CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court – I

Appeal No. ST/680/2008

(Arising out of Order-in-Original No. 09/2008- (S.Tax) (PNR) dated 29.10.2008 passed by Commissioner of Customs, Central Excise & Service Tax, Tirupati)

M/s The Chittor Co-Operative Sugar Ltd., …..Appellant(s)

Vs.

Commissioner of Customs, Central Excise & Service Tax, Tirupati …..Respondent(s)

Appearance
None for the Appellant.
Shri P.S. Reddy, Assistant Commissioner (AR) for the Respondent.

Coram:
Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)
Hon'ble Mr. MADHU MOHAN DAMODHAR, MEMBER (TECHNICAL)

Date of Hearing: 01/02/2018
Date of Decision: 01/02/2018

FINAL ORDER No. A/30484/2018

[Order per: M.V. Ravindran]

This appeal is directed against Order-in-Original No. 09/2008- (S.Tax) (PNR) dated 29.10.2008.

2. None appeared on behalf of the appellant despite notice. On perusal of records, it transpires that the issue is lies in a narrow compass, accordingly the appeal is taken up for disposal even in the absence of any representation.

3. Learned Departmental Representative takes the Bench through the entire case records and submits that appellant herein discharges the freight charges for transportation of sugarcane from the field to their factory premises. Appellant being a manufacturer of excisable commodity as to discharge the service tax liability on the freight paid under reverse charge mechanism having not done so, the Adjudicating Authority has correctly confirmed the demands raised along with interest and imposed penalties.

4. On perusal of records, it transpires that appellant herein has factually paid the transport charges to transporters for movement of sugarcane up to the factory. It is the case of the appellant that the movement of sugarcane from the field to factory is the responsibility of the farmer and entire payment of freight charges by them for transport or the lorry owners was recovered from the farmers from the total price of supply of sugarcane. In support of the same it was indicated the pricing factor of sugarcane was as per the State Government and being mandated they have to pay the said price, there is no intention to evade payment of duty.

5. On careful consideration of submissions made, we find that during the period in question i.e. 01.01.2005 to 31.03.2007, appellant had paid transport charges to individual transporters and it is also seen from the records, the claim of appellant that the said transportation charges is deducted from the total price paid to the farmers for the sugarcane procurement is correct. It is the submission if any service tax paid to State Government on freight charges, it has to be paid by the individual farmers but as per the policy of State Government sugarcane has to be delivered to the door of the sugarcane factory by the farmer, and as a financial facilitation transport charges are paid extended by the appellant, to follow the direction of State Government in respect of procurement price of sugarcane from the farmers in the State.

6. We find that the issue is no more res integra, as the Tribunal in the following cases was considering the very same issue and held in the favour of the assesses and set aside the demands of the service tax on the amounts paid as transportation charges of sugarcane, on behalf of the farmers

i) Nandganj Sihori Sugar Company Ltd., Vs. CCE [2016 (42) STR 545]

ii) *Nandganj Sihori Sugar Company Ltd., Vs. CCE* [2014 (34) STR 850] iii)*South Eastern Coal Fields Ltd.,* [2016 (41) STR 636], in the case of

iv) *Kranthi SSK* Final Order No. A/87262/2017 dated 03.05.2017 (Mumbai Bench)

v) *Bhima Sahakari Sakhar Karkhana Ltd., Vs. CCE, Pune-II* [2016 (41) STR (438)] and

vi) Shreenath Mhaskoba Sakhar Karkhana Limited [2017 (3) GST 169].

Ratio of the above said decisions of the Tribunal squarely covers the issue in favour of the appellant herein, following the ratio, we hold that the impugned order is unsustainable and liable to be set aside and we do so. The impugned order is set aside and the appeal stands allowed.

(Operative part of this order pronounced in open court
on conclusion of hearing)

MADHU MOHAN DAMODHAR	**M.V. RAVINDRAN**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Lakshmi….