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

Appeal No. ST/445/2011

(Arising out of Order-in-Original No. 28/2010 –S. Tax dated 18.11.2010 passed by Commissioner of Customs, Central Excise & Service Tax, Guntur)

M/s Green Leaf Tobacco Threshers Ltd., ...Appellant(s)

Vs.

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

Appearance
Shri Ch. Venkateswara Rao, Advocate for the Appellant.
Shri Arun Kumar, Joint Commissioner (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: 21/03/2019
Date of Decision: 21/03/2019

FINAL ORDER No. A/30416/2019

[Order per: M.V. Ravindran]

This appeal is directed against Order-in-Original No. 28/2010 –S. Tax dated 18.11.2010.

2. Heard both sides and perused the records.

3. On perusal of records, we find that the issue involved in this appeal is regarding demand of service tax from the appellant under the category of Business Auxiliary Services for rendering of services in relation to threshing and redrying of tobacco leaves, as also small demand of Rs. 34,000/- on GTA Services. The Adjudicating Authority has upheld the both the demands so raised rejecting the argument of the appellant with threshing and redrying of tobacco leaves is in relation to agriculture.

4. On consideration of submissions made by both sides, we find that on identical issue was decided by this bench in the case of *M.L Agro Products Ltd.,* [2017 (6) G.S.T.L. 94 (Tri.-Hyd.)] wherein, it was held that service tax liability on threshing and redrying of tobacco leaves does not arise under the category of Business Auxiliary Services. The said judgment of the Tribunal was carried in Civil Appeal by the revenue before the Apex Court and Apex Court dismissed the said Civil Appeal, after condoning the delay. Since identical issue is now decided by the Apex Court by upholding the order of the Tribunal in the case of *M.L Agro Products Ltd.*, we find that the impugned order on this point is unsustainable and liable to be set aside and we do so. The appeal of the appellant on the issue of tax liability under the category of Business Auxiliary Services stands allowed.

5. As regards service tax liability on GTA services, we find that the said liability arises and accordingly we uphold the demand of Rs. 34,000/- along with interest on GTA services, but noticing that the appellant could have entertained the bonafide belief that the tax

liability may not arise on GTA services, by invoking the provisions of Section 80 of the Finance Act, 1994, we set aside the penalties imposed on appellant.

6. Accordingly, the appeal stands disposed of as indicated herein above.

(Order pronounced & dictated in open court)

P. VENKATA SUBBA RAO
MEMBER (TECHNICAL)

M.V. RAVINDRAN
MEMBER (JUDICIAL)

Lakshmi….