IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. III

Service Tax Appeal No. 40230 of 2015

(Arising out of Order-in-Appeal No. 07/2014(P)(ST) dated 10.11.2014 passed by Commissioner of Central Excise (Appeals-II), No. 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

Shri N. Arunachalam & Co **...Appellant**
No. 392-A, Main Road,
Seplanatham & Post,
Virudhachalam Taluk,
Neyveli – 607 802.

Versus

Commissioner of GST and Central Excise **...Respondent**
Puducherry Commissionerate,
No. 1, Goubert Avenue, (Beach Road),
Puducherry – 605 001.

APPEARANCE:

For the Appellant : Shri J. Shankar Raman, Advocate
For the Respondent : Shri R. Rajaraman, Authorised Representative

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No.40439/2024

DATE OF HEARING: 22.04.2024
DATE OF DECISION: 22.04.2024

Per : Ms. SULEKHA BEEVI C.S.

Brief facts are that based on the statements furnished by persons of M/s. Neyveli Lignite Corporation, it revealed that the appellant Mr. N. Arunachalam had rendered services in the nature of AMC of North Dump Yard, Maintenance of Afforestation and watching and upkeeping of community halls at Blocks 27 to M/s. NLC during the period from April 2008 to March 2009. The appellant had received payment of Rs.8,76,423/- from M/s. Neyveli Lignite Corporation. The Department was of the view that the amount is consideration for providing services and that activity falls under the category of Management, Maintenance and Repair Services, Manpower Supply Agency Services. Accordingly, Show Cause Notice dated 12.10.2009 was issued to the appellant demanding service tax of Rs.1,08,326/- along with interest and for imposing penalties. After due process of law, the Original Authority confirmed the demand along with interest and imposed penalty underSection 76 of the Finance Act, 1994 as well as Section 77(2) of the Act *ibid.*

1.2 On appeal, the Commissioner (Appeals) though set aside the penalty imposed under Section 77 of Finance Act, 1944, upheld the confirmation of service tax as well as interest and penalty under Section 76. Hence this appeal.

2.1 The Ld. Counsel Shri J. Shankar Raman appeared and argued for the appellant. It is submitted that Show Cause Notice does not mention the category of service under which the demand has been proposed by the Department. It merely states that the appellant provided service in the nature of AMC of North Dump Yard, Maintenance of Afforestation and watching and up keeping of community halls. It is not clear as to whether the said activity falls under Business Auxiliary Services, Security Services or Maintenance and Repair Services. Even while confirming the demand, the Adjudicating Authority has not stated the category of service for which the service tax has been confirmed. There is no finding rendered as to the category of service. This cuts to the root of the demand of service tax and therefore cannot sustain.

2.2 The Tribunal in similar matter wherein Show Cause Notice was issued proposing to demand service tax without stating the category of service had set aside the demand observing that the demand cannot sustain when the proper category of service has not been stated in the Show Cause Notice.The Ld. Counsel relied upon Final Order No. 40392/2024 dated 28.03.2024 in the case of *NPS Construction Vs. Commissioner of GST and CentralExcise*. It is prayed that the appeal may be allowed.

3. The Ld. Authorized Representative Shri R. Rajaraman appeared and argued for the Department. It is submitted that the appellant had paid some amount of service tax. The Original Authority did not appropriate the said amount and the Commissioner (Appeals) had directed to appropriate the amount paid by appellant towards the demand confirmed. The appellant having received consideration from M/s. Neyveli Lignite Corporation ought tohave discharged the service tax on the services rendered by them. It is submitted that the impugned order does not call for any interference.

4. Heard both sides.

5. The issue to be considered is whether the appellant is liable to pay service tax as confirmed by the Adjudicating Authority.

6. On perusal of the Show Cause Notice as well as the order passed by the Adjudicating Authority and the Commissioner (Appeals), we do not find as to what is the category of service alleged to be rendered by the appellant. Merely because, the appellant received some amounts from M/s. Neyveli Lignite Corporation, it cannot be said that they have rendered service. In the Show Cause Notice, it is stated that the appellant rendered the activity of AMC of North Dump Yard, Afforestation and watching and up keeping of community halls. It is not clear what is the category of these services. The Department has not stated whether the activity falls within the definition of a particular category of service.

7. The Tribunal in similar set of facts had set aside the demand observingthat when the category of service has not been mentioned in the Show Cause Notice, the demand cannot be sustained. In Final Order No. 40392/2024 dated 28.03.2024, the Tribunal followed the decision of the Hon'ble Supreme Court in the case of *Commissioner of Central Excise Vs. M/s. Brindavan Beverages (P) Ltd. [2007 (213) ELT 487 (SC)]* wherein it was held that when the Show Cause Notice does not

mention the specific category of service so as to inform the assessee about the allegations raised against them, the demand cannot sustain.

8. From the foregoing facts and decision, the impugned order is set aside. The appeal is allowed with consequential reliefs, if any, as per law.

(Order dictated and pronounced in open court)

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

sd/-
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

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