (42) S.T.R. 329 (Tri.- Bang.)

(iv) CCE, Jaipur-II vs. M/s.Gandhar Roack –Final Order No. 50807/2017 dated 08/02/2017.

3. Further, we note that the factual details recorded by the original authority regarding supply/ use of diesel in operating

the equipments has no role in the service contract transaction has not been contested by the Revenue. Even otherwise, such free supply of diesel by the recipient of service is held to be not includable in the taxable value of various decisions of this Tribunal. Accordingly, following the settled legal principle on the issue, we find no merit in the appeal filed by the Revenue. Accordingly, same is dismissed.

[Dictated and pronounced in the open Court]

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita