CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>HYDERABAD</u>

REGIONAL BENCH – COURT NO – I

Service Tax Appeal No. 212 of 2009

(Arising out of Order-in-appeal No. 32/2008 (V-II)ST dated 29.12.2008 passed by Commissioner of Customs & Central Excise (Appeals) Visakhapatnam)

M/s THE PROFESSIONAL COURIERS **Appellant**
Beside Hero Honda Showroom,
Main Road,
Kakinada -533 001

VERSUS

Commissioner of Customs & Central Excise **Respondent**
Commissionerate-II
Central Excise Building,
Port Area,
Visakhapatnam

<u>Appearance</u>
None for the Appellant.
Shri C. Mallikarjuna Reddy, Authorised Representative for the Respondent.

CORAM: HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No./30460/2019

DATE OF HEARING: 09.04.2019
DATE OF DECISION: 09.04.2019

[ORDER PER: ANIL CHOUDHARY)

When the case is called it is seen that the counsel for the appellant has filed an adjournment petition. The appeal is of the year 2009. The adjournment petition is filed on the ground that the counsel is out of station for a week. The adjournment petition is rejected and the appeal is taken up for hearing.

2. Heard learned A.R. for the Revenue and perused the statement of facts and grounds of appeal.

3. The brief facts are that the appellant was providing courier service. They were registered with the department and after paying tax for the period November 1996 to September 1998, the appellant subsequently stopped paying service tax. In the course of enquiry and investigation, Revenue could get only three months current records from the premises of the appellant. When asked to produce the records, appellant informed that due to paucity of space they are not maintaining any records beyond three months and they disposed of their transaction records to the wastepaper buyer. In these circumstances, Revenue obtained information of service provided from two of his service receivers namely M/s Nagarjuna Fertilizers and Chemicals Ltd (NFCL) and Godavari Fertilizers and Chemicals Ltd., (GFCL) and according estimated turn-over for the period April 1997 to September 1998, demanded service tax of Rs 82,537/-. The Show-cause notice was adjudicated on contest wherein the appellant claimed that the work done by them for NFCL and GFCL, with respect to deployment of special messenger who would collect some machine/spares which needs repairs or replacement and such messenger deputed by them would go to the shops or centres designated by the service receiver and after the repair is done to deliver the said part back to the service receiver and these services are not in the nature of courier services. The adjudicating authority confirmed the proposed demand by giving credit of Rs 7,353/- which was already deposited by challan and thus confirmed balance demand of Rs 75,184/-. Further penalty of Rs 100/- per day was imposed under Section

76 and further penalty of Rs 500/- was imposed under Section 77 of the Finance Act.

4. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals) who was pleased to uphold the order.

5. This is the second round of litigation. Earlier this matter came before this Tribunal. This Tribunal allowed the appeal by way of remand to the Commissioner (Appeals) taking notice that in the date of order date i.e 30/05/2006 is struck off and corrected as 30/01/2006, without any attestation. Further taking notice that Dr H.B. Pradhan was not the Commissioner (appeals) at Visakhapatnam during the relevant time, as new officer by name P. Nageswar Rao assumed charge. Pursuant to remand, in the second round again after hearing the appellant, the order-in-original was confirmed by the Commissioner (Appeals). Being aggrieved, the appellant is in appeal before this Tribunal. The only ground taken before this Tribunal is that the work the appellant is doing for NFCL and GFCL, is classifiable under the head GTA Service and not under courier service in respect of courier services. The argument is that courier service is the door-to-door transportation of time sensitive documents but in the instant case the appellants were receiving certain machinery/components for repair or delivery and return of such machinery/components after the repair at the respective centre as per the direction of their client.

6. We find that courier service is defined in the Finance Act as follows:-

> "Courier agency means a commercial concern engaged in the door to door transportation of time sensitive documents, goods or articles

> utilising the services of a person either directly or indirectly, to carry or accompany said documents goods or articles".

The appellant has carried goods/parts/components for the service receiver. Accordingly, we hold that the service has been rightly classified under the courier agency service. Accordingly, we find no merit in the appeal and the same is dismissed.

(dictated and pronounced in open court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

Neela reddy