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

Appeal No. ST/784 & 878/2011

(Arising out of Order-in-Original No.25/2010 (S.Tax) (DENOVO) dated 27.11.2010 Order-in-Original No.28/2010 (S.Tax) (DENOVO) dated 21.12.2010 passed by CC, CE & ST, Tirupati)

K. Damodar Reddy & Co. & ….. Appellant(s)

K. Damodar Reddy

Vs.

CCE, C & ST, Tirupati ….. Respondent(s)

Appearance

Shri Ch. Venkateswara Rao, Advocate 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: 26.02.2019
Date of Decision: 26.02.2019

FINAL ORDER No. A/______________

[Order per: M.V. Ravindran]

1. These two appeals are directed against Orders-in-Original No.25/2010 (S.Tax) (DENOVO) dated 27.11.2010 Order-in-Original No.28/2010 (S.Tax) (DENOVO) dated 21.12.2010 dated.

2. Heard both sides and perused the records.

3. Based upon the investigation carried out, two show cause notices were issued to appellant for demand of service tax under the category of Manpower recruitment and supply agency services on the allegations that appellant herein had been loading cement bags into the trucks, cement into the tankers by employing their own personnel which is as good as rendering services of manpower supply. During the relevant period the departmental authorities also collected date of the amounts paid by M/s Zuari Cements Ltd., to appellant. Appellants contested the show cause notice on the ground that they are not engaged in rendering services under the category of manpower recruitment and supply agency services. The adjudicating authority after following due process of law confirmed the demands raised along with interest and also imposed penalties. Aggrieved by such an order dated 14.03.2008, appellant preferred an appeal before the Tribunal. Tribunal by Final Order No. 1462/09 dated 07.09.2009 set aside the impugned order dated 14.03.2008 and remanded the matter back to the adjudicating authority for reconsideration. The impugned order before us in these appeals is on bonafide proceedings.

4. We find from the impugned order that the adjudicating authority has religiously reproduced our remand order and come to a conclusion that appellant herein is rendering the services under the category of Cargo Handling Services during the period in question. Coming to said conclusion he confirmed the demands raised and along with interest appropriated the amount paid by the appellant and imposed penalties on

the appellant. It is to be noticed that show cause notices issued to appellant, seeks reasons from the appellant as to why the demand of service tax from them should not be under the category of manpower recruitment or supply agency services. In the entire show cause notice, there is no whisper as to classification of the services under Cargo Handling Services. Appellant herein had replied to the show cause notice allegation of how the services are not covered under manpower recruitment or supply agency services under the category of Cargo Handling Services. We find that the entire Orders-in-Original in both the cases of the appellant is travelling beyond the allegations made in the show cause notices. It is well settled law that adjudicating authority cannot pass an order beyond the allegations made in the show cause notices. On this ground itself both the Orders-in-Originals are liable to be set aside and we do so.

5. Accordingly, the impugned orders are set aside and the appeals are allowed.

(Operative Part of this order was pronounced in the Open Court on conclusion of hearing)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

Jaya…