IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Date of Hearing: 30.07.2018
Date of Decision: 10.08.2018

Appeal No. ST/55393/2013-DB
[Arising out of Order-in-Appeal No. OIA-200-BPL-2012 dated 08/10/2012 passed by Commissioner of Central Excise and Service Tax-BHOPAL (Appeal)]

CGST C.C & C.E-JABALPUR Appellants

Vs.

MAHAKAUSHAL TRANSPORT CO Respondent

Appearance:
Shri G.R. Singh, AR for the Appellant
Shri Manish Saharan, Advocate for the Respondent

CORAM:
Hon'ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Shri C.L. Mahar, Member (Technical)

FINAL ORDER NO. 52756/2018

Per C.L. Mahar:

1. Brief facts of the matter are that Commissioner of Central Excise, Bhopal has filed the appeal before this Tribunal against the Order-in-Appeal No. 200/BPL/2012 dated 08/10/2012 passed by Commissioner of Central Excise & Service Tax, Bhopal (Appeal). When on the previous occasion this appeal has come for hearing before this Tribunal, the same was dismissed on the ground that the appeal was under the monetary limit for filing appeal before CESTAT. As per the Litigation Policy for filing appeal before CESTAT, High Court and Supreme Court issued by vide CBECs instructions No. 319/MISC/163/2010-JC dated 11th December, 2015 the prescribed limit for filing appeal or maintaining appeal before

CESTAT was that in case where the amount of Central Excise, Service Tax, Customs duty involved is more than Rs. 10 Lakhs and any appeal where in case of CESTAT amount involved was less than 10 Lakhs same was to be withdrawn by the Department. Since the amount in the present appeal was only Rs. 1,89,938/-, this Tribunal vide its above mentioned order dated 12th October, 2017 has dismissed the appeal.

2. The Revenue has filed ROM application dated 15th Feb 2018 mentioning that there is an apparent misake from the record of the case as the appeal in this particular case pertains to the classification of service and as per para 3 of the instructions issued by CBEC dated 17/08/2011 there is an exclusion clause which provides that the withdrawal of appeals on monetary limits will not be applicable in case where issue involved pertaining to 'Classification' or 'refund issues' which are of legal and recurring nature.

3. After hearing both the sides, the above mentioned ROM was decided and appeal was restored vide this Tribunal's Final Order No. 50357/2018 dated 15/06/2018.

4. The issue before us is to determine the classification of service rendered by respondent assessee M/s Mahakaushal Transport Company wherein the respondent assessee have been undertaking following works:-

a. Hiring of backhoe/pay loader siding including mechanical unloading;
b. Hiring of pay-loader for loading or coal wagon at different siding of M/s Western Coal Ltd; and

c. Removal of all types of material by hiring of equipment such as HEMM, tippers, loading, transportation and dumping at specified places.

5. We have also perused the salient features of the contract which the respondent assessee has entered with M/s Western Coal Field, Chhindwara wherein it has been provided that the respondent assessee will undertake the work of loading of coal by Pay Loader and Transportation from B.G. Siding & Ganpati Mine coal stockyard through B.G. Siding weighbridge to Crusher Feeder Breaker including unloading at B.G. Siding, Pench Area. One of the conditions of the contract is Weighment of coal of each tipper/dumper shall be made and recorded in a separate register of the weighbridge of the loading point and at the unloading point. In case of the same is not possible due to operational reasons at the loading point, the quantity of the transportation be taken as per 'DALA' measurement on averge weight carried depending upon the convenience and practice of the unit/colliery as well as terms of contract may be restored by official in charge.

6. The matter of the facts is that the respondent assessee have been paying Service Tax on the above activity under transport of goods by road service after availment of the entitled abatement from the charges covered by the respondent assessee from the client namely M/s Western Coal Field Ltd. It has been the contention of the Department that the kind of service rendered by the respondent assessee is a more appropriately classifiable under the category of "Cargo Handling Service" rather than "Transport of Goods by Road Service" and thus an amount of Rs. 1,89,938/- has been evaded by the respondent assessee.

7. We have heard both sides and gone through the record of appeal. From the record of the appeal it appears that the matter under consideration is no longer res integra in view of the Hon'ble Supreme Court decision in case of Commissioner Central Excise & Service Tax, Raipur V/s Singh Transporters 2017 (4) GSTL 3 (SC) wherein the Hon'ble Supreme Court has held that the activity undertaken by the assessee of transporting of the coal from the pithead of the mines to railway sidings within the mining area is more appropriately classifiable under service head of Transport of Goods by Road Service. The relevant extract of the above judgment is reproduced here below:-

> ***"6.*** *Be that as it may, even if the relied upon judgment in the case of Arjuna Carriers (supra) is of no consequence to the present case, we are of the view that the activity undertaken by the respondent i.e. transportation of coal from the pit-heads to the railway sidings within the mining areas is more appropriately classifiable under Section 65(105)(zzp) of the Act, namely, under the head "transport of goods by road service" and does not involve any service in relation to "mining of mineral, oil or gas" as provided by Section 65(105)(zzzy) of the Act."*

8. In view of above we do not find any merit in the appeal of the Department and the same is dismissed.

(Order pronounced in the open court on _10/08/2018_)

(Anil Choudhary)
Member (Judicial)

(C.L.Mahar)
Member (Technical)

Rekha