CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL CHENNAI

REGIONAL BENCH – COURT NO. IV

Service Tax Appeal No. 40078 of 2019

(Arising out of Order-in-Appeal No.479/2018 (CTA-II) dt. 10.10.2018 passed by Commissioner of Central Excise (Appeals-II), CGST Chennai]

M/s.NIITSU Logistics (India) Private Ltd. **Appellant**

Capital Tower No.554-555, Anna Salai,
Off No.8-B, 8th Floor, Teynampet,
Chennai 600 018.

VERSUS

Commissioner of Central Tax – CGST & CE

Chennai Outer Commissionerate
C-48, TNHB Building, Anna Nagar
Chennai 600 040. **Respondent**

APPEARANCE :

Shri K. Sivarajan, Consultant for the Appellant

Shri Arul C. Durairaj, Superintendent (AR) for the Respondent

CORAM :

HON'BLE MR. S.K.MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. P.VENKATA SUBBA RAO, MEMBER(TECHNICAL)

DATE OF HEARING : 27.09.2019
DATE OF DECISION : 27.09.2019

FINAL ORDER No. 41736 / 2019

PER S.K. MOHANTY

This appeal is directed against the impugned order dt. 10.10.2018 passed by the Ld. Commissioner of Central Excise (Appeals-II), CGST and Central Excise, Chennai.

2. Briefly stated, the facts of the case are that during the disputed period, the appellant had incurred expenditure in foreign currency in

engagement of manpower from their parent company M/s.Nippon Express Co. Ltd., Japan on deputation basis. Since the appellant did not pay the service tax attributable to such service as a recipient under reverse charge mechanism, the department initiated proceedings against the appellant, which culminated into adjudication order dt.11.05.2018, wherein the original authority had confirmed service tax demand of Rs.11,55,750/- along with interest and also imposed equal amount of penalty under Section 78 of the Finance Act, 1994. On appeal, the Ld. Commissioner (Appeals) has upheld the adjudged demand confirmed on the appellant.

3. The Ld. Consultant appearing for the appellant submits that the parent company had deputed the employees to the appellant to perform the activities in India and the contractual terms between the appellant and the said employees are that of an employer and employee relationship. In this context, he submits that towards payment of salary, the appellant had deducted tax at source from the income of the employees and deposited such amount with the Income Tax Department and had also issued the Form No.16 to such employees, mentioning therein that the tax deducted at source on salary. The Ld. Consultant further submits that since there is no relationship exist between the appellant and the foreign entity as service provider and service receiver, no tax liability can be fastened on the appellant under reverse charge mechanism. To substantiate such stand, Ld. Consultant has relied upon the decision of this Tribunal in the case of *M/s.Nissin Brake India Pvt. Ltd. Vs CCE Jaipur-I*, reported in 2018 (5) TMI 1223-CESTAT, NEW DELHI. He also stated that the appeal filed against the said order of the Tribunal has been dismissed by the Hon’ble Apex Court, reported in 2019 (2) TMI 1630-SC.

4. Heard both sides and perused the records.

5. In order to fall under the scope and purview of any taxable service for levy of service tax, the basic requirement is that there must be involvement of a service provider and a service receiver. Admittedly, in this case, the relationship exist between the foreign entity and the appellant is that of parent and subsidiary company. Thus, the appellant cannot be termed as a service receiver in respect of the manpower deployed by the foreign entity for carrying out the activities in India for and on behalf of the appellant. Further, we also find that towards payment of salary to the employees payable by the parent company, the appellant had deducted tax at source from such salary amount and deposited the same with the Income Tax Department. We find that in an identical issue, this Tribunal in the case of *Nissin India Brake Pvt. Ltd.* (supra) has held that in absence of any service provider-service receiver relationship, the service tax cannot be levied on the transactions. The relevant paragraph in the said order is extracted herein below :

> "5. On perusal of the agreement entered into between the appellant and its parent company, we find that the employees deployed by the latter were working under the control, direction and supervision of the appellant. The appellant also deducted tax at source from the salary and other perks given to the employees. The fact is also not under dispute that the appellant did not pay any direct/indirect consideration to its parent company towards deployment of the employees. Thus, it cannot be said that there is any agency and client relationship between the parent company and the appellant. Rather, the terms of the agreement makes the position clear that the relationship between the appellant and the manpower deployed by the parent company is of employer/employee, and as such, it cannot be considered as the taxable service under the category of manpower recruitment or supply agency service. In the decision cited by the learned Advocate for the appellant, the Tribunal has held that when the employee/employer relationship exists, the method of disbursement of salary cannot determine the nature of transaction. Thus, we are of the view that the adjudged demand cannot be confirmed against the appellant. "

6. Feeling aggrieved with the order dt. 27.3.2018 passed by the Tribunal in the case of *Nissin Brake India Pvt. Ltd.* (supra), Revenue has preferred Civil Appeal before the Hon'ble Supreme Court, which was dismissed vide order dt. 22.02.2019, reported in 2019 (2) TMI 1630-SC.

In view of the fact that the issue arising out of the present dispute is no more open for any debate, we are of the view that the present impugned order passed by the Ld. Commissioner (Appeals) cannot be sustained on merits.

7. Therefore, the impugned order passed by the Ld. Commissioner (Appeals) is set aside and the appeal is allowed in favour of the appellant.

(pronounced in court)

(S.K.Mohanty)
Member (Judicial)

(P.Venkata Subba Rao)
Member (Technical)

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