(2015) 08 CESTAT CK 0004

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Appeal No. 260 Of 2008

M/s. Maharaja Group And Associates APPELLANT

Vs

C.C.E., Raipur RESPONDENT

Date of Decision : 07-08-2015

Acts Referred:

Citation : (2015) 08 CESTAT CK 0004

Hon'ble Judges : R. K. Singh, Technical Member;Sulekha Beevi, C.S., J

Bench : Division Bench

Advocate : Akshat Srivastava, Govind Dixit

Final Decision : Dismissed

Judgement

1. Appeal has been filed against Order-in-Revision dated 01.02.2008 in terms of which service tax demand of Rs.10,77,469/- along with interest and

penalties was confirmed under the category of ""Cargo Handling Service"".

2. The appellant has contended that it only provided manpower to do certain assigned works and so fell under ""Manpower Recruitment or Supply

Service"" and not under ""Cargo Handling Service"". The cement bags of M/s. Grasim Industries were filled and transported and loaded to the trucks

through an automatic system and it was only providing manpower to ensure that the system worked satisfactorily and the bags did not go stray. The

appellant cited CESTAT judgements in the cases of M/s. J & J Enterprises Vs. CCE, Jaipur [2005-TIOL-520-CESTAT- DEL] in Appeal

No.ST/80/04-NB-SM.

3. Ld. Departmental Representative on the other hand argued that the terms of the agreement quoted in the primary adjudicating authority's order

(para 13.1), dated 30.03.2007 clearly brings out the nature of work done by the appellant and that it clearly falls within the scope of cargo handling

service [Section 65 (23) of the Finance Act, 1994]. Ld. Departmental Representative submits copy of CESTAT judgement in the case of J.K.

Transport Vs. CCE, Raipur-II [2006 (2) STR (Tri.-Del.)] and relied upon it to support the proposition that the proprietary firm is subject to service tax

and is different from service being rendered in individual capacity .

4. We have considered the contentions of both sides. Cargo Handling Service as defined in Section 65 (23) ibid is reproduced below:-

Cargo Handling Service as loading, unloading, packing or unpacking of cargo and includes cargo handling services provided for freight

in special container 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.

It is seen that as per their agreement quoted in para 13.1 of the primary adjudicating order dated 30.03.2007, the service rendered by the appellant

was as under:-

(e) The services rendered by the Contractor shall include all work assignments relating to packing of cement into bags & loading of these

packed bags into wagons and trucks as well as stacking of packed bags on platform/godown whenever required and other miscellaneous

work at packing plant area. Details of such work are as under:

(i) Operating of packing plant panels, attending to silo and close watch of available stock in silo for smooth operation of packing plant and

loading.

(ii) Feeding of branded bags to the packing machine including shifting and stacking empty bags near the packer operator as and when

required for packing.

(iii) To do test weighment of packed bags every hour round the clock, maintenance of the test weighment records and their submission to the

Company for verification on weekly basis.

(iv) Removing under/over weight cement bags as and when required.

(v) Collecting packed cement bags from chute/conveyor for stack/transporting packed cement bags to wagons/trucks, their stacking inside

wagons/trucks as directed, and diversion of packed cement bags.

(vi) Opening wagon doors, cleaning and closing doors after cement loading, providing the water proofing compound and pushing of

wagons as required place as when required.

It is evident that the service rendered by the appellant included works relating to packing cement into bags and loading of the packed bags into wagons

and trucks as well as stacking of packed bags on platform/godown whenever required and other miscellaneous works at packing plant area. These

services rendered also included collecting cement bags from conveyor for transporting to wagons/trucks, their stacking inside wagons/trucks as

directed and opening wagon doors, cleaning and closing doors after cement loading, etc. Thus, the service rendered is categorically covered under the

scope of 'Cargo Handling Service'. The CESTAT judgement in the case of J.J. Enterprises (supra) by the appellant was perused. In that case it is

clearly mentioned that the rate PMT was based on the payment of workers as per Cement Wage Board rate effective from 01.04.2003. Further, the

said judgement was delivered by a Single Member Bench. Ld. advocate for the appellant also made a reference to Board Circular No.FB/11/1/2012-

TRU, dated 01.08.2002 to defend the proposition that the activity of loading and unloading by individuals with the help of hired labourers would not

come under the purview ""Cargo Handling Service"".

While the Board circulars do not have any binding effect on CESTAT, in the present case, the service was not rendered by an individual but by a

proprietary concern and it has been held in the case of J.K. Transport Vs. CCE, Raipur-II (supra) that a proprietary firm rendering service does not

tantamount to rendition of service by an individual.

5. In view of the foregoing analysis, we do not find any infirmity in the impugned order. The appeal is dismissed.

