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/55423/2013- [DB]

[Arising out of Order-in-Appeal No.113 (RDN)ST/JPR-II/2012 dated 3/15.10.2012 passed by the Commissioner (Appeals), Central Excise, Jaipur-II]

M/s.Gokul Ram Gurjar …Appellant

Vs.

C.C.E., Jaipur-II … Respondent

Present for the Appellant : Mr.K.M. Menon, Advocate
Present for the Respondent: Mr.A.K. Singh, D.R.

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

Date of Hearing / Decision : 20.02.2018

FINAL ORDER NO. 50962/2018

PER: S.K. MOHANTY

This appeal is directed against the impugned order dated 03/15.10.2012 passed by the Commissioner (Appeals), Customs and Central Excise, Jaipur.

2. In this case, the activities undertaken by the appellant pursuant to the agreement entered with Ajmer District Milk Production Co-operative Limited, Ajmer, relate to washing of cars/crates, sorting of milk bags, milk packing etc., for which the appellant received remuneration on fixed per liter basis. The above activities undertaken by the appellant was

interpreted by the Department to be a taxable service under the category of manpower recruitment or supply agency service. To arrive at such conclusion, the Department took the view that labours were supplied by the appellant, who were under the control of the Dairy authorities and the activities performed by those workers were under the direction and control of the Dairy authorities. Accordingly, while adjudicating the matter, the Department has confirmed Service Tax demand of Rs.13,06,908/- alongwith interest and also imposed penalty under Section 77 and 78 of the Finance Act, 1994.

3. Heard both sides and perused the records.

4. We have gone through the work order issued by Ajmer District Milk Production Co-operative Limited, Ajmer to the appellant. The scope of work described in the said work order relates to washing of cans/crates and packing of milk. Since there is no specific mention about deployment of labour/work force, the services provided by the appellant should not fall under the taxable category of manpower recruitment or supply agency service. Further, the rate contract provided in the work order clearly indicates that the amount shall be paid at a fixed basis i.e. on per liter for per pack basis. Since there is no specific mention about payment of reimbursement of wages and salaries to the workman, the services provided should not fall under such taxable category of service.

5. 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, with consequential relief.

[Dictated and pronounced in the open Court]

(B. RAVICHANDRAN)	**(S.K. MOHANTY)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Anita