CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-IV

Date of hearing: 21.06.2017
Date of Pronouncement: 10.07.2017

Appeal No. ST/55875/2013-CU[DB]
[Arising out of the Order-in-Appeal No. 02/RDN/ST/JPR-II/2013 dated 02.01.2013, passed by the Commissioner of Central Excise, Udaipur]

CCE Udaipur … Appellant

Vs.

M/s. Balaji Builders & Contractors … Respondent

Appearance:

Present Shri Amresh Jain, DR for the appellant
Present Shri Kumar Vikram & Ms. Rinki Arora, Advocate for the respondent

Coram: Hon'ble Mr. D.M. Misra, Member (Judicial)
Hon'ble Mr. Ashok K. Arya, Member (Technical)

FINAL ORDER No. 54842/2017

Per D.M. Misra:

This is the appeal filed by the Revenue against the order no. 02/RDN/ST/JPR-II/2013 dated 02.01.2013, passed by the Commissioner of Central Excise, Udaipur.

2. Briefly stated the facts of the case are that the Respondent was engaged in providing services relating to shifting and loading of railway sleepers to one M/s. Rural Engineering Pvt. Ltd. The said activity involves shifting of sleepers from water tank to the store yard and later on loading them in trucks. The

respondent was paid Rs. 80 per sleeper in rendering the said services. Alleging that the services rendered by the appellant fall under the purview of "cargo handling services', demand notice was issued to them for the period 2004-05 to 2006-07 (upto Jan 2007) on 20.07.2009 for recovery of service tax of Rs.21,59,034/- with interest and penalty. On adjudication the demand was confirmed with interest and penalty. Aggrieved by the said order, the respondent filed the appeal with the ld. Commissioner (A) who allowed the appeal of the respondent. Aggrieved by the said order, Revenue is in appeal.

3. The Ld. AR for the Revenue has submitted that the activities narrated in the show cause notice clearly indicate that the services rendered by the respondent are cargo handling services as defined under section 65 of the Finance Act 1994. He submits that irrespective of the fact where such activities are carried out whether within the factory premises or outside, it would fall under the taxable category of 'cargo handling services', once the activities mentioned thereunder is carried out.

4. The ld. AR further submitted that the principle laid down by the Hon'ble High Court of Rajasthan in the case of ***S.B. Construction Co. Vs. UOI 2006-TIOL-390-SC-RAG-ST*** is not applicable to the present case in as much as the handling of cargo in the said case was through mechanized system by using conveyer belt. Further, he submitted that the Larger Bench of the Tribunal in the case of ***ITW India Ltd. Vs. CCE Hyderabad 2016-TIOL-789-CESTAT-MUM-LB*** considered this judgment.

5. Ld. Advocate for the respondent on the other hand submits that the issue is squarely covered by the decision of ***Hon'ble High Court of Allahabad in the case of CCE Vs. Manoj Kumar 2015 (40) STR 35 (All.)*** and recent judgment of this Tribunal in the case of ***Khushdil Singh Vs. CCE Jaipur vide final order no. 51972/2017.*** She submits that the Hon'ble High Court of Allahabad after taking into consideration the judgment of High Court of Orissa in the case of ***Coal Carriers Vs. CCE 2011 (24) STR 395 (Ori)*** and the judgment of High Court at Jharkhand in the case of ***Modi Construction Company Vs. CCE 2011 (23) STR 6 (Jhar.)*** laid down the principle that loading and shifting of sugar bags within the factory premises would not attract service tax under the cargo handling services. Further, she submits that the judgment of the Larger Bench of this Tribunal in the case of ***ITW India Ltd.*** cited by the Revenue is not relevant to the facts of the case as the Tribunal in the said case was not posed with the question whether movement of the goods within the factory premises attracts cargo handling services, or otherwise. Further she submits that the demand is barred by limitation in as much as there has been conflicting views expressed by various Tribunal and High Courts, and no factor were suppressed by them.

6. Heard both the sides and perused the records.

7. The short question involved in the present case for determination is whether the shifting and loading of railway sleepers within the factory premises of M/s. Rural Engineering Pvt. Ltd. a service provided by the respondent would be

chargeable to service tax under the category of 'cargo handling services'. We need not dwell much on the issue as the Hon'ble High Court of Allahabad in the case of ***Manoj Kumar*** under similar facts and circumstances analyzing the definition of cargo handling and the dictionary meaning of cargo observed as under:

11. Section 65(23) of the Act defines 'cargo handling service' as follows :-

> *"cargo handling service" means loading, unloading, packing or unpacking of cargo and includes cargo handling services provided for freight in special containers or for non-containerized freight, services provided by a container freight terminal or any other freight terminal, for all modes of transport and cargo handling services incidental to freight, but does not include handling of export cargo or passenger baggage or mere transportation of goods.*

12. In Black's Law Dictionary the term 'cargo' means load i.e. freight by a vessel, train, truck, aeroplane or other career.'

13. The word 'cargo.' is defined in other dictionaries as follows :-

> *"Venkataramaiya's Law Lexicon 2nd Edition Reprint 2007*
>
> *'Cargo-the loading of a ship or vessel of whatever it consists; the loading or freight of a ship; the goods merchandise, or whatever is conveyed in a ship or other merchant vessel."*

Concise Oxford Dictionary

'Cargo-the goods carried commercially on a ship or aircraft or truck.'

Webstar's Dictionary

'Cargo-Goods and merchandise taken on abroad, vessel, aircraft etc.'

Webstar's New Collegiate Dictionary

'Cargo- goods on merchandise conveyed in ship airplane or vehicle'

Cargo- Entire load for ship which carries the load-interpreted by English Court in the case of National Dack Labour Board v. John Blarad & Co. Ltd. [(1971) 2 All ER 779, 789 (HL)]"

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 eligible to Service tax."*

8. We also find that recently this Tribunal in the case of ***Khushdil Singh*** followed the principle laid down in the case of ***Manoj Kumar (Supra).***

9. In the circumstances, we do not see merit in the contentions of the Ld. AR for the Revenue. Consequently, impugned order is upheld and the appeal filed by the Revenue is dismissed.

[Order Pronounced in the open court on 10.07.2017]

(Ashok K. Arya)
Member (Technical)

(D.M. Misra)
Member (Judicial)

Bhanu