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

Appeal No. ST/03/2009

Arising out of Order-in-Appeal No. 39/RAN/2008 dated 30.09.2008 passed by the Commissioner of Central Excise & Service Tax, (Appeals), Ranchi.

M/s Khetawat Coke Manufacturing Company

….Appellant(s)

Vs.
Commissioner of Central Excise & S. Tax, Ranchi

….Respondent(s)

Appearance:
Shri N. K. Agarwal, C. A. for the Appellant (s)
Shri H. S. Abedin, A. C. (AR) for the Respondent(s)

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

Date of Hearing/Decision: - 22.10.2018

Order No…FO/A/77311/2018

Per Bench:

Briefly stated, the facts of the case are that the appellant is a partnership firm engaged in the manufacture of coke and is governed by the provisions of the Factories Act, 1948. In the course of said manufacturing activities, the appellant has availed the services for transportation of goods by road on which the demand of service tax under reverse charge mechanism for an amount Rs.48,061/- was proposed vide Show Cause Notice dated 09.08.2006 for the period January 2005 to March 2006, alongwith penalties under Section 76 and 77 of the Finance Act, 1994 and applicable interest under Section 75.

The adjudicating authority confirmed the aforesaid demand with interest and penalty. In the appeal filed by the assessee, the Ld. Commissioner (Appeals) upheld the said demand by rejecting the appeal vide Order-in-Appeal dated 30.09.2008 against which the appellant has preferred the instant appeal.

2. Shri Narayan Kumar Agarwal, Ld.Counsel, appeared on behalf of the appellant. The main contention of the appellant is that the transportation services have been rendered by individual truck owners who are not the 'commercial concern' and therefore, the definition of 'taxable service' in their case is not fulfilled so as to attract levy of service tax on Goods Transport Agency services. The Ld. counsel also contested the demand on the ground of time bar and submitted that part of demand period from January 2005 to March 2005 is legally not sustainable and liable to be dropped. He also contested penalties imposed on the appellant.

On the other hand, the Ld. Departmental Representative contends that the transportation services are being rendered by individuals and therefore they cannot be said to be commercial concern is completely misplaced. In support of his submissions, he relies on the decision of the Hon'ble Madras High Court in CCE, Salem vs. K.M.B. Granites Pvt. Ltd. 2014 (35) STR 63 (Mad) wherein, it has been held that the term 'commercial concern' includes an individual operator or a proprietary concern as well and that the manufacturing assessee availing transportation services from the said individual or proprietary concern shall be liable to service tax under reverse charge mechanism.

3. Heard both sides and perused the appeal records.

4. We find force in the submissions made by the Ld. DR as also held by the Hon'ble Madras High Court (Supra) that transportation services rendered by individuals would also constitute commercial concern and therefore, the liability to pay service tax under goods transportation services legally sustains and is payable by appellant under the reverse charge mechanism. In so far as demand for the extended period of limitation is concerned, we find that there is no deliberate or positive evidence to prove that tax has been wilfully not paid with intent to evade payment of tax. But on account of interpretational issues, they entertained a bonafide view that service tax in their case is legally not payable for the reasons stated above. We, therefore, set aside the demand for the extended period from January 2005 to March 2005 out of the total period in dispute. In so far as penalty is concerned, we find that there has been a 'reasonable cause' for non payment of tax, and therefore, by virtue of the provisions of Section 80 of the Act, the entire penalty amount is liable to be set aside.

5. The appeal is disposed in the above terms.

(Dictated and pronounced in the open court.)

(V. PADMANABHAN)
MEMBER (TECHNICAL)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Tushar Kr.