IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Service Tax Appeal No.40090 of 2014

(Arising out of Order-in-Appeal No. 125/2013 dated 30.9.2013 passed by the Commissioner of Central Excise (Appeals), Madurai)

M/s. Bharat Cylinders **Appellant**
50, Amman Sannidhi
Madurai – 625 001.

Vs.

Commissioner of GST & Central Excise **Respondent**
Lal Bahadur Shastri Marg
C.R. Buildings
Madurai – 625 002.

APPEARANCE:

Smt. Pallavi Ganesh, Advocate for the Appellant
Smt. K. Komathi, ADC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No. 40391/2023

Date of Hearing : 01.06.2023
Date of Decision: 01.06.2023

Per Ms. Sulekha Beevi C. S.,

Brief facts are that the appellant is registered as an assessee for providing services of Technical Inspection and under Goods Transport Agency service. It is submitted by the learned counsel Smt. Pallavi Ganesh appearing on behalf of the appellant that they paid service tax under GTA service for transportation undertaken by them for the transportation of the cylinders to the bottling unit. The said service tax was paid by mistake and that they are not liable to pay service tax as the burden to pay service is under the service recipient. The appellant has thus filed refund claim for the period January 2010 to December 2010 for an amount of Rs.54,736/. The authorities below have rejected the refund claim. It is submitted by the learned counsel that as the amount was paid by mistake the refund claim may be allowed.

3. The learned AR Ms. K. Komathi submitted that the Tribunal for the earlier period vide Final Order No. 40753 and 40754/2019 dated 1.5.2019 had upheld the confirmation of demand of service tax on GTA service for the period 1.10.2009 to 30.9.2010. The refund claim overlaps with the present period wherein the demand has been confirmed. Without filing an appeal against such order and obtaining a favourable order setting aside the demand under GTA service, the appellant is not eligible for refund.

4. Heard both sides.

5. On perusal of the Final Order dated 1.5.2019, it is seen that there was an earlier demand for various services including GTA service for the period 1.10.2009 to 30.9.2010. The amount involved for this period from January 2010 to December 2010 is Rs.54,736/-. The learned counsel has not been able to demarcate the amount for which the earlier order does not apply. We therefore do not find any merit in the appeal filed by the appellant. After taking note of the submissions made by both sides and noting that the period involved in the present appeal overlaps with the period for which the demand has been confirmed, we hold that the appellant is not eligible for refund. The impugned order is sustained. The appeal is dismissed.

(Dictated and Pronounced in open court)

(**M. AJIT KUMAR**)
Member (Technical)

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

Rex