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

Appeal No.	Appellant	Respondent	Impugned Order No. & Date
ST/909/2009	CCE C&ST, Hyderabad	Bharat Kumar & Company	O-I-A No. 34/2009(H-III)ST, dated 31.07.2009 passed by CCE&ST, Hyderabad.
ST/910/2009	CCE C&ST, Hyderabad	Sri Durga & Company	O-I-A No. 35/2009(H-III)ST, dated 31.07.2009 passed by CCE&ST, Hyderabad

Appearance
Shri Arun Kumar, Dy. Commissioner/AR for the Appellant.
Shri Y. Sreenivasa Reddy, Advocate for the Respondent.

Coram:
Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 14.09.2018
Date of Decision: 14.09.2018

FINAL ORDER No.A/31215-31216/2018

[Order per: Mr. M.V. Ravindran]

1. These two appeals are directed against Orders-in-Appeal Nos. 34/2009(H-III)ST, dated 31.07.2009 and 35/2009(H-III)ST, dated 31.07.2009. Since both the appeals arise common issue, they are being disposed of by a common order.

2. These appeals are filed by Revenue against the Orders-in-Appeal on the ground that the first appellate authority has erred in holding that the

respondents herein are not taxable under the category of Cargo Handling Service for the period 1.10.2002 to 30.09.2007. It was the case of the Revenue in the show cause notice and adjudicated by the adjudicating authority that the respondent being a labour contractor undertakes various miscellaneous works in the factory premises of ITC Limited, Bhadrachalam like collecting, unloading and stacking of waste paper & pulp, collection/loading/weighment at company's weighbridge, unloading of sheet pulp from generation point, loading and transportation from picking point, handling of indigenous and imported waste etc., which definitely falls under the category of cargo handling service, while disposing appeals, first appellate authority has set aside the adjudication orders.

3. Ld. DR arguing the case submits that the Order-in-Appeal passed by the first appellate authority is not correct as the activities undertaken by the appellant herein would come under the definition of cargo handling service as there is no dispute as to the fact that the activities undertaken by the respondent in the factory premises of ITC Limited is under a contract. It is his submission that the CBEC vide circular No. B11/1/2002-TRU, dated 01.08.2002 in respect of cargo handling service, had clarified that post mining activities are chargeable to service tax under the head of cargo handling service and the analogy of the said circular will apply in this case also after taking us to the terms and conditions of the agreement entered into by the respondent with ITC Limited. It is his submission that the service provider is not only supplying manpower and handling equipment

but is also responsible for proper execution of the work like loading and unloading etc. and it is his further submission that the activity undertaken by the appellant has to be held as cargo handling service as the activities are nothing but handling of cargo. He relied upon the decision of the Tribunal in the case of Gajanand Agarwal vs. CCE, Bhubaneswar [2009(13) S.T.R. 138 (Tri.-Kolkata)] and the unreported judgment of Hon'ble High Court of Allahabad in the writ petition filed by M/s Star Paper Mills Limited and decided on 07.01.2004 for the submission that the activities undertaken by the appellant would fall under cargo handling service.

4. Ld. Counsel submits that the first appellate authority was correct in his findings and submits that the activities undertaken by the respondent attracts different rates on the basis of weight handling or on per head basis; raw materials and semi finished goods cannot be treated as cargo which are made into cargo for the purpose of transportation outside the factory as covered under Cargo handling Service, is a law settled by the following decisions:

a) Signode India Ltd. vs. CCE [2017(50) S.T.R. 3 (S.C)]
b) SN Uppar & Co. vs. CCE, Belgaum [2008(11) S.T.R. 34 (Tri.-Bang.) as approved by the Apex Court as reported at [2016(45) S.T.R J215 (SC)].

He also relied upon the decision of the Tribunal in the case of Purushottam Lal vs. CCE, Jalandar [2015(38)S.T.R. 161 (Tri.-Del.)] wherein identical issue of lifting, stacking and loading of sugar bags within the factory premises was not considered as cargo handling service. He further submits that in the case of CCE vs. Manoj Kumar [2015(40)S.T.R 35 (All.), it has been held by Hon'ble High Court of Allahabad that any activities/services which are undertaken in the factory premises do not fall under the category of cargo handling service. He submits that the same view has been reiterated by Hon'ble High court of Jharkhand in the case of CCE, Ranchi vs. Modi Construction Company [2011(23)S.T.R 6 (Jhar.)].

5. We have considered the submissions made by both sides and perused the records.

6. Essentially, the dispute is regarding taxability of the amounts received by the respondent for the services rendered within the factory premises of ITC Limited. The services which are rendered by the appellant are not disputed and it is also not disputed that the said services are rendered within the factory premises. The first appellate authority in the impugned order has relied upon the decision of the Tribunal in the case of SN Uppar & Co. and few other decisions on similar issue to hold that the Order-in-Original confirming the demands raised is unsustainable. We concur with the views and the findings of the first appellate authority. The first appellate authority has correctly followed the law laid down by various decisions of

the Tribunal and has also held that the demand is hit by limitation. We find that there is a recent judgment of the Tribunal in the case of Purushottam Lal vs. CCE, Jalandar (supra) and of the Hon'ble High Court of Allahabad in the case of CCE vs. Manoj Kumar (supra) and Hon'ble High Court of Jharkhand in the case of CCE, Ranchi vs. Modi Construction Company (supra) have specifically held that the services of loading and unloading and stacking within the factory premises would not fall under the category of cargo handling service. The issue involved in this case is now settled by various decisions and the first appellate authority was correct in following the law laid down by various judgments.

7. In view of the foregoing, we find that the impugned orders are correct and legal and does not require any interference.

8. Impugned orders are upheld and appeals stand rejected.

(Operative portion of the order pronounced in open court on conclusion of hearing)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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