IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

Appeal No.ST/06/2009

(Arising out of Order-in-Original No.CCE/BBSR-II/S.Tax/No.12-Commissioner/2008 dated 29.09.2008 passed by the Commissioner of Central Excise, Customs & Service Tax, BBSR-II)

M/s Gajanand Agarwal …APPELLANT(S)

VERSUS

Commissioner of Central Excise, Customs & Service Tax, BBSR-II

…RESPONDENT (S)

APPEARANCE
Shri Kartik Kurmi, Advocate for the Appellant
Shri S.Mukhopadhyay, Suptd.(AR) for the Respondent.

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER
Hon'ble SHRI V.Padmanabhan, Member (Technical)

Date of Hearing/Decision : 06.12.2018

ORDER NO.FO/77080/2018

Per Bench :

The present appeal has been filed by the appellant against the Order-in-Original No.CCE/BBSR-II/S.Tax/No.12-Commissioner/2008 dated 29.09.2008. The appellant is engaged in various mining related activities in the coal mines in different areas of Mahanadi Coal Fields Ltd. During the course of scrutiny of the balance sheet of the appellant it was observed that the appellant has recovered amounts under the head "Details of transporting & loading charges received". Department was of the view that the activities of loading and transporting of coal will be liable to payment of service tax under the category of 'Cargo Handling Service'. Accordingly, show cause notice dated 12.10.2007 was issued to the appellant proposing levy of service tax under the category of Cargo Handling Service falling under Section 65(23) read with Section 65(105)(zr) of the Finance Act, 1994. The dispute covered the periods from 16.08.2002 to 31.03.2005. The Adjudicating Authority confirmed the payment of service tax as proposed in the show cause notice alongwith interest and penalty. The same is under challenge in the present appeal.

2. The appellant is represented by Shri Kartik Kurmi, Advocate and Revenue is represented by Shri S.Mukhopadhyay, Suptd.(AR).

3. Ld. Advocate for the appellant drew our attention to the various work orders executed by the appellant for Mahanadi Coal Fields Ltd.

i) He emphasized the fact that these work orders were executed for "Transportation of crushed coal from crushed coal stock to Railway Siding". He submitted that such movement of coal was carried out by the appellant only within the coal mines and the activity did not involve loading or unloading of the coal. Accordingly, he placed his argument that the activity cannot fall within the category of Cargo Handling Service.

ii) He also relied on the case of Sainik Mining & Allied Services Ltd. vs. Commr. Of C.Ex., Cus. & S.T., BBSR [2008(9) STR 531 (Tri.-Kolkata)]. In this case the Tribunal has taken the view that the mechanical transfer of coal from coal face to tippers and subsequent transportation within mining area not covered under Cargo Handling Service.

iii) He also added that a separate case was booked against the appellant which involved loading of the coal into trucks and railway wagons for onward transportation. In that case the Tribunal has held that the activity will be covered by the Cargo Handling Service. He differentiated such case with the submission that the work orders in the present case were only for transportation of the coal within the mines.

iv) Finally he submitted that the impugned order may be set aside.

4. Ld. DR justified the impugned order.

5. After hearing both sides and perusal of records we note that the dispute is pertaining to the amounts recorded in the balance sheet under the head of Transporting and Loading charges received. However, on perusal of the relevant work orders indicate that the activity carried out by the appellant during the relevant period were only for transportation of coal within mining areas. Tribunal has already examined the identical facts in the case of Sainik Mining & Allied Services Ltd. vs. Commr. Of C.Ex., Cus. & S.T., BBSR (supra). The Tribunal held that such activity will not fall under Cargo Handling Service. Relevant portion of the Tribunal's order is reproduced below:

> *"**8.** We find that the activity undertaken by both the appellants for mechanical transfer of coal from the coal face to tippers and subsequent transportation of the coal within the mining area, does not come under the purview of cargo handing service. The dominant activities undertaken by the appellants under the contract in question are primarily the movement of coal within mining area and transfer of coal from the coal face to the tippers, if at all, includes loading and unloading which are merely incidental. Cargo in commercial parlance has a definite connotation which is carried as freight in a ship, plane, rail or truck and the activities undertaken by the appellants in terms of the contracts on behalf of M/s. MCL to move coal within mining area do not fall in the category of cargo handling service. Moreover, the activities undertaken are principally the transportation of coal within mining area and hence, the gross amounts received for the same cannot be taxed under the category of cargo handling service. We have, therefore, no hesitation in our mind to hold that the definition of cargo handling service under the Finance Act, 1994, does not include the kind of activities undertaken by the appellants and hence the same are not chargeable to service tax. We also find that there was no suppression or mis-statement by the appellants regarding the nature of activities undertaken by the appellants and hence the imposition of penalty on them is not at all justified.*

Accordingly, we set aside the impugned order and allow both the appeals with consequential benefit to the appellants."

6. By following the above decision, we set aside the impugned order and allow the appeal.

(Dictated and Pronounced in the Open Court)

S/d. S/d.

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

(V.Padmanabhan)
MEMBER (TECHNICAL)

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