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/956/2011 CU [DB]

[Arising out of Order-in-Appeal No.23 (CB) ST/JPR-II/2011 dated 29.01.2011 passed by the Commissioner, Central Excise (Appeals), Jaipur – II]

Meera Bux Neelgar …Appellant

Vs.

C.C.E., Jaipur-II … Respondent

Present for the Appellant : None
Present for the Respondent: Mr.Ranjan Khanna, D.R.

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

Date of Hearing: 25/01/2017
Pronounced on : 24.05.2017

FINAL ORDER NO. 53412/2017

PER: S.K. MOHANTY

This appeal is directed against the impugned order dated 29.01.2011 passed by the Commissioner, Central Excise (Appeals), Jaipur – II.

2. Brief fact of the case are that based on information received from M/s. Hindustan Zinc Ltd., it was noticed by the Department that the appellant had provided various taxable services namely, cargo handling service, manpower recruitment service, cleaning service and commercial & Industrial construction service to them (HZL), but did not pay service tax amounting to Rs.7,98,391/- on such services. It was also observed by the Department that the appellant did not get themselves registered and also failed to file prescribed returns. Accordingly, after initiation of show cause proceedings, the matter was adjudicated against the appellant vide order dated 10.11.2008, wherein service tax demand of Rs.7,85,836/- was confirmed alongwith interest. Besides, penalties were imposed under Section 76 & 78 of the Finance Act, 1994. On appeal, the ld. Commissioner (Appeals) vide the impugned order has upheld the adjudged demand.

3. None appeared for the appellant. Written submission was filed by the appellant with a prayer to decide the appeal on the basis of the submissions made there in. Heard the ld. D.R. for Revenue.

4. With regard to cargo handling service, the submissions of the appellant are that the assigned work was executed by deploying appellant’s own resources, without use of any public

transport carrier ; that the transportation is limited to within the plant premises and all loading / unloading are done in relation to transport vehicle moving inside the plant premises; and that the appellant at no point of time has acted as bailee under any document of title over the goods handled. Thus, the appellant submitted that mere shifting of material from one part of the mines to the other part will not fall under the purview of 'cargo handling service'. The appellant has relied on the decision of this Tribunal in the case of Modi Construction Co. V. CCE, Ranchi – (2008) 15-STR 8 (CESTAT – KOLKATA), Sainik Mining & Allied Services Ltd. V. CCER, C & ST, BBSR – 2008 (9) STR 531 (Tribunal- Kolkata), CCE, C & ST – BBSR-II v. Vionshree Coal Carriers Pvt. Ltd. – 2008 (10) STR- 473 (Tribunal – Kolkata) & ITW India Ltd. V. Commissioner of C.Ex. & Cus., Bhubaneswar – 2007 (8) STR – 490 (Tribunal – Kolkata).

5. As regards 'man power recruitment or supply agency service,' the appellant submitted that they are a labour contractor, engaged in supply of labour for execution of the works contract. Thus, according to the FAQs issued by CBEC, no service tax is leviable since the labourers were supplied for execution of the work and not for the employment of man power.

6. As regards commercial or industrial construction service, the appellant submitted that the activity of construction of

shed over transformer was done by the appellant by using its own material as well as labour and accordingly, should be entitled for exemption provided under notification No. 6/2005 – ST dated 01.03.2005.

7. The fact is not under dispute that the assigned work was executed by the appellant without use of any freight transport/carrier at any point of time and that the transportation activities undertaken by the appellant is limited to within the mine area. Thus, undertaking of the activity of loading and unloading of goods within the mines area will not be subjected to levy of service under cargo handling service as held by the Tribunal in the decisions relied on by the appellant. Therefore, service tax liability cannot be confirmed against the appellant under cargo handling service. We also rely on the decision of Hon’ble Supreme Court in Sushil & Co. 2016 (42) STR 625 (SC). It was held that it is only after the commodity becomes a cargo, its loading and unloading at the freight terminal for being transported by any mode becomes a cargo handling service.

8. The evidences enclosed in the appeal paper-book show that the appellant is a labour contractor, engaged in supply of labour for carrying out various cleaning activities within the mines area. Since the appellant itself provides the labour for executing the assigned task of cleaning to it, such service

provide by the appellant will not fall under man power supply service inasmuch as, the appellant never supplied any man power to be engaged by the contractee for executing the job by themselves. Hence, supply of labour by the appellant for undertaking the assigned task of cleaning will not fall within the ambit of taxable service of man power recruitment or supply agency service. Therefore, service tax demand cannot be sustained on the appellant.

9. We find, from the written submission that the appellant had used own material as well as labour for constructing the shed over transformer installed in the premises of the contractee. Since the work involved both supply of goods and deployment of labour, the activities should fall within the purview of taxable service of works contract, which is leviable to service tax w.e. f. 01.06.2007, as per the judgement of Hon'ble Supreme Court in the case of Larsen & Toubro Ltd. 2015 (39) STR 913 (SC). In this case, since the period is 2005-06, which is prior to the effective date of levy of service tax on work contract service, no service tax is liable to be paid by the appellant for providing such service. However, in the present case, since the authorities below have not specifically discussed about the nature of activities undertaken by the appellant and whether there is any involvement of any material for execution of the assigned work, we are of the view that the

matter should go back to the original authority for a fresh fact finding on the light of the judgement of Hon'ble Supreme Court in the case of Larsen & Toubro Ltd. (Supra). If the work executed by the appellant involved both supply of material and deployment of labour for executing the assigned job, the same should not be liable to serviced tax , since provided prior to effective date i.e. 01.06.2007. Thus, with regard to commercial or industrial construction service, the matter is remanded to the original authority for verification of documentary evidence of supply of material and labour.

10. The appeal is disposed of in above terms.

[Pronounced in the open Court on__24/05/2017_]

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita