CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 87854 of 2014

[Arising out of Order-in-Original No. 191/MAK(191) COMMR/RGD/ 2013-14 dated 27th March 2014 passed by the Commissioner of Central Excise, Customs & Service Tax, Raigad.]

Manjula B Patil … ***Appellant***
Vill: Jaskar, Post: JNPT, Uran, Dist: Raigad – 400 707

versus

Commissioner of Central Excise, Customs & Service Tax …***Respondent***
Raigad, 4th Floor, Kendriya Utpad Shulk Bhavan,
Plot No. 1, Sector 17, Khandeshwar,
Navi Mumbai – 410 206

APPEARANCE:

Shri Ajay Singh, Advocate for the appellant

Shri Autl Sharma, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR P DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NO: A/88576 / 2018

DATE OF HEARING: 01/05/2018
DATE OF DECISION: 01/05/2018

PER: C J MATHEW

This appeal arise from order-in-original no. 191/MAK(191)

COMMR/RGD/ 2013-14 dated 27th March 2014 of Commissioner of Central Excise, Customs & Service Tax, Raigad, in which service tax of ₹58,47,276/- has been confirmed.

2. We have heard Learned Counsel for the appellant and Learned Authorised Representative.

3. It is seen that the service tax and interest liability has been discharged in full which was, thereafter, appropriated in the impugned order. According to Learned Counsel, the appellant, a proprietary concern, had hired out their tractors/trailers to various clients in Jawaharlal Nehru Port Trust for transportation of containers within the terminal. He informs that the rate was fixed on the basis of the size of the container and the loading particulars.

4. It is seen from the record that the appellant appears to have been under the belief that this was tantamount to transport of goods by road and thus made the Jawaharlal Nehru Port Trust liable to tax. It was also submitted that all the contractors similarly deployed had also not been paying service tax and that one of such contractors was served with the show cause notice for discharge of tax liability as provider of 'port service'.

5. It is seen that the recipient of the service was Jawaharlal Nehru Port Trust and that, considering the activity, it was assumed by all the

contractors, similarly placed, that the tax liability devolved on reverse charge basis. It would also appear that the service tax authorities themselves were in doubt about the nature of the service rendered. It is also seen that the entire amount of service tax has been deposited along with interest.

6. In view of the above circumstances, the ingredients essential for invoking section 78 of Finance Act, 1994 would not be said to have been in existence. Accordingly, we modify the impugned order to the extent of setting aside he penalty.

7. The appeal is thus partly allowed.

(Pronounced in open court)

(C J Mathew)
Member (Technical)

(P Dinesha)
Member (Judicial)

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