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

REGIONAL BENCH – COURT NO.2

S. Tax Appeal No. 83 of 2009

Arising out of Order-in-Original No.44/COMMR/ST/KOL/2008-09 Dated 19.01.2009 passed by Commissioner of Service Tax, Kolkata.

M/s. Saha Road Lines Pvt. Ltd.
89/3/2, Vivekananda Road,
Bangur Park,
(Rani Market), Rishra
Distt. Hooghly, West Bengal-712248

Respondent (s)

VERSUS

CGST & Excise, Howrah **Appellant (s)**
180, Santipally, Rajdanga Main Road
Kolkata-700107

APPERANCE :
Mr. S. Bhowmik & Mr. S. Kejriwal, both Advocates for the Appellant
Mr. S. S. Chattopadhyay, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

ORDER NO. FO/75225/2020

Date of Hearing : 03 February 2020
Date of Decision : 03 February 2020

PER P. V. SUBBA RAO :

The appellant is a Service Provider providing storage and warehousing services. They have been paying Service Tax and filing ST-3 returns as required. A Show Cause Notice dated 11/10/2007 was issued to the appellant demanding differential Service Tax amounting to Rs. 59,63,602/-. After Adjudication, the Ld. Commissioner, by the impugned Order, dropped the demand to the extent of Rs.44,96,561/- and confirmed the demand of only Rs.14,67,041/-.

2. Ld. Counsel for the appellant submits that of this confirmed amount, they are not contesting an amount of Rs.3,87,818/- and have already paid this amount before the impugned Order was passed. He submits that therefore, the only disputed amount is Rs.10,79,223/- as follows.

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SI No.	Name of the Services	Amount of Services
1.	Storage and Warehousing of Agricultural Produce	Rs.4,14,498
2.	Renting of Godown Space (Pure renting on sq.ft. basis)	Rs.5,71,492
3.	Handling of Agricultural Produce	Rs.93,233
		Rs.10,79.233

3. As far as storage and warehousing services are concerned, he would submit that the above demand is on account of storage and warehousing of agriculture produce which is outside the ambit of the levy of Service Tax under Section 65 (87) of the Finance Act, 1994. As far as the Renting of Godown Space is concerned, he would submit that the demand is not sustainable because renting become a taxable service under Section 65(90a) of the Finance Act, 1994 only with effect from 1/06/2007 and the present appeal pertains to the period prior to this stage. As far as the demand of Handling of Agricultural Produce is concerned, he would submit that the demand is under 'Cargo Handling Service' which also should not apply to Agricultural produce in view of Notification No.10/2002 dt. 01/08/2002.

4. Ld. Departmental Representative agrees that Storage and Warehousing of agricultural produce is not leviable to Service Tax. However, in this particular case, he argues that the appellant could not establish what was rendered was storage and warehousing in respect of agricultural produce. Therefore, the demand was confirmed on this account correctly. As far as the renting of Godown space is concerned, he would submit that a perusal of the contract entered into between the appellant and M/s. Mother Diary, Calcutta (one of the service receivers) would show that the pith and substance of the agreement is one of warehousing service although the title is only for renting of immovable property. He takes us through various clauses of the agreement to demonstrate that the appellant was loading, unloading the goods, stacking the goods in the warehouse and also assuming responsibility for the storage of the goods. Effectively, he would submit that the

goods have been given to the custody of the appellant by M/s. Mother Diary. Such an agreement is different from an agreement where space is rented out and the tenant stores goods in them. It is the nature of warehousing service and the demand was under this head. Similarly, in the case of demand on service of Handling of agricultural produce, he would submit that the appellant could not show that what was handled was only agricultural produce.

5. After listening to both sides for some time, we find that this appeal involves determination of a number of facts after going through all the agreements and at least some of the corresponding invoices. There is no dispute that near Renting Godown Space was not taxable during the period or that storage for warehousing agricultural produce was not taxable.

6. Both sides agree that these facts need to be determined and for this purpose, the matter could be remanded to the Original Authority for examination of the documents.

7. In view of the above, without passing any remarks on the merits of the case, we remand the matter to the Original Authority for Denovo Adjudication for examining the Revenue contracts and invoices. Needless to say that principles of natural justice have to be followed and the appellant should be given an opportunity to present the papers in their defence.

8. The appeal is allowed by way of remand to the Original Authority.

(Operative part of the order was pronounced in the Open Court)

Sd/-
(S. S. Garg)
Member (Judicial)

Sd/-
(P. V. Subba Rao)
Member (Technical)

Pooja