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

APPEAL No. ST/1383/2010
(Arising out of Order-in-Appeal No. 08/2010 (G) ST, dated 21.04.2010 passed by CCCE, Guntur)

COROMANDEL AGRO PRODUCTS & OILS LTD .. APPELLANT

Vs.

CCCE&ST, Guntur .. RESPONDENT

Appearance
Shri Y. Srinivasa Reddy, Advocate for the Appellant.

Shri P.S. Reddy, Asst. Commissioner/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: 26.09.2018
Date of Decision: 26.09.2018

FINAL ORDER No.A/31259/2018

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

1. This appeal is directed against Order-in-Appeal No. 08/2010 (G) ST, dated 21.04.2010.

2. Heard both sides and perused the records.

3. On perusal of records, it transpires that the issue is regarding service tax liability on the appellant herein under reverse charge mechanism for the amount paid as transportation/freight charges to individual transporters during the period 01.05.2008 to 30.11.2008. It is the case of Revenue that the said amount is taxable under GTA service while the appellant contested the same stating that the amounts involved were paid to individual and private truck owners which are not coming under GTA services. Lower authorities have taken a view that tax liability arises.

4. Ld. Counsel was correct in bringing to the notice of the Bench that identical issue is decided by the Larger Bench of the Tribunal headed by President in the case of Nandganj Sihori Sugar Co. Ltd. vs. CCE, Lucknow [2014(34)S.T.R. 850 (Tri.-Del.)] and following the decision of the Tribunal in the case of CCE&C, Guntur vs. Kanaka Durga Agro Oil Products Pvt. Ltd. [2009 (150) S.T.R 399 (Tri.-Bang.)], Lakshminarayana Mining Co. vs. CST, Bangalore [2009(16)S.T.R. 691 (Tri.-Bang.)]. We also find strong force on the contentions made by Ld. Counsel that identical issue of the appellant has attained finality in the hands of the Tribunal. It is noticed that the first appellate authority by an Order-in-Appeal No. 14/2011 (G) ST. Dt/ 11.03.2011 for the subsequent period i.e. December 2008 to March 2009, held that service tax liability does not arise on the amount paid to the individual truck owners and private truck owners and he noticed that the said Order-in-Appeal was carried before the Tribunal in appeal No. ST/1684/2011. The said appeal No. ST/1684/2011 was dismissed as per

the litigation policy of Govt. of India. Subsequently, Revenue moved an application for rectification of mistake in appeal No. ST/1684/2011 stating that the dismissal of appeal under new litigation policy is incorrect as the issue involved was classification and taxability of the services rendered by individual truck owners. The Tribunal in the Final Order No. A/30217/2016 declined to entertain the application for rectification of mistake and specifically recorded that the issue is squarely covered by the decision of Kanakadurga Oil Products Pvt. Ltd. and Shanti Fortune (I) Pvt. Ltd. We also notice that this Bench in the case of Sai Sudhir Infrastructures Limited in Final Order No. A/30585/2018 on similar issue has held that service tax liability under reverse charge mechanism does not arise for the freight charges paid to individual truck owners.

5. Respectfully following the ratios of various decisions as stated herein above, we hold that the impugned order is unsustainable and liable to be set aside and we do so.

6. Impugned order is set aside and appeal is allowed.

(Dictated and pronounced in open Court)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

vrg