CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.

PRINCIPAL BENCH COURT NO.II

Service Tax Appeal No.52074/2014 (SM)

[Arising out of Order-in-Appeal No.384/OPD/ST/JPR-II/2013 dated 31.12.2013 passed by the Commissioner (Appeals), Customs and Central Excise, Jaipur-II]

M/s. Jupiter Industries **Appellant**
B-67 (B-1), Mia, Basni, Phase-II,
Jodhpur,
Rajasthan.

VERSUS

Commissioner of Central Excise & Service Tax, **Respondent**
NCR Building, Statue Circle, C-Scheme,
Jaipur, Rajasthan.

APPEARANCE:

Shri O.P.Agarwal, Advocate for the appellant
Shri P. Juneja, Authorised Representative for the respondent

CORAM:
HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.51194/2019

DATE OF HEARING:13.05.2019
DATE OF DECISION:13.05.2019

ANIL CHOUDHARY:

Heard the parties.

2. This is second round of litigation. The issue involved is regarding calculation of service tax payable on the GTA. Secondly, whether the service tax is payable on container inland freight, for the purpose of export and also ocean freight.

3. The appellant is a manufacturer of SS Patta/patti, SS Circles and SS utensils, etc and registered with the Department, both under Central Excise and Service Tax. Pursuant to the audit of the records, it appeared to Revenue that the appellant had not paid service tax on outward/inward transportation of the goods by road against GRs, on which the transporter has charged the service tax amount.

4. As the appellant is a certified person under Notification No.35/2004-ST, they were required to pay service tax on freight under Reverse Charge Mechanism. Audit objection was conveyed dated 30.09.2009. Thereafter, the appellant vide their letter dated 14.12.2009 provided the details of freight paid during 01.01.2005 to 30.09.2009. It appeared to Revenue that service tax has been short paid/not paid for an amount of Rs.2,94,696/- including cess, for transportation of goods by road and accordingly, show cause notice dated 19.01.2010 was issued for the extended, period Jan. 2005 to September, 2009, along with proposal to impose penalty.

5. In the first round, the Dy. Commissioner held that the extended period of limitation is not applicable and confirmed demand for normal period amounting to Rs.62,649/-. Thereafter, the appellant came before the Tribunal in Appeal no.ST/A-1763/2011 dated 14.05.2012, which was disposed of vide order dated 14.05.2012, taking notice of the appellant's contention that if they are given opportunity to demonstrate the abatements available on freight and railway freight paid to concor, and whereas the GTA services provided are considered, there shall be no

demand payable by them. Accordingly, this Tribunal remanded the matter to the adjudicating authority.

6. Pursuant to remand, the appellant demonstrated before the Adjudicating Authority, break-up of the total demand as follows:-

Sl.No.	A/c head		Gross Amount	Taxable Amount (Rs.)
1.	Cartage & Transportation	-2/8	1,70,174	
	Less:Amount below Rs.750/- each		13,144	1,57,030
2.	Carriage Inward Exp.paid	-19-28	7,30,549	
3.	Container Inland Freight (Export)		32,172	7,62,724
4.	Ocean Freight	-29/32		8,96,920
	Total			18,16,674
	Tax demand	41-45		7,78,374
				25,95,048
				62,649

7. Sofar as the Sl.No.3 – Container Inland Freight (export) charges are concerned, ld. Counsel demonstrates from a copy of the bills raised by the transporter, along with copy of the ledger, evidently the appellants had paid full amount to the service provider including service tax. However, in the ledger, they had debited the service tax amount with the outward transport account, and the balance amount has been reflected in the accounts of the transporter. Further, the bill amount has been paid by AC paid cheque, which is also evident from the copy of the ledger account. So far as, Sl.No.4 is concerned – ocean freight, it is explained that the said expense is incurred in the export of their goods, which is not taxable under service tax. It is further explained that they are liable to

pay service tax for carriage and transportation, on gross amount of Rs.57,043/-, subject to abatement of 15%, and expenses of Rs.7,62,724/- subject to abatement, thus totalling Rs.9,19,754/-. Further, the appellants states that on this gross amount, after abatement, taxable amount comes to Rs.26,000/-.Ld. Counsel further states that the Dy. Commissioner have erred in observing in the order-in-original, that while issuing the demand, service tax already paid by the appellant was considered and the demand was raised only for short payment of service tax, which is factually wrong. Further, in para 18 of the Order-in-original, the observation that, "despite service tax having been charged on Container Inland Freight (export) by the service provider, the same has not been paid to the service provider, as claimed by the assessee, is also factually wrong. It is further explained that the Commissioner has failed to appreciate the facts and passed order, confirming the adjudication order. Accordingly, the ld. Counsel prays for allowing their appeal.

8. Ld. Authorised Representative for the Department has relied upon the impugned order.

9. Having considered the rival contentions, I hold that the appellant is liable to pay service tax only on first three items in the table aforementioned. Sofar as Sl.no3 of the table is concerned, as is evident from the Table, the service tax has been paid to the provider of service and the appellant is not liable to pay tax. Further, the appellant is only liable for the service tax, subject to abatement, on item no.1 and 2. Accordingly, the appellant shall file afresh calculation chart of the tax already paid by them and also the details of tax payable by them before

the Adjudicating Authority. If any tax is short paid, the same shall also be paid by them.

10. Further, the appellant has already paid service tax, on these items as explained by them. Sofar as the ocean freight is concerned, the same is not liable to tax, being beyond the scope of service tax. Accordingly, the impugned order is set aside. The appeal is allowed, as indicated above.

[Order dictated and pronounced in open court]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

ckp