IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

EASTERN ZONAL BENCH: KOLKATA

Appeal No. ST/159/2009

Arising out of Order-in-Appeal No.12-13/ST/B-II/2009 dt. 24/03/2009 passed by the Commissioner (Appeals), Central Excise, Customs & S. Tax, Bhubaneswar.

M/s. Lakhanpur Coal Carriers Pvt. Ltd.
At Lamtibahal, Distt. Jharsuguda, Orissa

Appellant (s)

VERSUS

Commissioner of Central Excise, Customs & S. Tax, BBSR-II
CR Building, Rajaswavihar,
Bhubaneswar, Orissa

Respondent (s)

APPERANCE :

Shri Kartik Kurmi & Rajesh Sharma, Advocates for the Appellant
Shri A. Roy, Suptd. (A. R.) for the Respondent

CORAM:

HON'BLE MR. P. K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. V. PADMANABHAN, MEMBER (TECHNICAL)

ORDER NO.FO/75466/2019

Date of Hearing : 24.04.2019
Date of Decision : 24.04.2019

PER P. K. CHOUDHARY :

1. This appeal arises out of the Order-in-Appeal No.12-13/ST/B-II/2009 dated 24-03-2009.

2. The facts of the case in brief are that the Appellant M/s. Lakhanpur Coal Carriers P. Ltd. was awarded two contracts dated 13-12-2002 and dated 18-10-2006 by M/s. Mahanadi Coalfields Ltd. for loading and transportation of coal from Quarry Beds/Coal Handling Plants/Surface Stock to different destinations within the mines. Under the contract, separate rates are provided for transportation and loading. Service Tax of Rs. 6,33,951/- demanded for the period from 01-01-2006 to 31-12-2006 under the category of "Cargo Handling Services" on the ground that the transportation within the mines are for short distances and not a long haul transportation and the basic thrust in the contract is on

loading/unloading for shifting by Tippers to short distances within the mines, hence, the essential character of contract cannot be transportation but loading/unloading. Accordingly, a Show Cause Notice dated 20-04-2007 was issued by the Ld. Addl. Commissioner, Bhubaneswar-II, demanding Service Tax of Rs. 6,33,951 /- (including E. Cess) along with interest and proposing penalty U/s. 76 and 77 of the Finance Act, 1994. The adjudicating authority vide Order-in-Original dated 25-03-2008 confirmed Service Tax demand of Rs. 6,33,951/- (including E. Cess) 73(2) and imposed penalty of Rs. 100/- or Rs.200/- for each day of default U/s. 76 and penalty of Rs. 1000/- U/s. 77 of the Finance Act, 1994. Being aggrieved, the Appellant filed an Appeal before Ld. Commissioner (Appeals), Bhubaneswar Zone, which stood rejected by the impugned Order dated 24-03-2009. Hence, the present appeal before the Tribunal.

3. The Ld. Advocate for the Appellant Shri Kartik Kurmy took us through the contracts dated 13-12-2002 and dated 18-10-2006. The Ld. Advocate submits that U/s 65(50b) read with Section 65(50a) and Section 65(105)(zzp), a taxable service provided to any person by a "Goods Transport Agency" in relation to transport of goods by road in a goods carriage, is classifiable under the category of "Goods Transport Agency Services." The distance, whether short or long haul is an irrelevant criterion. The Ld. Advocate further contended that in the instant case the service of loading and transportation is provided within the mines, hence, their case is directly covered by several decisions of the Tribunal wherein it is consistently held that loading/unloading and transportation of coal within the mines is not taxable under the category of "Cargo Handling Services." The Ld. Advocate relied on the decisions of the Tribunal in the case of CCE Vs. Sainik Mining And Allied Services Ltd. reported in 2008 (9) S.T.R. 531 (Tri. – Kolkata) and on the Final Order No.76815/2018 Dated 11-10-2018 in the case of Sainik Mining Allied Services Ltd. in Appeal No.ST/91/2008-DB.

4. The Ld. D.R. supports the Impugned Order.

5. Heard both the sides and perused the appeal records.

6. We find that the conclusions of the Ld. Commissioner (Appeals) that under the contract the Appellant is to transport coal by Tipper for short distances within the mines including loading, hence, it is taxable

under "Cargo Handling Service", cannot be countenanced. Under Sec. 65(105)(zzp) read with Sec.65(50a) and Sec. 65(50b) of the Finance Act, 1994, the requirement of provisioning of taxable service to any person by a "Goods Transport Agency" in relation to transport of goods by road in a goods carriage stands satisfied in this case and transport for long or short distances is not the relevant criterion for classification under the category of "Goods Transport Services." We also find that the case of the Appellant is covered by the decision of this Tribunal in CCE Vs. Sainik Mining Allied Services Ltd. (Supra) and Final Order No.76815/2018 Dated 11-10-2018 in the case of Sainik Mining Allied Services Ltd. in Appeal No.ST/91/2008-DB wherein loading and transportation of coal within the mines was held to be not taxable under the category of "Cargo Handling Services."

7. In view of the above discussions, we set aside the Impugned Order and allow the Appeal with consequential relief to the Appellant.

(Operative part of the order was pronounced in the open court.)

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

Sd/-
(V. PADMANABHAN)
MEMBER (TECHNICAL)

Pooja