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

Appeal No.	Appellant	Respondent	Impugned Order No. & Date
ST/655/2009	Visakhapatnam Dock Labour Board	CCE, C&ST, Visakhapatnam-I	O-I-A No. 34/2009(V-I)ST, dated 17.3.2009 passed by CCE,C&ST, Visakhapatnam
ST/855/2009	Visakhapatnam Dock Labour Board	CCE, C&ST, Visakhapatnam-I	O-I-A No. 74/2009(V-I)ST, dated 31.7.2009 passed by CCE,C&ST, Visakhapatnam

Appearance
Shri D.V. Anjaneyulu, CA for the Appellant.
Shri Guna Ranjan, Superintendent /AR 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.

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

1. These two appeals are directed against Orders-in-Appeal Nos. 34/2009(V-I)ST, dated 17.3.2009 and 74/2009(V-I)ST, dated 31.7.2009.

2. Heard both sides and perused the records.

3. On perusal of records, it transpires that the issue involved in this case is regarding taxability of an amount which is called as Fringe Benefit Tax (FBT) and Productivity Linked Reward (PLR) fund collected by the appellants from their clients. It was the case of the Revenue in the show cause notice that the said FBT and PLR are nothing but the amounts received from their clients for their employees while it is the case of the appellant that they are governed by the Ministry of Shipping, Government of India, Road Transport & Highways and hence they are collecting these amounts from their clients and paying it to their employees.

4. The appellants herein had submitted before the lower authorities that they are discharging the service tax on other amounts received for the services but in the case of FBR and PLR, they are mentioning the same as component separately and agreed to produce copies of these invoices. Adjudicating authority has specifically recorded that the services pertaining to the period concerned were not produced but produced for the subsequent period and held against appellant. The first appellate authority did not make any observations/findings on these claims. Ld. Counsel submits that they will be in a position to justify the entire case before the adjudicating authority and are in a position to produce the documents on which they are relying upon to justify their defence. It is seen that the entire issue is fact based and needs appreciation of the documents on which the tax liability is sought to be charged upon the appellant herein. In our view this exercise of doing so would be better left to the adjudicating authority.

5. In view of the foregoing, without expressing any opinion on the merits of the case, leaving all issues open, the impugned orders are set aside and the matters are remitted back to the adjudicating authority to reconsider the issue afresh after following the principles of natural justice. Appellants are at liberty to produce the documents on which they wish to rely upon.

6. Appeals stand disposed of by way of remand to the adjudicating authority.

(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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