IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
REGIONAL BENCH – COURT NO.1

S. Tax Appeal No. 75 of 2010
Service Tax Cross Objection No.38 of 2010

Arising out of Order-in-Original No.35/Commr/Denovo/ST/Kol/2009-10 Dated 22/12/2009 passed by the Commissioner of Service Tax, Kolkata.

Commr. of S. Tax, Kolkata
180, Santipally, Rajdanga Main Road,
3rd Floor, Kolkata-700107

Respondent (s)

VERSUS

M/s. Naresh Kumar & Co. **Appellant (s)**
9B, Wood Street, 5th Floor,
Kolkata-700016

WITH

S. Tax Appeal No. 80 of 2010

Arising out of Order-in-Original No.35/Commr/Denovo/ST/Kol/2009-10 Dt. 22.12.2009 passed by Commissioner of Service Tax, Kolkata.

M/s. Naresh Kumar & Co.
9B, Wood Street, 5th Floor,
Kolkata-700016

Respondent (s)

VERSUS

Commr. of S. Tax, Kolkata **Appellant (s)**
180, Santipally, Rajdanga Main Road,
3rd Floor, Kolkata-700107

APPERANCE :
Mr. T. Mondal, Authorized Representative for the Appellant
Mr. J. K. Mittal, Advocate & Shri Pranabesh Ghosh, G. M. Accounts for the Respondent

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

FINAL ORDER NO.75313-75314/2020

Date of Hearing : 06 February 2020
Date of Decision : 06 February 2020

PER P. V. SUBBA RAO :

Heard both sides and perused records.

2. The assesee's appeal is against confirmation of the demand of Service Tax on their activities under the head "Clearing and Forwarding Agent Services" under Section 65(105)(j) read with Section 65(25) of the Finance Act, 1994. In the impugned Order, the Adjudicating Authority confirmed a demand of Rs.41,66,047/- but dropped the demand of Rs.45,91,393/- due to computation, cum duty benefit, etc. Revenue's appeal is against the portion of the demand which was dropped on grounds of computation. The assessee's appeal is on the ground that no service tax is payable at all by them.

3. The appellant assesee is rendering the following services:-

(a) Liaison and follow up on behalf of their consumers (power generation companies) between collieries and railways.

(b) supervisions, monitoring, witnessing the loading of specified size and grade of coal and shortage enroute, ensuring optimum quantity of supply, ensuring proper weighment.

(c) Co-coordinating receipt of necessary documents and submitting the same to consumers.

(d) Organising sampling and analysis of coal.

4. It is the case of the Revenue that these activities amount to rendering "clearing and forwarding services" and are accordingly chargeable to Service Tax under this head. It is the case of the assessee that these activities do not amount to rendering "clearing and forwarding service" as they do not physically handle or receive or store the goods/coal, but only do liaisoning, supervision and co-ordination. Not agreeing with the arguments of the assessee, the Adjudicating Authority, by the impugned order, held that the appellant is liable to pay Service Tax.

5. Ld. Counsel for the assessee submits that this case has been decided on merits in their favour by the Hon'ble Supreme Court in the case of Coal Handlers Pvt. Ltd. Vs. Commissioner of Central Excise, Kolkata-I [(2015) 11 SCC 683]. He also submits that relying on this judgment of the Hon'ble Apex Court, the Hon'ble Mumbai Bench of this Tribunal had in their own case [(2019) 22 G.S.T.L. 76 (Tri.-Mumbai) held that they are not liable to pay Service Tax.

6. Following the decision of the Hon'ble Apex Court in the case of Coal Handlers Pvt. Ltd. (Supra) and the judgment of Tribunal Mumbai in the appellant's own case, this Bench, vide Final Order No.76188-76189/2019 dated. 25/06/2019 has held that the appellant assessee is not liable to pay service tax. Paras 7 and 8 which are reproduced below:-

> *7. We find that the issued stands settled by the Mumbai Bench of this Tribunal in the assessee's own case. The Tribunal relying on the Apex* Court decision in Coal Handlers case (Supra) observed that:
>
> > *"3. Appellant's further submission is that taxing the gamut of services is not the intention of the law unless and until the clearing and forwarding services are said to have been provided. The scope of activity as enumerated above does not subscribe to this mandate of the law. He further submits that liaisoning, supervising, loading are not activity of clearing and forwarding. Revenue has not at all shown which activity was in relation to clearing and forwarding for taxability. Therefore the activity of "clearing and forwarding" consisting of two activities i.e. clearing and forwarding when carried out cumulatively and simultaneously, that only is taxable. Hon'ble Supreme Court while deciding the case in Coal Handlers Pvt.Ltd. v. CCE, Rage Kolkata-I – 2015 (38) S.T.R. 897 (S.C.) noticed that the activities of the nature as enumerated in Para 2 of the judgment should not fall within the scope of "clearing and forwarding" service. The Court has explained what constitutes clearing and forwarding operation and on the given facts and circumstances how the expression shall be interpreted. For this purpose, Learned Counsel places Para 11 of the said judgement which reads as under:-*
> >
> > > *"11. From the reading of the definition contained in the aforesaid provision, together with its dictionary meanings contained in Legal and Commercial dictionaries, it becomes apparent that in order to*

> *qualify as a C&F Agent, such a person is to be found to be engaged in providing any service connected with 'clearing and forwarding operations'. Of course, once it is found that such a person is providing the services which are connected with the clearing and forwarding operations, then whether such services are provided directly or indirectly would be of no significance and such a person would be covered by the definition. Therefore, we have to see as to what would constitute clearing and forwarding operations. As is clear from the plain meaning of the aforesaid expression, it would cover those activities which pertain to clearing of goods and thereafter forwarding those goods to a particular destination, at the instance and on the directions of the principal. <u>In the context of these appeals, it would essentially include getting the coal cleared as an agent on behalf of the principal from the supplier of the coal (which would mean collieries in the present case) and thereafter dispatching/forwarding the said coal to different destinations as per the instructions of the principal.</u> In the process, it may include warehousing of the goods so cleared, receiving dispatch orders from the principal, arranging dispatch of the goods as per the instructions of the principal by engaging transport on his own or through the transporters of the principal, maintaining records of the receipt and dispatch of the goods and the stock available on the warehouses and preparing invoices on behalf of the principal. The Larger Bench rightly enumerated these activities which the C&F Agent is supposed to perform."*

4. It is his submission that Hon'ble Supreme Court has specifically held that liaisoning will not be covered by the definition of clearing and forwarding service. This can be *appreciated from Para 12 of the above said judgment which is reproduced below:-*

> *"12. On the facts of the present case, we find that none of aforesaid activities are performed by the appellant. the <u>There is no role of the appellant in getting the coal cleared from the collieries/supplier of the coal</u>. Movement of the coal is under the contract of sale between the coal company and Ambuja companies. Even the coal is loaded on to the railway wagons by the coal company. The goods are not under any legal detention from which they need to be freed by the appellant. Not only this, destination of the goods is known to the coal company and the railway rakes are placed by the coal company for the said destinations. The destination is the factories of the principal itself, namely, Ambuja companies, where the coal is to be delivered by the coal company as per pre-determined/agreed covenants between them. Therefore, there is no occasion for Ambuja companies to instruct the appellant to dispatch/forward the goods to a particular destination which is already fixed as per the contract between the coal company and the Ambuja companies. The appellant does not even undertake any loading operation. The primary job of the appellant, as per the contract between the appellant and the Ambuja companies, is of supervising and liaisoning with the coal company as well as the Railways to see that the material required by Ambuja companies is loaded as per the schedule. At no stage custody of the coal is taken by the appellant or transportation of the coal, as forwarders, is arranged by the appellant. We are, thus, of the clear opinion that the services rendered by the appellant would not*

qualify as C&F Agent within the meaning of Section 65(25) of the Act."

5. On the aforesaid reasoning, appellant says that the term "clearing and forwarding" would cover only those activities which pertain to clearing of the goods and forwarding thereof to a destination, under the directions of the principal. Beyond this, no other activities shall be taxable under the above said taxing entry.

6. Per contra, Revenue pleads that the entire gamut of services stated in the show cause notice is extracted above shall be taxable.

7. It is inconceivable how an activity not being covered by the fold of law shall be taxable beyond its mandate. It is well settled law in Cape Brandy Syndicate v. Inland Revenue Commissioner – (1921) 1 KB 64, which is also approved by Apex Court that taxing provision should be considered strictly without leaving any intendment. When law prescribed certain activity shall only be taxable on occurrence of taxable event, without any evidence to that effect, there is no presumption in taxation. In absence of such evidence on record, it is not at all possible to hold beyond the ratio laid down by the Apex Court which is binding on Tribunal on the given facts and circumstances and akin to the facts in the judgment of the Apex Court."

8. We find that the very essential requirement, in order to constitute clearing and forwarding services, of clearance of coal from the collieries is absent in the present case and that the assessee is only undertaking liaisoning related services to ensure smooth supply of coal. The present issue is no longer res integra and therefore, the appeal of the assessee is entitled to succeed. In so far as the appeal filed by the Revenue is concerned, the question of inclusion of other charges as deducted by the Ld.Commissioner will not arise inasmuch as the very taxability under the category of Clearing and Forwarding services cannot *sustain and therefore, the appeal of the Revenue being devoid of any merit is liable to be rejected.*

7. As the issue has already been settled in the assessee's own case by this very Bench of the Tribunal for a different period, we respectfully follow the ratio and hold that the assessee is not liable to pay service tax on the services rendered by them. Accordingly, the entire demand in the impugned order is set aside.

8. In view of the above, the assessee's appeal is allowed and revenue's appeal is rejected with consequential benefits, if any.

(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