CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

<u>BENCH-DB</u>

<u>COURT –IV</u>

<u>Service Tax Appeal No.ST/1560/2011-CU [DB]</u>

[Arising out of Order-in-Appeal No. IND/CEX/000/APP/303/2017 dated 25.07.2011 passed by the Commissioner (Appeals), Central Excise & Service Tax, Indore.]

M/s. Shailu Traders …Appellant

Vs.

C.C.E., Indore . … Respondent

Appearance:
Mr. Kumar Vikram, (Advocate) for the Appellant
Mr. Sanjay Jain, AR for the Respondent

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

Date of Hearing.03.08.2017
Date of Decision.10.11.2017

<u>Final Order No. 57824 /2017</u>

<u>Per S.K. Mohanty</u>:

This appeal is directed against the impinged order dated 22.07.2011 passed by the Commissioner (Appeals), Customs Central Excise and Service Tax, Indore, wherein the adjudication order was confirmed, holding that the services provided by the appellant fall under the taxable category of "Man Power Recruitment or Supply Agency Service".

2. The ld. Advocate appearing for the appellant submitted that as per the agreement dated 01.04.2002 entered with M/s. J.K

Tyres, the appellant had undertaken the job work of material handling and shifting activities, which cannot be considered as man power recruitment and supply agency service.

3. On the other hand the ld. DR appearing for the Revenue reiterated the findings in the impugned order.

4. Heard both sides and perused the case records.

5. In this case, the appellant had entered into agreement on 01.04.2002 with M/s. J.K. Industries Ltd. for undertaking the activities of material handling and shifting within the premises of such principal. The relevant Paragraph in the said agreement for consideration of the present dispute are extracted herein below:

> *3. That the 'Contractor' will decide the numbers of employees to be engaged for execution of work and will along be entitled to dictate such employees about the manner of the execution without any interference or instruction or intervention whatsoever of the 'Principal'. The 'Principal' will not have any connection with employees engaged by the 'Contractor' neither he nor any of t his official will supervise, dictate to the employees the manner of execution/ completition of the job.*
>
> *5. The 'Principal will not be entitled to retain any control, supervision or the manner of the discharge, dismissal or retrenchment or re-employment of the workers engaged / employed by the 'contractors'*

> *6. That the 'contractor' will be liable for due observation and implementation of the statutory conditions an requirements of Labor and Factory laws duly complied with as applicable from time to time to his employees.*

6. On perusal of the conditions contained in the agreement, it reveals that the man power/ employees deployed for executing the assigned task were under the control and supervision of the appellant and the activities undertaken pursuant to the agreement relate to the work of material handling and shifting. Since the appellant was no way connected with any recruitment or supply of manpower to the client, rather the manpower/employees were under the active control and supervision of the appellant and were deployed for undertaking the assigned job work entrusted by the principal, in our considered view, such service should not fall under the taxable category of 'Manpower Recruitment and Supply Agency Service'.

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

(Pronounced in the open court on 10.11.2017)

(**B. Ravichandran**)
Member(Technical)

(**S. K. Mohanty**)
Member (Judicial)

Sakshi