CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH,
COURT NO. I

SERVICE TAX APPEAL NO. 53262 OF 2015

[Arising out of the Order-in-Original No. RPR/EXCUS/000/COMMR/019/2015 dated 29/05/2015 passed by The Commissioner, Customs, Excise & Service Tax, Raipur (Chhattisgarh) – 492 001.]

M/s Bagadia Brothers Private Limited **Appellant**
15-63, Bagadia Mansion, Ground Floor, Jawahar Nagar,
Raipur (C.G.) – 492 001.

VERSUS

The Commissioner, **Respondent**
The Office of Central Excise & Customs,
Central Excise Building, Dhamtari Road,
Raipur (Chhattisgarh) – 492 001.

APPEARANCE

Shri Bipin Garg, Advocate, Ms. J. Kainaat, Advocate – for the appellant.
Shri Rajeev Kapoor, Authorized Representative (DR) – for the Department

CORAM : **HON'BLE SHRI JUSTICE DILIP GUPTA, PRESIDENT**
HON'BLE SHRI P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51108/2023

DATE OF HEARING : 18.08.2023

JUSTICE DILIP GUPTA

The order dated 29.05.2015 passed by the Commissioner confirming the demand of service tax with interest and penalty has been assailed in this appeal.

2. It transpires from the records that a Scheme called Wagons Investment Scheme was floated by the Indian Railways. The appellant provided the wagons to the Railways, for which an Agreement dated 09.03.2006 was executed between the Railways and the appellant. The pattern of movement contained in Clause 4.1 of the Agreement provides that wagons provided by the appellant under scheme will merge and operate under the general pool of wagons of the Indian Railways.

3. A show cause notice dated 18.10.2013 was, however, issued to the appellant that by providing wagons to the Indian Railways supply of tangible goods service as defined under section 65 (105) (zzzzj) of the Finance Act, 1994[1] would be provided by the appellant, but the appellant had not paid service tax on the said service. The appellant filed a detailed reply to the show cause notice contending that the appellant had not provided supply of tangible goods service to the Indian Railways and, therefore, the demand was mis-conceived. The Commissioner, however, by the order dated 29.05.2015 confirmed the demand holding that the contention of the appellant that it had transferred the right of possession and effective control to the Indian Railways was not borne out from the Agreement executed between the appellant and the Indian Railways.

4. Shri Bipin Garg, learned counsel for the appellant assisted by Ms. Kainaat submitted that this finding of the Commissioner is

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[1] the Finance Act

perverse as Clause 4.1 of the Agreement clearly indicates that the right of possession and effective control was transferred to the Railways. In support of this contention, learned counsel also placed a Certificate dated 25.03.2015 issued by the Chief Commercial Manager (FM) of the South Eastern Railway mentioning that the wagons are in effective possession and control of the Indian Railways.

5. Shri Rajeev Kapoor, learned authorized representative appearing for the department, however, supported the impugned order.

6. The submissions advanced by the learned counsel for the appellant and the learned authorized representative appearing for the department have been considered.

7. The only point to be decided in this appeal is as to whether the appellant had transferred possession and effective control of the wagons to the Indian Railways under the terms of the Agreement. There is no manner of doubt that in terms of Clause 4.1 of the Agreement, the right of possession and effective control of the wagons had been transferred by the appellant to the Railways as the wagons provided by the appellant merged and operated under the general pool of wagons of the Indian Railways. This fact also finds support from the Certificate dated 25.03.2015 issued by the Indian Railways.

8. Such being the position, the Commissioner was not justified in recording a finding that the appellant had provided supply of tangible goods service to the Indian Railways.

9. It is, therefore, not possible to sustain the impugned order dated 29.05.2015. It is, accordingly, set aside and the appeal is allowed.

(Dictated and pronounced in open court.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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