IN THE CUSPTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:7.06.2017

Service Tax Appeal No.587/2011

[Arising out of Order-in-Appeal No.465(DKV)ST/JPR-I/2010 dated 31.12.2010 of the Commissioner (Appeals), Customs & Central Excise, Jaipur]

M/s.Vijay Brothers — Appellants

Vs.

CCE, Jaipur — Respondent

Appearance:

Rep. by Shri Kumar Vikram, Advocate for the appellant.
Rep. by Shri Sanjay Jain, DR for the respondent.

Coram: Hon'ble Shri S. K. Mohanty, Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 53816/2017

Per B. Ravichandran:

The appeal is against order dated 31.12.2010 of Commissioner (Appeals)-I, Jaipur. The appellants were engaged in providing man power as per the requirements of their clients, M/s.DCM Shriram Consolidated Ltd. Kota for various operations inside the client's factory. The dispute in the present case relates to the liability of the appellant to pay service tax under the category of "Cargo Handling Service". The Revenue entertained a view that the appellants are providing cargo handling service inside the client's factory with reference to movement of raw materials, products, etc. The appellants contended that they have provided only labour service and they are not liable to tax under "Cargo Handling Service", for the activities of shifting items within the factory premises. Proceedings were initiated against the appellant to demand and recover service tax which resulted in the original order dated 29.09.2009, which confirmed service tax liability of Rs.19,38,020/- on the appellant (this includes service tax liability on cleaning services). Penalties under Section 76, 77 and 78 of the Finance Act, 1994 were also imposed. On appeal, the Commissioner (Appeals) dropped the demand on cleaning service. However, he confirmed service tax liability on the appellant for cargo handling services and corresponding penalties also.

2. Ld. Counsel for the appellant submitted that the appellants are engaged in providing manpower for specific work as per job order. He drew our attention to various job orders placed by the clients. He further relied on the decided cases of the Tribunal to state that movement of goods within the plant of the client cannot be covered under the "Cargo Handling Service" for service tax purpose.

3. Ld. AR reiterated the findings of the lower authorities.

4. We have heard both the sides and perused the appeal records.

5. We have perused the job orders/service order of the clients. These are relating to shifting of PVC resin/raw materials /soda ash and other material within the plant premises of the client. It is clear that none of the work orders talk about loading of cargo or handling of cargo with reference to movement out of the factory by lorry or other means. We note that similar disputes came before the Tribunal for decision in earlier cases. In **Gaytri Construction Co. – 2012 (25) STR 259 (Tribunal-Delhi),** the Tribunal observed as below:-

> "9. Considered arguments on both sides, we find that it is now well settled by the decisions of the Courts and Tribunal discussed above that shifting of goods within the factory premises will not come within the scope of "Cargo Handling Services" as decided in the

case of *S.B. Construction* (supra). There is no need for much discussion on the issue. In the case of handling of goods using conveyor system also decision of Hon'ble Punjab & Haryana High Court in the said decision has held that such activity will not fall within the definition of "Cargo Handling Service". There is no information that such orders has been challenged by the Revenue or stayed by the Apex Court. The facts of the case at hand is different for that in *Gajanand Agarwal* where the whole payment was based on per metric tome or cargo loaded in railway wagons.

10. In this case an issue arises at what stage the goods handled by the Appellants were in the nature of "cargo". M/s. Shriram Cement Works state that in the case of loading from platform to wagon they were paying service tax from the beginning. Therefore, essentially the present, demand is for services used for transporting goods within the factory and also for manpower supplied for manual assistance at various points of loading system using conveyer system though there may be a small part of the service which may be in the nature of manual loading of cargo into railway wagons or trucks which may come within the meaning of "Cargo Handling Service." In the facts of the case the service rendered by Appellants cannot be considered as "Cargo Handling Services", in view of the decisions in the case of *S.B. Construction Co.* - 2006 (4) S.T.R. 545 (Raj.), and *Modi Construction Company* - 2008 (12) S.T.R. 34. Therefore, the Appellant succeeds on merits. The appellant has a strong case also on time-bar because essentially the contract was for shifting of cargo within factory premises and the Appellant had a *bona fide* belief that it was not "Cargo Handling Service" as defined in Finance Act, 1994. Accordingly, the Appeal is therefore, allowed with consequential relief, if any.

Similar ratio has been followed in various decisions of the Tribunal/Courts. Reference can be made to these decisions:-

(i) **Sainik Mining & Allied Services Ltd. – 2008(9)STR 531 (T-Kolkata)**

(ii) **Modi Construction Co.-2008 (12) STR 34 (T-Kolkata)**

(iii) **CCE, Ranchi Vs. Modi Construction Co.-2011(23)STR 6 (Jhar.)**

(iv) **S.B. Construction Co. – 2006 (4) STR 545 (Raj.)**

(v) **Dy.Commissioner of Central Excise Vs.Sushil &Co.-2016(42)STR 625 (SC)**

(vi) **CCE Vs. Manoj Kumar – 2015 (40)STR 35 (All.)**

(vii) **CCE Vs. Jaspal Darshan Lal-2016(45) STR 156 (T-All.)**

6. In view of the settled legal position, as discussed above, we find that the impugned order is not legally sustainable. Accordingly, the same is set aside. The appeal is allowed.

[order dictated and pronounced in the open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.