Cce Vs. Laxmi Trading Co.

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SooperKanoon Citation : sooperkanoon.com/47012

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-18-2008

Reported in : (2008)14STT313

Judge : S Jha, V T M.

Appellant : Cce

Respondent : Laxmi Trading Co.

Judgement :

1. This is an appeal filed by the Department. Heard the learned Departmental Representative. We have perused the written submissions filed on behalf of the respondent.

2. The respondent has undertaken a series of activities like mining, loading, transporting and unloading of limestone from the mines belonging to ACC on the basis of a contract entered into with them. The Commissioner (Appeals), after taking into account the evidence placed before him, came to a conclusion that the appellant raised bills for transportation of lime stone and the work of loading/unloading was incidental to the transportation of lime stone and accordingly dropped the demand of Rs. 36,799/- and set aside the penalty imposed by the original authority.

3. Learned Departmental Representative submits that out of Rs. 70.05 per MT received by the respondent Rs. 49.01 per MT relates to mining activities, Rs. 8/-

per MT is for loading of lime stone etc. He contends that inasmuch as Rs. 8/- per MT is clearly identified as attributable to loading charges, the same should be treated as charges received for the service of cargo handling. According to him, the definition of the term cargo handling includes the activities of loading, unloading, packing etc. of cargo.

4. We have carefully considered the submissions. At the outset, we note that the contract is for a series of activities starting from mining to delivery of the lime stone to the designated place of the client. The findings of the Commissioner (Appeals) that the loading is incidental to mining and transportation, appears reasonable. We feel that the respondent cannot be considered as an agent in the context of rendering the service of cargo handling. The cargo handling, even if taken as a separate service rendered, the same is rendered to the respondent himself in completing the entire work assigned to the respondent by the contract. In the circumstances, we do not find any reason to interfere with the decision of the Commissioner (Appeals).