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

Date of Hearing/Decision:08.01.2018

Service Tax Appeal No.1205/2011(DB)

[Arising out of Order-in-Appeal No.IND/CEX/000/APP/203/11 dated 26.05/01.06.2011 passed by the Commissioner (Appeals), Central Excise, Indore]

M/s. Prakash Chand Mukesh Kumar — Appellants

Vs.

CCE, Indore — Respondent

<u>Appearance</u>:

Rep. by Ms. Priyanka Goel, Advocate for the appellant.
Rep. by Shri P. Juneja, AR for the respondent.

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

Final Order No.50109/2018

<u>Per B. Ravichandran:</u>

The appellant is aggrieved by the order dated 26.05.2011 of Commissioner (Appeals-I), Central Excise, Indore. The appellants are engaged in clearing and forwarding work for M/s.Grasim Industries in terms of the agreement with them. The said agreement covers various responsibilities of the appellant, which included facilities for storage, transport and dispatch of cement to various customers, etc.

2. The dispute in the present appeal relates to valuation of such services. The appellants were discharging service tax on the commission received from their clients which was specifically indicated in the Annexure to the agreement. The same is on per MT clearance basis. The Revenue entertained a view that the appellant is also getting other considerations, which assessee claimed as

reimbursement, should also form part of taxable value. Proceedings initiated against the appellant resulted in the original order dropping the demand. The Original Authority held that as C & F Agent, the appellant will only be liable to pay tax on remuneration received as a 'commission' for such agency work. The amount recovered as reimbursement of freight etc. incurred by the appellant and received on actual basis from the clients cannot be considered as amount received for Clearing & Forwarding Agency Service. The Revenue contested the findings by filing the appeal before the Commissioner (Appeals). The Commissioner (Appeals) reversed the decision of the Original Authority and held that the appellants are liable to pay service tax as per the demand proposed. He relied on the provisions of Section 67 to hold that the gross amount charged by the service provider shall be liable to tax. Such gross amount should include remuneration received by the appellant. Aggrieved by this, the appellant filed the present appeal.

3. We have heard both the sides and perused the appeal records.

4. We also perused the impugned agreement, which is subject matter of dispute. It is clear from the scope of the agreement that the appellants were in fact acting as Clearing & Forwarding Agent of the client cement company. They were also undertaking various connected activities, which are essentially loading, transporting the cement. The amount attributable to such activities are shown separately in the agreement as reimbursement. Going by the factual finding of the Original Authority, these amounts were reimbursed by the client to the appellant on actual basis. In such situation, we note that they cannot form part of the

assessable value for C & F Agency service. We find that the Original Authority is correct in appreciating the legal position in this regard.

5. In this connection, we note that the Tribunal in various earlier cases held that when the expenditure incurred by the assessee are in terms of agreement and are actually re-imbursed without any variation, the same shall not form part of the taxable value for C & F agency service. We refer to one of the recent decisions in **Rajshree Enterprises Vs. CCE, Jaipur-I – 2017 (4) TMI 39 CESTAT New Delhi.**

6. In view of the above discussions, we find no merit in the impugned order. Accordingly, the same is set aside. The appeal is allowed.

[order dictated and pronounced in the open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.