CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 58446 of 2013

[Arising out of Order-in-Appeal No. 209/ST/APPL/LDH/2012 dated 14.03.2023 passed by the Commissioner (Appeals), Chandigarh]

M/s IAL India Ltd ......**Appellant**
C-145, Focal Point, Ludhiana

VERSUS

Commissioner of Central Excise ......**Respondent**
House No. F Block, Rishi Nagar, Ludhiana, Punjab 141001

APPEARANCE:

Present for the Appellant: Shri Hari Radhakrishnan, Advocate

Present for the Respondent: Shri Harish Kapoor, Authorized Representative

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60221/2023

DATE OF HEARING: 25.07.2023
DATE OF DECISION: 25.07.2023

PER S. S. GARG

The present appeal is directed against the impugned order dated 14.03.2013 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has confirmed the demand under 'Steamer Agent Service' without quantifying the same.

2. Briefly the facts of the present case are that the appellant are providers of 'Steamer Agent Service' (Goods Transport Agency, Business Auxiliary Service, Business Support Service and Storage &

Warehousing Services) and they are registered under service tax and regularly filing the returns. A show cause notice dated 21.10.2010 demanding the service tax on the amount of Rs. 67,99,554/- received from M/s. Vardhaman Industries Ltd. Rajpura on the ground that the appellant has provided clearing and forwarding services to Vardhaman Industries, Rajpura. The appellant filed rely to the show cause notice stating that the amount paid by M/s. Vardhaman Industries was towards ocean freight, terminal handling charges and Bill of lading charges and that no service of clearing and forwarding was provided to M/s. Vardhaman Industries and hence the demand raised was not sustainable. It was further stated that there was no levy as per the Finance Act on ocean freight, terminal handling charges and Bill of lading charges. Further, the demand being for the year 2005-2006, is hit by limitation as the show cause notice was issued on 21.10.2010.

3. After following the due process the Additional Commissioner vide its Order-in-Original dated 28.03.2011 confirmed the demand of Rs. 6,93,559/-under clearing and forwarding service along with penalty under Section 76, 77 and 78 and further demanding the interest under Section 75. Aggrieved by the said order, the appellant filed appeal before the Ld. Commissioner (Appeals) who vide the impugned order held that there can be no levy of service tax on ocean freight but confirmed the demand under steamer agent service without quantifying the same along with penalty under Section 78. Hence, the present appeal.

4. Heard both the parties and perused the records.

5. Ld. Counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and law and binding judicial precedents.

6. He further submitted that while passing the impugned order the Ld. Commissioner (Appeals) has gone beyond the scope of the original show cause notice dated 21.10.2010 in as much as the only issue raised in the show cause notice was whether the services provided by the appellant fall under the category of 'clearing and forwarding agent Services'. He further submitted that the Ld. Commissioner (Appeals) has traversed beyond the scope of the notice by holding that the service provided by the appellant relating to terminal handling services and bill of lading are classifiable under steamer agent services.

7. Ld. Counsel further submitted that it is a settle position of law that the Department cannot traverse beyond the scope of show cause notice and cannot resort to a new classification other than that proposed in the show cause notice. For this submission, he relied upon the following decisions as held under:

(i) ***CC, Mumbai v. Toyo Engineering India Ltd. : 2006 (201) E.L.T. 513 (S.C.)***

(ii) CCE v. Nav Bharat Engineering : 2004 (163) E.L.T. 83 (Tri.-Del.)

(iii) CCE, Bombay v. Neoluxe India : 2001 (128) E.L.T. 298 (T)

(iv) Warner Hindustan Ltd. v. CCE, Hyderabad : 1999 (113) E.L.T. 24 (S.C.).

(v) Hindustan Aeronautics Ltd. Vs. Commissioner of Customs, Bangalore : 2019 (370) ELT 699 (Tri-Bang.)

(vi) Uniform Enterprise Vs. CCE & ST, Daman [Final Order No. A/10710/2023 dated 24.03.2023]

(vii) Carborandum Universal Ltd. Vs. Commissioner of C.EX., Chennai as reported in [2007 (211) ELT 105 (Tri-Mad) This decision was upheld by the Apex Court as reported in 2008 (223) ELT A94 (SC).

8. He further submitted that on merit also, the terminal handling is an activity done on the port area and it relates to lifting of cargo from the vessel to the yard or lifting the cargo from the yard and placing it on board the vessel and the said activity is not related to the steamer agent. Thereafter, he referred to the definition of steamer agent as provided in Section 65(105)(i) and submitted that the terminal handling cannot at all be classified as service rendered by the steamer agent. He also submitted that in the present case the service was not provided to a shipping line rather it was provided to Vardhaman Industries, the shipper of the cargo.

9. He also submitted that as far as bill of lading charges, the appellants have paid service tax under Business Auxiliary Service with effect from 16.06.2005 after it covered "any activities" as per clause

(vii). He also submitted that only such services which are rendered to the shipping line are to be considered as steamer agent service. He also submitted that the entire demand is barred by the limitation because the demand pertains to the year 2005-06 and the show cause notice was issued on 21.10.2010 by invoking the extended period of limitation but the ingredients for invoking the extended period of limitation is not present in the instant case.

10. On the other hand, Ld. AR reiterated the findings of the impugned order.

11. After considering the submissions of both the parties and perusal of the material on record, we find that admittedly original show cause notice dated 21.10.2010 was issued demanding service tax under the category of clearing and forwarding agent service and the original authority has also confirmed the demand under the category of clearing and forwarding services. We also find that the Ld. Commissioner (Appeals) in the impugned order dropped the demand under ocean freight but wrongly confirmed the demand relating to terminal handling charges and bill of lading under steamer agent services which is not permissible in law.

12. In view of the various decisions relied upon by the appellant cited (Supra) in this regard, we may refer to the judgment of the Hon'ble Supreme Court in the case of ***CC, Mumbai v. Toyo Engineering India Ltd***. and ***Warner Hindustan Ltd. v. CCE, Hyderabad*** cited (Supra) wherein it has been held by the Apex Court that the Department cannot travel beyond the show cause notice.

13. By following the ratio of the decisions cited (Supra) we are of the considered opinion that the impugned order confirming the demand under 'Steamer Agent Services' is not sustainable in law and we set aside the same on this ground alone without further going into other issues and limitation.

14. Accordingly, we allow the appeal with consequential relief, if any as per law.

(Operative part of the order pronounced in the open court)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Kailash