IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal No. ST/260/2010

(Arising out of Order-in-Original No. 07/S. Tax/Commr/2010 dated 29/03/2010 passed by the Commissioner of Central Excise, Jamshedpur.)

M/s. Nilachal Iron & Power Ltd. Appellant (s)
Vs.

Commissioner of Central Excise, Jamshedpur
Respondent (S)

Appearance:
Shri S. Mohapatra, GM (Taxation) for the Appellant (s)
Shri S. Mukhopadhyay, Suptd. (A. R.) for the Revenue

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI BIJAY KUMAR, MEMBER (TECHNICAL)

Date of Hearing: -20.07.2018
Order No. FO/77247/2018

PER SHRI P. K. CHOUDHARY

The facts of the case in brief are that appellant is a manufacturing company having manufacturing facility at Ratanpur, District Jamshedpur. Subsequently, the appellant had started rendering services of promoting sale of goods and got itself register under the category of "Business Auxiliary Service" (BAS). They have received commissions from two agents M/s. Eastern Financier Ltd., Kolkata and M/s. SKP Securities Ltd., during the period 2005-06 and 2006-2007, for rendering the service of mobilization of mutual fund on behalf of the two mutual fund distributors. It is the case of the department that the Commission received from the distributors is chargeable to Service Tax under the category "Business Auxiliary

Service", during the relevant time. Show Cause Notice dated 19/01/2009 was issued for non-payment of Service Tax.

The Adjudicating Authority confirmed the demand of Service Tax amounting to Rs.50,22,995/- along with interest and also imposed penalty under Section 76 and Section 78 of the Finance Act, 1994. Hence, the present appeal before the Tribunal.

2. The Ld. Representative of the appellant company submits that they were providing services to mutual fund distributors for distribution of mutual fund scheme. The appellants were canvassing and interacting with the prospective investors and were collecting the duly filled forms for purchase of mutual funds along with cheques/drafts etc. and handing over the same to the main distributors. In lieu of such services, appellant is getting some commission from the mutual fund distributors. It is the case of the appellants that they have not collected any Service Tax from the investors of mutual funds. It is their submission that providing of services to the mutual fund distributors M/s. SKP Securities Ltd. and M/s. Eastern Financiers Ltd. is covered under the principal of levy of Service Tax under the 'Reverse Charge Mechanism' and therefore, no service tax was payable by the appellant on the amount received as commission. It is also submitted that during the year 2005-06 and 2006-07, the appellants had worked as an intermediary for the two mutual fund distributors and for this purpose, they have also obtained Membership of Association of Mutual Funds in India.

3. The Ld. Representative of the appellants further argued that during the period of dispute, the services provided by them to the mutual fund distributors, cannot be classified as procurement of goods or services, which are inputs to the client and therefore, the allegation that the Services provided by the appellants to the mutual fund distributors, were procurement of goods & services, which are inputs for the client, is baseless and unfounded. He strongly contended that they were not liable to pay Service Tax under the category of "Business Auxiliary Service" as defined under Section 65 (19) of the Finance Act, 1994.

4. The Ld. DR reiterates the discussions and findings of the impugned order.

5. Heard both sides and perused the appeal record.

6. We find that the appellants are rendering their services to the distributors of various mutual fund companies and not directly to the mutual fund companies. We also find from the records that the mutual fund distributors M/s. Eastern Finance Limited, Kolkata have submitted a declaration which reads as under:-

> ***"(i)*** ***<u>To Whom It May Concern</u>***
>
> *This is to confirm that the commission received by us on sales of Mutual Funds and shared by us with M/s. Nilachal Iron & Power Ltd. as our sub-agent is from the net commission received by us from the respective Asset Management Companies-net, after deduction of Service Tax at source.*
>
> *For Eastern Financiers Limited*
> *Sd/-*
>
> *Kolkata*
> *February 17, 2009* *Authorised Signatory*

M/s SKP Securities Ltd.

(ii) ***TO WHOMSOEVER IT MAY CONCERN***

This is to confirm that commission on mutual fund sales shared by us with M/s. Nilachal Iron & Power Ltd. as our sub-broker is from net commission received by us from the respective asset management company-net, after deduction of Service Tax at Source.

Sd/-

Kolkata *Aurhorised*

February 16, 2009"

They have also filed details of commission and brokerage received during the period by the appellants.

7. We find that there is no provision in the Finance Act, 1994, for double taxation. The scheme of Service Tax Law suggests that it is a single point tax law without being a multiple taxation legislation. In absence of any statutory provisions to the contrary, providing of service being event of levy, self same service provided shall not be doubly taxable. If Service Tax is paid by sub-broker or stock broker in respect of same taxable service provided by the Stock Broker, the stock broker is entitled to the credit of the tax so paid on such service, only if entire chain of identity of sub-broker and stock broker is established and transactions are provided to be one and the same. Therefore, sub-brokers and stock-brokers are agent and principal. Asking the appellants to pay Service Tax shall amount to double taxation since as per the declarations of the mutual fund distributors, the asset management companies have made the payment of

commissions to the mutual fund distributors after deduction of Service Tax at source.

8. We observe that Revenue has not suffered any loss due to discharge of tax liability by the asset management companies. There shall be no levy of tax on the present appellants.

9. In view of the above discussions, the impugned order cannot be sustained and the same is set aside. Accordingly, the appeal filed by the appellant is allowed with consequential benefits, if any to the appellants.

Sd/-
(BIJAY KUMAR)
MEMBER (TECHNICAL)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Pooja