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/59160/2013-ST [DB]

[Arising out of Order-in-Appeal No.4(ST)/RPR-II/2013 dated 15.05.2013 passed by the Commissioner (Appeals), Customs, Central Excise and Service Tax, Raipur]

CCE, Raipur …Appellant

Vs.

Jugal Constructions … Respondent

Present for the Appellant : Mr.R.K. Maji, DR
Present for the Respondent: Mr.Kumar Vikram, Advocate

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

Date of Hearing/Decision: 05.3.2018

FINAL ORDER NO. 51113/2018

PER: S.K. MOHANTY

Revenue is in appeal against the impugned order dated 15.05.2013 passed by the Commissioner (Appeals), Customs and Central Excise Raipur. The grievance of Revenue are that the activities provided by the respondent to its service receiver should merit consideration of classification as cargo handling service, as against the classification made by the Commissioner (Appeals), under 'GTA Service'. Further, the Revenue also contended that the activities of respondent in applying Gunning Mass in the steel melting shop should appropriately be classifiable under Business Auxilliary Service, instead of the classification made by the Commissioner (Appeals), under the head Management, Maintenance, or Repair Service. Thus, the submission of Revenue is that the impugned order is not proper and justified.

2. Heard both sides and perused the case records.

3. We find that the service provider M/s. Bharat Refractory's Ltd. has awarded the contract for transportation of bricks and for accomplishing the said purposes, the appellant undertook the activities of loading, unloading etc. Since the principal objective of the contract was for transportation of goods, the same should appropriately fall under the GTA service and not under cargo handling service. We find that the CBEC while answering to the question with regard to classification of service, has furnished the following clarification:-

> *"4. Issue 2: GTA providing service in relation to transportation of goods by road in a goods carriage also undertakes packing as an integral part of the service provided. It may be clarified whether in such cases service provided is to be classified under GTA service.*
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> *Clarification: Cargo handling service [Section 65 (105) (zr)]means loading, unloading, packing or unpacking of cargo and includes the servie of packing together with transportation of cargo with or without loading, unloading and unpacking. Transportation is not the essential character of cargo handling service but only incidental to the cargo handling service. Where service is provided by a person who is registered as GTA service provider and issues consignment note for transportation of goods by road in a goods carriage*

> *and the amount charged for the service provided is inclusive of packing, then the service shall be treated as GTA service and not cargo handling service. (Emphasis provided)."*

5. In this case, the appellant was awarded with the work order for application of Gunning Mass in steel melting process, which has basically meant for maintenance of furnace. Thus, such activities are in the nature of management, maintenance or repair service, as defined under Section 65(64) of the Act. Classification of such service under business auxiliary service by Revenue is not proper and justified.

6. Therefore, we do not find any infirmity in the impugned order passed by the ld. Commissioner (Appeals). Accordingly, the appeal of Revenue is dismissed.

[Dictated and pronounced in the open Court)

(V.PADMANABHAN)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita