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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No.171 of 2009 &
Service Tax Cross Objection No.71 of 2009

(Arising out of Order-in-Original No.53-54/Commr./ST/Kol/2008-09 dated 20.02.2009 passed by Commissioner of Service Tax, Kolkata)

CST, Kolkata
180, Shantipally, Rajdanga Main Road, Kolkata-700107

Applicant

VERSUS

M/s Vikash Construction Company
6A, Stephen House, 3rd Floor, 4 B.B.D.Bag, Kolkata-700001

Respondent

APPERANCE :

Shri A.Roy, Authorized Representative for the Appellant
Shri A.K.Das, Consultant for the Respondent

CORAM:
HON'BLE MR. P.K.CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR.P.VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO.76603/2019

DATE OF HEARING : 24.07.2019

DATE OF DECISION : 24.07.2019

PER P.K.CHOUDHARY :

The instant appeal has been preferred by the Revenue against Order-in-Original dated 20.02.2009 passed by the Ld. Commissioner, Service Tax, Kolkata, whereby the Ld. Commissioner has dropped the service tax demand proposed in Show Cause Notices dated 16.10.2007 and 15.10.2008 issued on M/s Vikash Construction Co., for the period 2002 to 2008 under the category of "Cargo Handling Services". The respondent assessee has also filed Cross Objection no. 71/2009 in the said departmental appeal.

2. Briefly stated, the facts of the case are that the respondent assessee has rendered the services in the nature of excavation and extraction of ores, providing machines incl. tippers on rent, site

formation and demolition services and transportation of rejects for removal thereof. The SCN was issued to classify and tax the aforesaid services under the taxable category of “Cargo Handling Services”. The Ld. Commissioner while taking note of the clarification issued by CBEC vide M.F. (DR)F. No. B11/1/2002-TRU dated 01.08.2002 observed that the services rendered by assessee could not be classified as Cargo Handling Services. He examined in detail, as noted in page no. 8 of the adjudication order, the various activities undertaken by the assessee during the period in dispute such as hiring of tippers, excavation and earth work, cleaning and scrubbing, supplying and filling up with sand, filling up the embankment, water compaction, removal of unsuitable materials, which could not be classified as Cargo Handling Services inasmuch as the said services were appropriately introduced in service tax net on a later date subsequent to the period in dispute.

3. Sri A. Roy, Ld.D.R. appeared for the Revenue and Sri A K Das, Ld.Consultant, appeared for the respondent assessee.

4. The Ld. D.R. reiterated the grounds of appeal to contend that the removal of materials after excavation is taxable under the head Cargo Handling services and therefore the assessee is liable to pay tax. On the contrary, the Ld. Consultant for the assessee submitted that the Ld. Commissioner has analysed in great detail the activities undertaken by the assessee which could not be taxed as Cargo Handling Services inasmuch as the said services have been appropriately brought within the purview of taxation on a subsequent date. He submitted that it is a settled legal position of law that when new service is introduced, it was not part of any earlier pre-existing services as rightly observed by the Commissioner. He prayed that the appeal of the Revenue be dismissed being without any merit.

5. Heard both sides and perused the appeal records.

6. We find force in the contention of the Ld. Consultant that the services provided by the assessee were not taxable during the period in dispute inasmuch as the said services have been brought within the purview of taxation under the category of Supply of Tangible Goods service w.e.f. 16.05.2008, Site Formation & Clearance Services w.e.f. 16.06.2005, etc. The services provided by assessee for removal of

rejects after excavation cannot be said to be loading / unloading of cargo so as to classify them in Cargo Handling Services. The Ld. Commissioner has rightly held that the demand proposed in the SCN under the head Cargo Handling Services is legally not sustainable and therefore, in our view, the impugned adjudication order passed by the Ld. Commissioner does not warrant any interference.

7. Hence, the appeal filed by Revenue does not have any merit and thus rejected. The Cross Objection filed by respondent assessee also stands disposed.

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

Sd/
(P. K. Choudhary)
Member (Judicial)

Sd/
(P.V.SUBBA RAO)
Member (Technical)

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