IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal No. ST/99/10

(Arising out of Order-in-Original No.39/Commr/ST/Kol/2009-10 dated 08.01.2010 passed by the Commissioner of Service Tax, Kolkata.)

Commissioner of Service Tax, Kolkata
Applicant (s)/Appellant (s)

Vs.

M/s.Traxpo Enterprises Pvt.Ltd.
Respondent (s)

Appearance:
Shri K.Choudhary, Supdt.(AR) for the Revenue
NONE for the Respondent (s)

CORAM:
HON'BLE SHRI JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE SHRI C.J.MATHEW, MEMBER(TECHNICAL)

Date of Hearing/Decision :- 20.03.2018

ORDER NO.FO/75445/2018

Per Shri Justice (Dr.) Satish Chandra.

Present appeal is filed by the department against Order-in-Original No.39/Commr/ST/Kol/2009-10 dated 08.01.2010.

2. Briefly stated the facts of the case are that the appellant is the importer of the chemical in liquid form from overseas manufacturers and suppliers and market the same in India and sales outside India. For selling the said chemicals in the domestic market the temporary storage has been provided till the transfer to the customers. The appellant is also selling chemicals for the future with free storage

period of 60-90 days which vary from customers to customers. Beyond this period if the goods are not uplifted then the appellant charge the money as terminal charges/storage charges. The department brought these charges to the clutches of the Service Tax. But the Commissioner by the impugned order observed that these charges are not subject to Service Tax. Being aggrieved the department has filed the present appeal.

3. With this background we have heard Shri K.Choudhary, representative for the department. None appeared for the respondent.

4. After hearing representative for the department and on perusal of record, it appears that as per the trade practice for future sale the goods are stored for 60-90 days in general which vary from customer to customer as per the prevalent practice of the market. The Commissioner has observed that the storage charges and warehousing services are not the business of the appellant. The appellant is engaged in import and sale of the chemical for which storage is required.

5. Hon'ble Supreme Court in such type of cases has observed that this can be considered as demurrage charges and not subject to Service Tax. One such case is Sun Export Corpn. V. Board of Trustees of the Port of Bombay – AIR 1998 SC 92.

6. In the instant case, the party has given detail of their activities and from which it appears that they are engaged in the trading of the chemicals and not in providing the services for the storage, loading and unloading. The Commissioner in his order observed that assessee has not provided any service in the category of storage or warehouse

service so no Service Tax liability can be fastened on them. He discussed a number of case laws to support his case.

7. When it is so then following the ratio laid down by the Hon'ble Supreme Court's case (supra) we find no merit in the appeal filed by the Department and the same is dismissed.

(Dictated and pronounced in the open court.)

Sd/
(C.J.Mathew)
Member(Technical)

sd/
(Justice Dr. Satish Chandra)
President

sm