IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –II

Service Tax Appeal No.ST/57430 /2013-CU [DB]

[Arising out of Order-in- Appeal No.IND-CEX-000-APP-34/2013 dated 06.02.2013 passed by the Commissioner (Appeals), Customs & Central Excise, Indore]

Sulakhan Singh **...Appellant**

Vs.

C.C.E., Indore **... Respondent**

Service Tax Appeal No.ST/ 57433/2013-CU [DB]

[Arising out of Order-in- Appeal No.IND-CEX-000-APP-35/2013 dated 06.02.2013 passed by the Commissioner (Appeals), Customs & Central Excise, Indore]

Bir Bahadur Yadav **...Appellant**

Vs.

C.C.E., Indore **... Respondent**

Present for the Appellant : Mr.P.H. Parekh, Sr.Advocate &
Mr. Sumit Goel, Advocate
Present for the Respondent: Mr.Sanjay Jain, D.R.

Coram: HON'BLE MR. V.PADMANABHAN, MEMBER (TECHNICAL)
HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing/Decision: 03.07.2018

FINAL ORDER NO. 52520-52521/2018

PER: V.PADMANABHAN

The facts involved in both the appeals are identical and hence these two appeals are decided with this common order.

The appellants in these 2 cases are labour contractors engaged by M/s. Larsen & Toubro in its factory, for carrying out the activity of loading of material in vehicles, segregation of material, unloading, stacking and shifting of materials within the factory premises. The Revenue was of the view that the activities carried out by the appellants are liable for payment of Service Tax under the category of Cargo Handling Services as defined under Section 65 (23) of the Finance Act 1994. Accordingly, the authorities below ordered payment of Service Tax alongwith interest and also penalties. These two orders are under challenge in the present appeals.

2. In this connection, we heard Shri P.H. Parekh, ld. Advocate & Shri Sunil Goyal, Advocate for the appellants as well as Shri Sanjay Jain, ld. DR for the Revenue.

3. The ld. Advocates submitted that the activity carried out by the appellants were entirely performed within the factory premises. He submitted that it is squarely well settled that such activities carried out within the factory cannot be brought within the scope of the definition of Cargo Handling Services. In this connection, he relied on several judgments including Commissioner of Central Excise vs. Manoj Kumar and Arvind Kumar which was decided by the Hon'ble High Court of Allahabad reported as 2012 (11) ADJ 618, 2015 (40) S.T.R. 35 (All.). He further submitted that the same view has been taken by the Tribunal in several other cases and hence the benefit may be extended to the appellants.

4. Ld. DR justified the impugned orders.

5. We have gone through the records of the case as well as the points raised by both the sides. We have also carefully considered the decision of Hon'ble High Court of Allahabad in the case cited on behalf of the appellants. We find that Hon'ble Allahabad High Court as decided the issue identical to the present appeal and the observations of the Hon'ble High Court are reproduced below:-

> ***"13.*** *In common parlance 'cargo' means load, which is to be carried by ship, aeroplane, rail or truck. The handling of transportation of goods, by itself unless it is an organised activity, which is connected with carrying cargo (load) by ship, aeroplane, rail or truck is involved would not fall within the definition of cargo handling service. The definition specifically excludes handling of export cargo or passenger baggage or mere transportation of goods.*
>
> ***14.*** *In the present case the transportation of goods namely the sugar bags is within the factory. The respondent firm was engaged for loading, unloading, packing, unpacking, stacking, re-stacking and shifting of bags from floor of mills, from godowns and from one godown to another. The firm with its partners and other labourers handled bags of sugar under a contract, within the factory premises. The sugar bags were not to be loaded or unloaded for any movement outside the factory on public roads, on any ships, aeroplane or trucks for onward movement to any destination. The activities will fall within the meaning of transportation of goods, and would certainly not be included in the definition of 'Cargo Handling Service ', which is the service exigible to Service tax."*

6. The Hon'ble Supreme Court has also in the case of Dy. Commissioner, Central Excise & Anr. vs. Sushil & Company reported in 2016 (13) SCC 223 had an occasion to examine the similar case in which they have observed as follows:-

> *"6. The High Court, on the interpretations of the aforesaid Entry 23, has observed that two conditions for*

considering any service to be "Cargo Handling Service" need to be satisfied, namely;

(1) there must be a cargo i.e. a packed or unpacked commodity accepted by a transporter or carrier for carrying the same from one destination to another. It is only after the commodity becomes a cargo, its loading and unloading at the freight terminal for being transported by any mode becomes a cargo handling service, if it is provided by an independent agency and;

(2) the service provider must independently be involved in loading-unloading or packing-unpacking of the cargo.

The aforesaid meaning given by the High Court while interpreting Entry 23 of Section 65 is perfectly in order and justified…."

7. From the observation of the Apex Court, it is further evident that moving of goods within the factory cannot be brought within the definition of "Cargo and Cargo Handling Service".

8. In view of the above, we set aside the impugned orders and allow the appeals.

[Dictated and Pronounced in the open Court]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

(V.PADMANABHAN)
MEMBER (TECHNICAL)

Anita