**IN THE CUSTOMS, EXCISE & SERVICE TAX**
**APPELLATE TRIBUNAL**
**West Block No. 2, R.K. Puram, New Delhi – 110 066.**

**Date of Hearing/Order : 15.12.2017**

## Appeal No. ST/52898/2016-DB
## ST/50372/2017-DB

(Arising out of Order-in-Appeal No. BHO-EXCUS-001-APP-186 & 484-16-17 dated 27.7.2016 & dated 6.12.2016 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Bhopal)

M/s Santani Sales Organisation — Appellant

Vs.

CCE, Bhopal — Respondent

**<u>Appearance</u>**

Shri Rajveer Singh, Advocate - for the appellant

Shri Sanjay Jain, A.R. - for the respondent

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

**Final Order No. 58642-58643/2017**

### Per S.K. Mohanty :

The issue involved in both these appeals are identical. Accordingly, the same are taken up for hearing together and a common order is being passed.

2. Brief facts of the case are that the appellant is a consignment agent and is engaged in sale of goods, against receipt of the commission amount. The appellant is registered with the service tax

department under the taxable category of business auxiliary service. However, upon perusal of certain contracts of the appellant, the department observed that the activities provided by the appellant should fall under the category of C&F agent service. Therefore, after initiation of the show cause proceedings, the department has confirmed the adjudged demand against the appellant.

3. The ld. Advocate appearing for the appellant submits that for the earlier period i.e. October, 2003 to March 2008, this Tribunal vide Final Order No. 51786-51787/2017 dated 14.2.2017 has allowed the appeal of the appellant, holding that consignment agent cannot be treated as C&F agent and accordingly, no service tax can be demanded. Thus, he submits that the present proceedings initiated for the subsequent periods i.e. 2009-2010, 2012-2013 and 2013-2014 on the identical issue, cannot be sustained in view of the decision of the Tribunal, in the case of the appellant itself.

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

5. Heard both sides.

6. We find that in the case of the appellant itself, for the earlier period, this Tribunal vide final order dated 14.2.2017 has allowed

the appeal, holding that the consignment agent cannot be treated as C&F agent. Since, on identical issue, for the subsequent period, the department has proceeded against the appellant for confirmation of service tax demand under C&F agent service, we are of the view that the same is not sustainable in view of the decision of the Tribunal vide order dated 14.2.2017.

7. Accordingly, after setting aside the impugned orders, we allow the appeals in favour of the appellants with consequential benefit.

(Dictated & pronounced in open Court)

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| (B. Ravichandran)<br>Member (Technical) | (S.K. Mohanty)<br>Member (Judicial) |

RM