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

Date of Hearing/Decision:12.10.2017

Service Tax Appeal No.219/2012(DB)

[Arising out of Order-in-Appeal No.33(DKV)ST/JPR-1/2011 dated 21/28-01-2011passed by the Commissioner (Appeals-I), Customs & Central Excise, Jaipur]

M/s.Khandelwal Construction Company Appellants

Vs.

CCE,Jaipur-I Respondent

Appearance:

Rep.by Shri Kumar Vikram, Advocate for the appellant.
Rep. by Shri Ranjan Khanna, DR for the department.

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

Final Order 57182/2017

Per B. Ravichandran:

The appeal is against order dated 28.01.2011 of Commissioner (Appeals-I), Customs & Central Excise, Jaipur. The appellants are engaged in providing cargo handling service to the clients (M/s.DCM Shriram Consolidated Ltd., Kota). The proceedings were initiated against them for non-payment of service tax under the category of "Cargo Handling Service". The Original Authority held that the appellants are liable to pay service tax of Rs.80,343/- and also imposed penalty of equivalent amount under Section 78 of the Finance Act, 1994 and further, penalty under Section 76. On appeal, by the impugned order, the Commissioner (Appeals) confirmed order of the Original Authority.

2. Ld. Counsel appearing for the appellant submitted that the appellant did not undertake "Cargo Handling Service" as they have moved the materials within the factory of client only.

3. Ld. AR submitted that the appellant could not support their claim that they are involved only in cargo handling services and not loading of the cargo on transport vehicles for movement outside.

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

5. The appellants could not produce the relevant evidence to substantiate their claim that the handling of goods to the client is only within the factory premises and not during the course of loading of goods on transport vehicles for outside movement It is settled position in law that when the goods are loaded on transport facility, lorry/ship or truck for movement of the goods, the goods become cargo and loading of such cargo will be covered under "Cargo Handling Service".

6. We have perused the impugned order. It is recorded that the appellants are engaged in loading of goods for transport in wagon/truck/tailors for outward movement. That being the case, we find no merit in the present appeal by the appellant.

7. Ld. Counsel pleaded for waiver of penalty imposed under Section 76 and 78 as they have discharged service tax with interest prior to show cause notice itself and as such, the matter could have been closed under Section 76 without proceedings.

8. Considering the plea taken by the appellant and also the fact that they have discharged full duty and interest before issue of show cause notice and considering possible interpretation of the scope of the "Cargo Handling Service", we find it fit

case for invoking Section 80 of the Finance Act, 1994, to waive the penalties imposed on the appellant. In the result, the tax liability is upheld. The appeal is partly allowed only with reference to penalties.

[dictated & pronounced in open court]

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

Ckp.