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

Appeal No.ST/79202/2018

Arising out of Order-in-Appeal No. 01/HAL/ST/2018-19 dated 11.04.2018 passed by the Commissioner of CGST & Central Excise (Appeal-II), Kolkata.

M/s Sai Surfactants Pvt. Ltd.
Plot No. 1517(P), Mouza+P.O.-Debhog,
Haldia, Midinipore, West Bengal-72160.

….Appellant (s)

Vs.

Commissioner of Central Excise & S. Tax, Haldia
3rd Floor, C. R. Annex, Vir Chand Patel Path,
Annex Central Revenue Building Bihar,
Patna-800001

….Respondent (s)

Appearance:
Shri N. K. Chowdhury, Advocate for the Appellant (s)
Shri T. Mondal, A. C. (AR) for the Respondent(s)

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

Date of Hearing/Decision: - 14.06.2019

Order No.FO/A/76192/2019

PER SHRI P.K.CHOUDHARY:

Briefly stated the facts of the case are that the Appellant is engaged in the manufacture of various goods such as Polythene Woven sacks, polythene fabrics and polythene scraps, etc. classifiable under Chapter 39 of the First schedule of the Central Excise Tariff Act, 1985. The case of the Department is that the Appellant had paid transportation charges on inward and outward freight for the period from 2004 to 2008, however, had not discharged service tax on Transport of Goods by road (GTA) amounting to Rs.1,10,099/-. Accordingly, Show Cause Notice dated 27.07.09 was issued to the

Appellant for recovery of service tax as per proviso to Section 73(1) of the Finance Act, 1994 along with interest and penalty.

2. The said Show Cause Notice was adjudicated by the Adjudicating Authority vide Order-in-Original dated 21.11.2011 wherein the demand of Rs.1,10,099/- was confirmed along with interest under Section 75 of the said Act and penalties of Rs. 1,10,099/- under Section 76, Rs. 5,000/- under Section 77 and Rs. 1,10,099/- under Section 78 of the said Act. On appeal, the Commissioner (Appeals) confirmed a demand of Rs.1,02,449/- along with interest and confirmed the imposition of penalties under Sections 77 and 78 of the Act. Hence, the present appeal.

3. Heard both sides and perused the appeal records.

4. The Ld. Advocate for the Appellant submitted that the Commissioner (Appeals) has erred in observing that the required documents were not furnished by the Appellant whereas all documents showing payment of Service Tax along with the documents showing payment of transportation charges below Rs. 750/- or Rs. 1500/- had been submitted. Therefore, the Impugned Order was passed in violation of the Principles of Natural Justice.

5. The ld. DR reiterated the findings of the lower authorities.

6. I find that the perusal of the transportation documents is vital for deciding the instant case on merits. It is not possible for the Tribunal to determine what transpired during the adjudication process and whether the documents were submitted before the Adjudicating Authority, as claimed by the Appellant. However, in the interest of justice, I hold that the Adjudicating Authority must consider the

transportation documents and decide accordingly. All contentions of the parties are kept open.

7. In view of the above discussion, the appeal filed by the Appellant is allowed by way of remand.

(Dictated and pronounced in the open court.)

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

T.K.