CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT NO. III

Service Tax Appeal No. 42636 of 2014

[Arising out of Order-in-Appeal No. TNL-CEX-000-130-14 dated 28.08.2014 passed by the Commissioner of Central Excise (Appeals), Madurai]

M/s Aspinwall and Co. Limited ......**Appellant**
11A, World Trade Avenue,
Harbour Estate, Tuticorin,
Tamil Nadu 628004

VERSUS

Commissioner of Central Excise and Service Tax, Tirunelveli ......**Respondent**
Central Revenue Building, Tractor Road,
NGO A Colony, Tirunelveli,
Tamil Nadu 627007

APPEARANCE:

Present for the Appellant: Shri R. Parthasarathy, Advocate

Present for the Respondent: Shri Harendra Singh Pal (Asst. Commr.), AR

CORAM:

HON'BLE Shri S. S. GARG, MEMBER (JUDICIAL)
HON'BLE Shri VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 40351 /2024

DATE OF HEARING: 25.01.2024
DATE OF DECISION: 27.03.2024

PER : S. S. GARG

The present appeal is directed against the impugned order dated 28.08.2014 passed by the Commissioner (Appeals), whereby the learned Commissioner (Appeals) has upheld the Order-in-Original and dismissed the appeal of the appellant.

2.1 Briefly stated facts of the case are that the appellant is a public limited company providing various services like Customs House Agency Services, Port Services, Steamer Agency Services, Technical Inspection Services, Certification Services and Goods Transport Agency Services ('GTA') and have Service Tax registration with the Department. The appellant has been providing GTA services to various clients and in order to provide these services, the appellant is hiring vehicles from vehicle owners for the transportation of the goods. In return, the appellant is paying hire charges to the vehicle owners as per the agreements entered into with them. The appellant in many instances has executed work orders with the clients wherein they have undertaken the responsibility of transportation of the goods by road. The consideration for GTA services provided by the appellant to the clients is as per terms mutually agreed between them. The invoices for the GTA services provided by the appellant to the clients reflect a lump-sum amount inclusive of all expenses incurred by the appellant with profits/margin, if any. The appellant while remitting payment towards service tax under the category of GTA services, has claimed abatement at the rate of 75% of the entire consideration received from the clients.

2.2 Pursuant to the service tax audit, the Department issued the show cause notice directing the appellant to show cause as to why:

- the extra amount collected from the clients over and above the amounts actually paid to the vehicle owners on back-to-back basis should not be classified under the category of 'Business

Auxiliary Services (BAS)' as per Section 65(19) of the Finance Act, 1994 and service tax due thereon be realized;

- the abatement already claimed on this portion of amount i.e. extra amount collected from the clients under GTA services by the appellant should not be denied;
- service tax amount of Rs.4,45,888/- should not be demanded and recovered under Section 73(1) of the Finance Act, 1994 along with interest under Section 75 of the Act;
- also, why penalties should not be imposed under Sections 76, 77 and 78 of the Finance Act, 1994 for failure to pay service tax, non-filing of ST-3 returns under BAS and suppression of taxable amounts received.

2.3 The appellant filed detailed reply to the show cause notice and after following the due process, the Original Authority confirmed the demand of service tax under Section 73(1) of the Finance Act, 1994 along with interest under Section 75 of the Act. Penalties under Sections 76, 77 and 78 of the Finance Act, 1994 were also imposed. Aggrieved by the said order, the appellant filed appeal before the Commissioner (Appeals), who upheld the order of the Original Authority and dismissed the appeal of the appellant. Hence, the present appeal.

3. Heard both the parties and perused the records.

4.1 The learned Counsel for the appellant submits that the impugned order is not sustainable in law and is liable to be set aside, as the same has been passed without properly appreciating the facts and the law; and binding judicial precedents on the identical issue.

4.2 He further submits that the undisputed facts of the case, flowing from the Order-in-Original as also the Order-in-Appeal are stated herein below:

- The appellant renders service of transporting goods of their customers in exchange for a ‘consideration';
- For this purpose, the appellant hires vehicles from third-party vehicle owners under agreement entered *inter se*, which are used for transporting goods of the appellant's customers;
- The appellant's customers are not privy to the Agreement for hiring vehicles;
- The appellant collects and retains a 'Margin Money", which is nothing but the surplus of Transportation income, over and above the hire charges paid;
- The appellant discharges Service Tax on the ‘Margin Money' under GTA services, after availment of 75% abatement.

4.3 He further submits the Department has wrongly entertained the view that 'Margin Money’ collected has no nexus to GTA service and consequently, the Department has confirmed the demand on ‘Margin Money’ on the premise that the said amount is taxable under BAS.

4.4 He further submits that the impugned order has also traversed beyond the show cause notice because in the show cause notice, the demand was made under the category of BAS as per Section 65(19) of the Act without specific indication as to why the alleged 'extra amounts' collected by the appellant from their clients are liable to service tax under BAS.

4.5 He further submits that no specific clause under BAS has been mentioned in the show cause notice, but the Original Authority has made out a new case by holding that the appellant's case is squarely covered under clause (iv) *"procurement of goods or services which are inputs for the client"* as provided in Section 65(19) of the Act. In support of his submission, he relies on the decision of this Tribunal in the case of ***IDAA Infrastructure Pvt Ltd vs CST, Mumbai – 2013-TIOL-586-CESTAT-MUM***, wherein the Tribunal has held as below:

> *"Neither in the show cause notice nor in the impugned order is there any proposal to classify the service rendered by the Appellants under any of the sub-clauses of business auxiliary service. The only allegation is that the Appellants have been authorized by the government or NHAI to collect toll charges on the use of the highways/roads constructed by them and, therefore, they have rendered a service. Non-specification of the charge is a gross violation of the principles of natural justice and on that ground along, the show cause notice and the impugned order are liable to be set aside"*

4.6 Further, the learned Counsel submits that this issue is no more *res integra* and has been decided in favour of the appellant in the appellant's own case as reported in ***2019 (4) TMI 182 CESTAT Chennai***, wherein the identical issue was involved and the Tribunal allowed the appeal of the appellant and set aside the impugned order.

5. On the other hand, the learned Authorized Representative for the Revenue reiterates the findings of the impugned order and submits that the appellant has collected extra amounts over and above the hiring charges and the amount has no bearing on GTA services and therefore, it would fall under BAS. He further submits that the extra amount relates to procurement of goods or services, which are inputs for the clients/customers and is clearly within the ambit of BAS. The goods when transported by the appellant, is being used by their customers and hence, extra amount collected from the customers is classifiable under BAS and the claim for abatement on this amount is against the provisions of law.

6. We have considered the submissions made by both the parties and perused the material on record. We find that the undisputed fact in the present case is that the appellant renders service of transporting goods of their customers in exchange for a 'consideration' and for this purpose, the appellant hires vehicles from third party owners under the agreement. Further, the appellant's customers are not privy to the agreement for hiring vehicles and the 'Margin Money' collected and retained by the appellant is nothing but the surplus of transportation income, over and above the hire charges paid, on which service tax is paid after availment of 75% abatement.

7. We also find that in the appellant's own case for the previous period, this Tribunal allowed the appeal of the appellant by holding in para 9 and para 10 as below:

> ***"9.*** *........ On perusal of the facts, we find that the customers to whom the appellant has provided GTA services has no knowledge whether the appellant is rendering service of transport of goods by using their own vehicles or by using the vehicles hired from other vehicle owners. This being the case, the allegation of the department that the extra amount collected is for procurement of services for their customers/client is factually incorrect.*
>
> ***10.*** *......... That amount that has been collected by them for transportation of goods of their clients/customers has been thus subject to levy of service tax under GTA service. Thus the department cannot argue that the said amount has to fall under BAS and the appellant have to discharge service tax under BAS. On perusal of the order as well as records, we do not find any element that would attract the activity or the amount collected by the appellant in relation to hiring of vehicles or transportation of goods to be falling under BAS.***"**

8. In view of our discussion above and by following the ratio of the decision cited supra, we are of the considered opinion that the impugned order is not sustainable in law and therefore, we set aside the same by allowing the appeal of the appellant with consequential relief, if any, as per law.

(Order pronounced in the court on 27.03.2024)

Sd/-
(S. S. GARG)
MEMBER (JUDICIAL)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

RA_Saifi