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

S.T.Appeal No.111/08

(Arising out of Order-in-Appeal No.04/ST/B-I/2008 dated 26.03.2008 passed by the Commissioner (Appeals) of Central Excise, Cus. & Service Tax, Bhubaneswar)

M/s Baba Lingaraj Enterprises

Applicant (s)/Appellant (s)

Vs.

CCEx, Cus. & S.Tax, BBSR I

Respondent (s)

Appearance:

Shri C. R. Das, Advocate for the Appellants(s)
Shri H. S.Abedin, Asstt.Commr. (AR) for the Revenue

CORAM:

HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI V. PADMANABHAN, MEMBER (TECHNICAL)

Date of Hearing : 15.11.2018
Date of Pronouncement : 07.01.2019

ORDER NO. FO/A/75025/2019

Per Bench :

The present appeal is against the Order-in-Appeal No. 04/ST/B-I/2008 dated 26.03.2008.

2. The appellant entered into an agreement dated 08.12.2000 with M/s SAIL for handling of iron and steel products at the later stockyard. In terms of the agreement, the appellant was required to undertake the following activities :

(i) take delivery of iron and steel consignments reaching through rail or road ;

(ii) transporting the received goods to the stockyard of SAIL ;

(iii) packing of the materials so received at the stockyard ;

(iv) loading of the materials for further transportation and delivery to the customers.

The agreement clarified that the total consideration payable to the appellant will be apportioned equally to the four components of the activities as above. The Department was of the view that the activity undertaken by the appellant for M/s SAIL in terms of the above agreement, will be liable for payment of service tax under the category of "Cargo Handling Service" which has been incorporated in the Finance Act, 1994 under Section 65(23) w.e.f.16.08.2002. The show-cause notice dated 23rd December, 2004 was issued covering the period September, 2002 to March, 2004. The original adjudicating authority as well as the first Appellate Authority confirmed and demanded the payment of service tax under the category of "Cargo Handling Service". Aggrieved to the decision of the order of the Commissioner (Appeals), the present appeal has been filed.

3. The appellant is represented by Shri C.R.Das, ld.Advocate and Revenue is represented by Shri H.S.Abedin, ld.D.R.

4. The ld.Advocate for the appellant assailed to the demand of the service tax on the Cargo Handling Services along with the following main points :

(i) He submitted that for the four components of works, the consideration received is to be apportioned equally. The activity of transportation of goods from railway siding to the stockyard as well as packing of the same are nowhere connected with the cargo handling and as such cannot be levied to service tax on the activity of cargo handling ;

(ii) He also submitted that similar activities have been held as not liable to service tax under cargo handing in the following decisions:

(a) Commr. of Central Excise, Indore Vs. Arvind Singh Lal Singh : 2017 (48) S.T.R. 63 (Tri.-Del.) ;

(b) I.A.Dhas Vs. Commr. of Central Excise, Raipur : 2012 (28) S.T.R. 630 (Tri.-Del.).

(iii) He also submitted that in any case, the demand is hit by time bar.

(iv) He also submitted that no penalty leviable against the appellant.

5. The ld.DR for the Revenue justified the impugned order. He referred to the various clauses of the agreement with M/s SAIL as well as the description of such clauses by both the authorities below. He emphasized the fact that all the activities carried out by the appellant are in connection with the handling of the iron and steel materials. He also referred to the definition of the "Cargo Handling Service" during the relevant period and submitted that the activities required are covered within the said definition. He also opposes plea of the limitation advanced by the appellant with a submission that the appellant has failed to take registration for such activities during the relevant time. They have also not paid the service tax due. The investigation undertaken by the Department reveals the duty liability. Accordingly, he submitted that the impugned order may merit and the same is to be upheld.

6. Heard both sides and perused the appeal records.

7. The definition of cargo handling services under Section 65(23) is as follows :

> *"Cargo handling service means loading, unloading, packing of cargo and includes cargo handling services provided for freight in special containers or for non-containerized freight, services provided by a container freight terminal or any other freight terminal, for all modes of transport and cargo handling services incidental to freight, but does not include Handling of export cargo or passenger baggage or mere transportation of goods."*

The above definition of "Cargo Handling Services" has been made effective by the Finance Act, 2008 w.e.f. 16.05.2008.

8. We observe that as per agreement, the appellant shall take delivery of all the consignments meant for the Company and stacked them in the stockyard in orderly manner and arrange for the delivery of the goods. The agreement outlined four measure operations viz. unloading, transportation (both external and internal) stacking and Ex-Yard delivery. On examination of the agreement, it is observed that the appellant for the purpose of transportation from the platform to the stockyard of the appellant has undertaken the job of loading and unloading operation. Transportation is the main activity for which loading and un-loading are performed. Transportation of the goods would incidentally include loading and unloading, but these activities cannot be covered by the definition of Cargo Handling Services. Board's Circular dated 01.08.2002, clarifies that mere transportation of goods is excluded from the purview of cargo handling services. We

also observe from the agreement that the appellant is in possession of Mobile Crane, Tractors and Flat Bed Tailors and Truck apart from the regular tools and tackles. SAIL also reserve its rights to provide Mobile Crane without operator on a rent of Rs.10,000/- per Unit. In the instant case, the payment was made for the performance of cranes, machinery and trucks for undertaking transportation of the goods by the above machinery and trucks, wherein loading and unloading is incidental activity. The payment received by the appellant is not under head of "Cargo Handling Services", but for Hire charges on such machineries. It is pertinent to note that the agreement was executed on 8th December, 2000, and the cargo handling service has been notified w.e.f. 16.08.2002. On similar facts and circumstances of the present case, the co-ordinate Bench of this Tribunal in the case of I.A.Dhas Vs. CCEx., Raipur reported in 2012 (28) STR 630 (Tri.-Del.), has held as under :

> "***10.****In any case we note that the appellants have a good case on merits. The activity of transportation and stacking was within the stockyard premises. Number of Tribunal's decisions have held that such activity cannot be held to be covered by the activity of 'cargo handling services'. Reference can be made to Tribunal's decision in the case of B.K. Thakkar reported in 2008 (9) S.T.R. 542 (Tri.-Kol.) as also Hon'ble Rajasthan High Court's decision in the case of S.B. Construction Co. reported in 2006 (4) S.T.R. 545 (Raj.) and in the case of Modi Construction Co. reported in 2011 (23) S.T.R. 6 (Jhar.). Ld. AR has also made a reference to Hon'ble Orissa High Court's decision in the case of Coal Carriers reported in 2011 (24) S.T.R. 395 which we find stands considered by the Tribunal in the case of Anupam Coal*

Carriers P. Ltd. & Others, Final Order Nos. ST/A/143-154/12-Cus., dated 23-2-2012."

In view of the above, we hold that the activity undertaken by the appellant is of transportation of goods and the activities of loading and un-loading are clearly incidental to the main activity of transportation of goods.

9. In view of the above discussions, the impugned order is set aside and the appeal filed by the appellant is allowed.

(Pronounced in the open court on 07.01.2019)

Sd/
(P.K.Choudhary)
Member (Judicial)

Sd/
(V.Padmanabhan)
Member (Technical)

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