CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-I

Date of hearing: 19.07.2017

Appeal No. ST/55553/2013-ST[DB]

[Arising out of the Order-in-Appeal No. 04(RD)ST/JPR-II/2013 dated 03.01.2013, passed by the Commissioner of Central Excise, Jaipur]

C.C.E. Jaipur-II … Appellant

Vs.

M/s. C.S. Doshi (HUF) ... Respondent

Appearance:

Present Shri Sanjay Jain, DR for the appellant
Present Ms. Rinki Arora, Advocate for the respondent

Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Technical Member

FINAL ORDER No.55540/2017

Per Justice (Dr.) Satish Chandra:

The present appeal has been filed against the order in Appeal No. 04/2013 dated 03.01.2013.

2. The brief facts of the case are that during the period under consideration (April 2007 to April 2009), the respondent was engaged in providing the services of shifting of material from the pit head to a specified location within the mines area with the help of excavators and keepers. The diesel for the equipment / vehicles was supplied free of cost to assessee by the recipient of

the services. But it was held as taxable value of the service. So the demand of the service tax was raised in the show cause notice. But by impugned order, demand was deleted. Being aggrieved with the impugned order, Revenue has filed the present appeal.

3. With this background, we have heard Shri Sanjay Jain, DR for the appellant and Ms. Rinki Arora, Advocate for the respondent.

4. After hearing both the sides and 2 ***Jain vide Final order no. 52868/2017 dated 11.04.2017*** wherein it was observed as follows:

> *"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."*

5. Thus the claim of the respondent is allowable on merits. When it is so, then, we find no reason to interfere with the order in appeal that has given the relief on the basis of limitation.

6. In the result, appeal filed by the Department is dismissed.

[Dictated and Pronounced in the open court]

(V. Padmanabhan)
Technical Member

(Justice Dr. Satish Chandra)
President

Bhanu