IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –IV

Service Tax Appeal No. ST/52956/2014CU [DB]

[Arising out of Order-in-Appeal No.87 (AKJ)ST/JPR-I/2012 dated 16/05/2012 passed by the Commissioner (Appeals), Central Excise, Jaipur-I]

BOC India Ltd. …Appellant

Vs.

C.C.E., Jaipur-I … Respondent

Present for the Appellant : Mr.Nand Kishore, Advocate
Present for the Respondent: Mr.Amrish Jain, D.R.

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

Date of Hearing / Decision : 01/11/2017

FINAL ORDER NO. 57722/2017

PER: S.K. MOHANTY

This appeal is directed against the impugned order dated 16.05.2012 passed by the Commissioner of Central Excise (Appeals), Jaipur, wherein the adjudication order was confirmed, holding that the services provided by the appellant fall under the taxable category of Supply of Tangible Goods Service, defined under Section 65 (105) (zzzj) of the Finance Act, 1994.

2. The ld. Consultant appearing for the appellant submits that cylinder holding charges received from the customers are leviable to VAT and the appellant had appropriately discharged VAT amount on such deemed sale of cylinders. He further submits that in the case of the appellant itself, the Hon'ble Supreme Court vide judgement dated 21.02.2008 reported in 2008 – (SC1) GJX-1104- SC held that cylinder holding charges are taxable under Section 3A of the Tamil Nadu General Service Tax Act, 1959. He further submits that for subsequent period, the Department initiated show cause proceedings against the appellant for confirmation of the Central Excise duty on such charges received by it. Thus, he submits that the Department cannot take contrary stand in respect of different period, holding that the cylinder holding charges will be subjected to levy of Service Tax as well as Central Excise duty.

3. On the other hand, the ld. DR appearing for the respondent reiterates the findings recorded in the impugned order.

4. Heard both sides and perused the case records.

5. We find that in the appellant's own case, the Hon'ble Supreme Court vide order dated 21.02.2008, while upholding the decision of the Tamil Nadu Taxation Special Tribunal, Chennai have held that cylinder holding charges are taxable

under Section 3A of the Tamil Nadu General Service Tax, 1959. From the said judgement of Hon'ble Supreme Court, it is manifestly clear that the charges received by the appellant is not a service and considered as sale of goods. Since such charges cannot be considered as a service, it will not fall under the purview of Finance Act, 1994 for levy of Service Tax.

6. Therefore, we do not find any merits in the impugned order. Accordingly, after setting aside the same, we allow the appeal in favour of the appellant.

[Dictated and pronounced in the open Court]

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita