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

Appeal No. ST/157/2010

(Arising out of Order-in-Appeal No. 18/2009 (T) ST dated 27.07.2009 passed by Commissioner of Customs & Central Excise (Appeals), Guntur)

Uma Transport Corporation **.....Appellant(s)**

Vs.

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

Appearance
On merit for the Appellant.
Shri AVLN Chary, Superintendent (AR) for the Respondent.

Coram:
Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)
Hon'ble Mr. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 04/10/2018
Date of Decision: 04/10/2018

FINAL ORDER No. A/31326/2018

[Order per: M.V. Ravindran]

This appeal is directed against Order-in-Appeal No. 18/2009 (T) ST dated 27.07.2009.

2. None appeared on behalf of the appellant. The matter was adjourned last time on the request of advocate on record. Today also advocate on record filed a letter to consider grounds of appeal mentioned in the appeal memorandum and matter may be decided on merits.

3. We have heard the Learned Departmental Representative and perused the grounds of appeal.

4. On perusal of records, it transpires that the issue is regarding the taxability of the services rendered by the appellant during the period 2003-2004, 2006-2007 whether would fall under the category of Storage & Warehousing, Cargo Handling services and whether extended period can be invoked or otherwise.

5. Undisputedly, appellant had rendered the services during the period in question and had obtained the service tax registration on 01.06.2005. Despite getting registered with the Department, they did not file any return nor pay service tax for the services so rendered. A show cause notice was issued by invoking the extended period.

6. The main argument of the appellant in the grounds of appeal that the demand is hit by limitation as they had declared the amounts received by them in the income tax returns and hence cannot be held that they had intention to evade the tax. On merits there is no argument of the appellant and another argument put forth is that the lower authorities have could considered the binding judgments.

7. We find no merits in the arguments of the appellant assessee. In our view, the factual findings of the Adjudicating Authority as well as the First Appellate Authority are very clear and we reproduce the findings of the First Appellate Authority on this point in paragraph No. 7 & 8:

> **"7.** *It is observed that the adjudicating authority confirmed the demand in respect of "Storage & Warehousing Service" holding that the argument of the appellant that, wrong categorization of the services, is a matter of convenience but not based on logic and due diligence. I find that adjudicating authority has properly analyzed the issue. It is the contention of the appellants that two columns, 2 and 3 in the Annexure-I to the show cause notice shows that column under Sl. No. 2 as the amount collected under Go down Rent and the column no. 3 as amount collected for providing Storage and warehousing Service" only. Moreover, it is noticed that the appellants have got themselves registered as the service provider of*

"Storage & warehousing service" only but not as Rental Agency and the Service of Renting of immovable property came under the Service Tax net w.e.f 01.06.2007 only. In such circumstances it cannot be held that the amount collected under column 2 of the Annexure-1 relates to go down Rent only. It is the amount collected under Go down Rent A/c for Storage & Warehousing services.

8. *Further, the appellants argues that the service of arranging laborers to place the fertilizer bags in the go down and load the said bags into trucks as per the buyers request does not covered by "Cargo Handling Service", however, the same merits classification under "Man Power Recruitment Service". In this regard, the appellants relied on the case law, in the case of C.K. Krishna Kumar Vs. Commissioner. The adjudicating authority not applied the said case law as it is only an interim order and not attained finality and also for the reason that the appellants were not simply supplying the labor occasionally to their clients. Further he distinguished both the services and finds merit in classifying the impugned services rendered by the appellants as "Cargo Handling Service" only. As the definition for "Man Power Recruitment Service" gives stress on "Recruitment or supply of Manpower" but not any other service, I find that the services rendered by the appellant merit classification of said services under "Cargo Handling Service". Moreover, in the present case the appellants were asked to provide the service of "Movement of Cargo".*

We find further that the First Appellate Authority in paragraph No. 9 has extended the applicable benefit of cum tax value on the amounts which were shown has realized. We find that the impugned order is well reasoned one and has correctly addressed all the points raised by the appellant in the grounds of appeal before him which are again raised before Tribunal. Accordingly, we do not find any reason to interfere in the impugned order. The impugned order is upheld and the appeal stands rejected.

(Order pronounced and dictated in open court)

P. VENKATA SUBBA RAO
MEMBER (TECHNICAL)

M.V. RAVINDRAN
MEMBER (JUDICIAL)

Lakshmi….