CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.
PRINCIPAL BENCH,COURT NO. I

Service Tax Appeal No. 52833 Of 2018

[Arising out of the Order-in-Appeal No. BHO-EXCUS-001-APP-047-18-19 dated 08.05.2018 passed by the Commissioner (Appeals), CGST, Customs & Central Excise, Bhopal.]

South Eastern Coalfields Ltd Sohagpur Area — **Appellant**
Office of the General Manager,
Area Finance Manager, Post-Dhanpuri
Shahdol, Madhya Praesh-484114

vs

Commissioner, CGST CUSTOMS & Central Excise Jabalpur — **Respondent**
GST Bhawan, Napier Town,
Jabalpur, M.P.

APPEARANCE:
Mr. Rajeev Kumar Agarwal, Advocate for the Appellant
Mr. Rajeev Kapoor, Authorised Representative for the Department

CORAM :

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

Date of Hearing/ Decision: November 16, 2023

FINAL ORDER NO. 51582/2023

JUSTICE DILIP GUPTA

The order dated 23.4.2018 passed by the Commissioner (Appeals) rejecting the refund claim filed by the appellant has been assailed in this appeal filed by M/s South Eastern Coalfields Ltd Sohagpur Area[1].

2. In order to appreciate the controversy involved in this

1 **the Appellant**

appeal it would be useful to narrate the relevant factual aspects. It transpires that pursuant to the order dated 13.08.2014 passed by the Tribunal in the own case of the appellant pertaining to the Head Office, a refund claim was filed by the appellant in July, 2015 seeking refund of service tax paid under goods and transport agency service[2] on a reverse charge basis for the period 2005-11. It needs to be stated that the Tribunal in the order dated 13.08.2014 had specifically held that service tax could not be levied under GTA service under reverse charge basis on the appellant.

3. However, a show cause notice dated 17.08.2015 was issued to the appellant contending that the order dated 13.08.2014 passed by the Tribunal did not pertain to the appellant and for the reason that the claim was not filed within the time prescribed under section 11B of the Central Excise Act, 1944.

4. It also transpires that against the final order dated 13.08.2017 passed by the Tribunal, the department filed an appeal before the Chhattisgarh High Court, which appeal was allowed by the High Court by judgment and order dated 02.09.2015 and the matter was remanded to the Tribunal for a fresh decision.

5. In the mean time, the refund application filed by the appellant in July, 2015 was rejected by the Assistant Commissioner by order dated 23.09.2015 holding that the order

2 GTA

passed by the Tribunal did not pertain to the appellant and for the reason that the claim was barred by time stipulated under section 11B of the Central Excise Act. It also transpires that pursuant to the judgment and order dated 02.09.2015 of the Chattisgarh High Court, the Tribunal, on remand, again decided the matter on 28.07.2016 holding that no service tax would be payable by the appellant on the GTA service under reverse charge basis since consignment notes were not issued by the transporters.

6. The appellant had also assailed the order dated 23.09.2015 passed by the Assistant Commissioner before the Commissioner (Appeals), who by order dated 23.09.2015 allowed the appeal holding that the orders dated 30.08.2014 and 28.07.2016 passed by the Tribunal also covered the appellant unit and that the refund claim was not barred by time. However, the Commissioner (Appeals) remanded the matter for the limited purpose of verification of documents. The relevant portion of the order passed by the Commissioner (Appeals) is reproduced below:

> "10. In view of the Final Order No. ST/A/52655/2016-CU(DB) dated 28.07.2016 (arising out of the Order-in-Original No. COMMISSIONER/RPR/17/2008 dated 19.02.2008) and No. ST/A 53553/2016-CU(DB) dated 26.08.2016 (arising out of the Order-in-Appeal No. 18(ST)RPR-I/2010 dated 30.03.2010) of the Hon'ble Cestat, New Delhi, no liability to pay service tax arose on the appellant as recipient of GTA services under the reverse charge mechanism and therefore the appellant became entitled, to refund claim, if otherwise admissible. However, it is observed that the impugned order is silent

> about the vital aspects such as whether the verification of challans were conducted and results obtained, whether the amount paid and refund claimed by the appellant is in relation to GTA Service or otherwise, whether any stay has been obtained against the Final Order dated 28.07.2016 and 26.08.2016 by the department, etc. The respondent has neither submitted re-joinder nor any material evidence regarding rebuttal of the submission and evidences produced by the appellant. The respondent has also not sought any extension of time for submission of comments/ documents. On account of the failure of the respondent to submit necessary comments, the necessary aspects and procedures prescribed under the law required to be conducted for sanction of any refund claim remained unverified and unexplained. Under the circumstances, the matter is required to be remitted back to the respondent for fresh decision after determination of factual position discussed above and after giving an opportunity to the appellant to explain its case and to produce any additional evidences. It may be mentioned that in CCE, Raipur Vs Anand Color Lab reported al 2014(36)STR.915(Tri. -Del.), CESTAT has upheld the power of Commissioner (Appeals) to remand a case under Section 85(4) of the Finance Act, 1994."

7. It also needs to be noted that the order dated 28.07.2016 passed by the Tribunal, after remand of the matter from the Chhattisgarh High Court, has been challenged by the department before the Supreme Court and though the Civil Appeal is pending, no stay has been granted by the Supreme Court.

8. Pursuant to the order dated 22.11.2016 passed by the Commissioner (Appeals), the Assistant Commissioner by order dated 30.1.2018 held that the bar of unjust enrichment would not

be attracted since the amount was paid under reverse charge basis. However, the refund claim was rejected by the Assistant Commissioner following the decision of the Supreme Court in **Commissioner of Central Excise and Service Tax, Raipur** vs. **Singh Transporters**[3]**.**

9. It is against the aforesaid order dated 30.01.2018 passed by the Assistant Commissioner that the appellant filed an appeal before the Commissioner (Appeals), who by order dated 30.01.2018 dismissed the appeal in view of the decision of the Supreme Court in **Singh Transporters**.

10. This appeal has been filed to assail the aforesaid order dated 23.04.2018 passed by the Commissioner (Appeals).

11. Shri Rajeev Agarwal, learned counsel for the appellant submitted that both the Assistant Commissioner and the Commissioner (Appeals) in their orders dated 30.01.2018 and 23.04.2018 committed an error by also examining whether the appellant, on merits, was entitled to the refund. Elaborating this submission, learned counsel for the appellant submitted that all that was required to be decided by the Assistant Commissioner on remand by the Commissioner (Appeals) was whether the appellant would be entitled refund after verification of the documents. Learned counsel also submitted that the Commissioner (Appeals) committed the same error by examining whether the appellant

3 2017 (4) G.S.T.L. 3 (S.C.)

would be entitled to refund in view of the decision of the Supreme Court in **Singh Transporters**.

12. Learned counsel also submitted that even the decision of the Supreme Court in **Singh Transporters** would not be relevant in the present case, since it is an admitted fact that consignment notes had not been issued by the transporters and in this connection, learned counsel placed reliance upon the decision of the Kolkata Bench of the Tribunal in **Mahanadi Coalfields Ltd.** vs. **Commissioner of Central Excise and Service Tax, BBSR-I**[4]**.**

13. Shri Rajeev Kapoor, learned authorized representative appearing for the department has however supported the impugned order and has contended that in view of the directions issued by the Commissioner (Appeals) on 22.11.2016, the Assistant Commissioner and the Commissioner (Appeals) were justified in examining whether the appellant, on merits, would be entitled to refund or not.

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

15. All that is required to be examined in this appeal is as to whether the Assistant Commissioner and the Commissioner

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4 2022 (57) G.S.T.L. 242 (Tri. Kolkata)

(Appeals) in their orders dated 30.01.2018 and 23.04.2018 travelled beyond the remand order.

16. As noted above, the Commissioner (Appeals) in the order dated 22.11.2016 held that the appellant would be entitled to refund but the matter was remanded to the Assistant Commissioner only for the limited purpose of verification of the documents. This is clear from paragraph 10 of the remand order. The Assistant Commissioner, pursuant to the remand order, did record a categorical finding that the bar of unjust enrichment would not be attracted since the amount was paid under reverse charge basis. After having held so, the Assistant Commissioner should have granted refund but what transpires from the order dated 30.1.2018 passed by the Assistant Commissioner is that he further proceeded to examine whether the appellant would be entitled to refund and for this purpose, in view of the decision of the Supreme Court in **Singh Transporters,** concluded that the transportation of coal within the mining area would appropriately be classifiable under GTA service. It is for this reason that the Assistant Commissioner rejected the refund claim and this order has been upheld by the Commissioner (Appeals) in view of the decision of Supreme Court in **Singh Transporters.**

17. It is clear that the Assistant Commissioner travelled beyond the remand order as he proceeded to examine whether the appellant is entitled to refund or not on merits when this issue had

been settled by the Commissioner (Appeals) in the order dated 22.11.2016 and this was not a matter which was remanded to the Assistant Commissioner.

18. This apart, what also needs to be noted is that the decision of the Supreme Court in **Singh Transporters** would not be relevant for the purpose of the controversy involved in this appeal because it has been found as a fact in this appeal that consignment notes had not been issued by the transporters, which is an essential requirement for a service to be classified as GTA service.

19. This is what was also observed by the Kolkata Bench of the Tribunal in **Mahanadi Coalfields Ltd** and paragraph 12 of the decision is reproduced below:

> "12. We also find that the same view has been consistently followed by the co-ordinate Benches of the Tribunal, the decisions which have been admitted for consideration before the Hon'ble Supreme Court in Revenue Appeals. We note that though the matter is pending before the Apex Court, the aforesaid Tribunal decisions have not been stayed and therefore, we do not find any reason to take a contrary view. In so far as the decision in Singh Transporter's case (Supra) is concerned, we agree with the arguments canvassed by the Ld. CA for the appellant that the mandatory requirement of issue of consignment note, in order to constitute "Goods Transport Agency as has been specifically defined in the Act, was not the subject matter of examination so as to decide the taxability in the hands of assessee receiving goods transportation services and therefore, the aforesaid Apex Court's decision has no

application in the instant case."

20. Thus, for all the reasons stated above, the order dated 23.04.2018 passed by the Commissioner (Appeals) cannot be sustained and is set aside in as much a categorical finding has been recorded by the Assistant Commissioner in order dated 30.1.2018 that the bar of unjust enrichment would not be attracted since the amount was paid under reverse charge basis, which finding has been recorded after examination of the documents as directed by the Commissioner (Appeals) in the order dated 22.11.2016. The appellant would clearly be entitled to refund of the amount with applicable rate of interest. The appeal is, accordingly, allowed to the extent indicated above.

(Order dictated in the open court)

(JUSTICE DILIP GUPTA)
PRESIDENT

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

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