(2013) 02 CESTAT CK 0001

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 634 Of 2012

?M/s Dholu Construction And Projects Ltd. APPELLANT

Vs

CCE, Jaipur-II RESPONDENT

Date of Decision : 17-02-2013

Acts Referred:

Citation : (2013) 02 CESTAT CK 0001

Hon'ble Judges : Dr. Satish Chandra, J;V. Padmanabhan, Technical Member

Bench : Division Bench

Advocate : Rachit Jain, Ranjan Khanna

Final Decision : Allowed

Judgement

1. The present appeal is directed against the order in original No. 03/2012/ST/JPR-II dated 27.01.2012 passed by the Commissioner of Central Excise, Jaipur.

2. The brief facts of the case are that the appellant is providing the mining services. The department has confirmed the demand against the appellant on the ground that while providing mining services they have procured diesel from the service recipient, which stand used by them for the purpose of Service Tax mining and, as such value for same has to be added in the assessable value. Being aggrieved, the appellant has filed the present appeal.

3. With this background, we heard Shri Rachit Jain, Id. Advocate for the appellant and Sh. Ranjan Khanna, Id. AR for the Revenue.

4. After hearing both the parties and on perusal of record, it appears that identical issue has come up before the Tribunal in the case of CCE, Jaipur-II vs. M/s Gandhar Rock (Final Orer No. 50807/2017 dated 08.02.2017) where the Tribunal observed that:

"5. After hearing both the parties and on perusal of record, it appears that the issue is squarely covered in favour of the appellant as per the ratio laid down in the case of CCE vs. M/s S. B. Construction Pvt. Ltd. - 2014-TIOL-1654-CESTAT-

DEL, where it was observed as under:

"5. The issue of includibility of the value of free supplies in the gross amount charged has been decided by the Larger Bench of CESTAT in the case of Bhayana Builders (P) Ltd. vs. Commissioner of Service Tax, Delhi -2013 (32) STR 49 (Tri. LB) = 2013-TIOL-1331-CESTAT-DEL-LB, wherein it has been unambiguously held that the value of free supplies by the service receiver to the service provider is not includible in the 'gross amount charged' by the service provider from the service receiver. In view of this, any further discussion on the issue involved is unnecessary and unwarranted. It is accordingly held that the demand confirmed on the basis that the value of diesel supplied free of cost by the service receiver is includible in the gross amount charged is unsustainable. When the demand itself is not sustainable, the question of any penalty simply does not arise".

Similar views were expressed in the following cases:

(i) Bhayana Builders (P) Ltd. vs. CCE, Raipur - 2013 (32) STR 49 (Tri. Del.)

(ii) Karamjeet Singh & Co. Ltd. vs. CCE, Raipur-2013 (32) STR 740 (Tri. Del.)

(iii) CCE, Pune-II vs. V. B. Atil Kanwade Associates - 2014-TIOL-26-CESTAT-MUM

(iv) Baliram Gopal Mahajan vs. CCE, Nashik - 2014 - TIOL-90-CESTAT-MUM Service Tax Appeal No. 634 of 2012 3

(v) S.V. Engineering Constructions vs. CCE, Guntur - Final Order No. 27220 /2013 dated 31.12.2013 - 2016 (46) STR 589(Tri. Hyd)

(vi) ATR Constructions Pvt. Ltd. vs. CCE, Ghaziabad - 2014-VIL-48-CESTAT-DEL-ST= 2014 (35) STR 92 (Tri. Del.).

6. In the light of the well settled legal position above, we find no reason to interfere with the impugned order. The same is hereby sustained along with reasons mentioned therein".

5. By following our earlier order (supra), we set-aside the impugned order and allow the appeal.

6. In the result, appeal filed by the appellant is allowed.

(Dictated and pronounced in the open Court).

