CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

Regional Bench COURT-2

Service Tax Appeal No. 1762 of 2010

[Arising out of the Order-in-Appeal Nos. 13/2010-Service Tax dated 14.05.2010 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Cochin-18]

M/s. Kerala Ceramics Ltd.,
Kundara P.O.,
Kundara, Kollam,
Kerala **......Appellant**

VERSUS

Commissioner of Central Excise
T.C. No.26/334(1&2),
I.C.E Bhavan, Press Club Road, **.....Respondent**
Trivandrum
Kerala – 695001

Appearance:
Mr. Kurian Thomas, Advocate for the Appellant
Mr. Neeraj Kumar, Authorized Representative for Respondent

Coram:

Hon'ble Mr. P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

<u>FINAL ORDER No. 20374 of 2024</u>

Date Of Hearing: 17.12.2023
Date Of Decision: 02.05.2024

Per: Pullela Nageswara Rao

M/s. Kerala Ceramics Ltd., appellent is a public sector undertaking owned by the Government of Kerala engaged in the manufacture and sale of Ceramic commodities.

2. The brief facts of the case are the appellant had availed the Goods Transport Agency (GTA) services from 01.01.2005 to 28.02.2005 and from 01.03.2005 to 30.09.2005 and paid an amount of Rs.12,48,060/- to both the transporters as freight towards the above said services. Alleging that the appellant failed to pay service tax on the above said amount and alleging non-registration, non-filing of return under the category of GTA as prescribed under Finance Act, 1994, Show Cause Notice was issued and the adjudicating authority confirmed differential amount of service tax as Rs.56,476/- and Rs.1129/- as education cess along with interest. Aggrieved by the said order, appeal was filed before the appellate authority, who dismissed the appeal. Aggrieved by the impugned order, present appeal is filed.

3. During the hearing, Learned counsel for the appellant submits that demand against transportation by M/s. Devi Transports and M/s. Ayoob & Co. is unsustainable. Learned counsel for the appellant further submits that the appellant is entitled for the Benefit of Notification No.32/2004/ST dated 03.12.2004, during the period from January-2005 to February–2005 for GTA services received from M/s. Devi Transports, however it was denied on the ground that the appellant failed to produce certificate from M/s. Devi Transports. However, learned counsel for the appellant drew our attention to Annexure A certificate and submits that inspite of producing the said certificate before the appellate authority, he has not considered the same. As regards the demand for the service provided by transporter M/s. Ayoob & Co., the appellant had produced

certificate from the transporter regarding payment of service tax by them. However it is denied on the ground that it is the responsibility of the appellant to pay service tax. Learned counsel further submits that such demand amounts to double taxation and is unsustainable. Learned counsel also drew our attention to the Notification No.32/2004 dated 03.12.2004, decisions of the Hon'ble Tribunal in the matter of Paliwal Home Furnishing Vs. Commr. of Service Tax-2011(22)S.T.R.531(Tri.–Del.), Micromatic Grinding Technologies Ltd. Vs. C.C.E., Ghaziabad, 2012(25) S.T.R.355(Tri.–Del.), Indian Oil Corporation Ltd. Vs. Commissioner Of C. Ex., Patna-2013(29) S.T.R. 524 (Tri. – Kolkata), Agniplast Pvt. Ltd. Vs. Commissioner of Service Tax, Ahmedabad 2013(32) S.T.R. 628(Tri.– Ahmd.).

4. Learned AR reiterated the findings in the impugned order and submits that the demand is sustainable as per the findings given by the adjudication/appellate authority. Learned AR further submits that the claim of the appellant is that one of the transporter had paid some amount of service tax is not relevant, since the liability to pay the service tax is on the appellant and service tax paid by the agency cannot be adjusted against the tax liability of the appellant.

5. Heard both sides and persued the records.

6. We find that as per the letter furnished by M/s. Devi Transporters, they have certified that they have not availed any credit under Cenvat Credit Rules for providing the Goods Transport Service to the appellant and no deduction is claimed for cost of goods used in the rendering services. Similarly as

evidenced from letter issued by M/s. Ayoob & Co., they also have not availed any Cenvat Credit and no deduction was claimed for cost of goods used in rendering the services.

7. We find that the claim of the appellant is that once the transporter had paid some amount of service tax, it can be adjusted towards the tax liability of the appellant. The issue was considered by the Tribunal in the matter Navyug Alloys Pvt. Ltd. Vs.Commr. of C.Ex. & Cus., Vadodara-Ii 2009(13)S.T.R.421(Tri.-Ahmd.), where on similar facts and circumstances, the Tribunal held that once tax is already paid on the service, it isnot open to the department to confirm the same against the appellant. Similarly in the matter of M/s. Agniplast Pvt. Ltd., 2013 (32) S.T.R.628 (Tri.–Ahmd.) where it is held that:-

> *8. On perusal of the records, I find that there is no dispute that the amount of Service Tax liability which is contested before the Bench is in respect of the services rendered by M/s. Naranji Peraj Transport Co., M/s. Pathik Roadlines and Transport Corporation of India Ltd. On perusal of the certificates issued by these transport companies, as annexed page Nos. 36, 37 & 38, I find that these transporters have categorically stated that the Service Tax liability for the invoices raised on the appellant has been discharged by them and they had also mentioned their Service Tax registration number and PAN number in their certificates. As against such documentary evidences, the first appellate authority's findings as to no authentic documentary evidence has been produced, seems to be incorrect. Since the certificates clearly indicate the Service Tax registration number, the least that could have been expected from the Revenue, was to call for the details from the concerned jurisdictional Service Tax authorities. Having*

not done, the lower authorities cannot shift the entire blame on the appellants for having not produced any authentic documentary evidence.

9. I find that the decision of this Bench in the cases Navyug Alloys Pvt. Ltd. (supra), Mandev Tubes (supra) and Geeta Industries Pvt. Ltd. (supra) will squarely cover the issue in favour of the assessee. I also find that CBEC vide Circular dated 17-12-2004, specifically in para 5.7 stated that; "If Service Tax due on transportation of a consignment has been paid or is payable by a person liable to pay Service Tax, Service Tax should not be charged for the same amount from any other person, to avoid double taxation."

8. Considering the facts and circumstances of the case, and the decisions of the Tribunal the appeal is allowed with consequential relief, if any in accordance with law.

(Order Pronounced in Open court on 02.05.2024)

(P.A.Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

Ganesh