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

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.267 of 2009

(Arising out of Order-in-Appeal No.63/ST/BBSR-I/2009 dated 31.07.2009 passed by Commissioner(Appeals), Central Excise, Customs & Service Tax, Bhubaneswar.)

M/s. Ferro Scrap Nigam Limited
(C/o M/s. Nilachal Ispat Nigam Ltd., Duburi, Kalinga Nagar, Dist: Jajpur, Odisha.)

...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Bhubaneswar-I

.....Respondent

(C.R. Building, Rajaswa Vihar, Bhubaneswar-751007.)

APPEARANCE

Shri Rahul Tangri, Advocate for the Appellant (s)

Shri A.Roy, Authorized Representative for the Respondent (s)

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

FINAL ORDER NO. 75163/2022

DATE OF HEARING : 17 January 2022
DATE OF DECISION : 17 January 2022

P.K. CHOUDHARY :

The Ld. Additional Commissioner of Service Tax, Bhubneshwar-I vide the Adjudication Order dated 30.12.2018 has confirmed demand of Service Tax of Rs.21,69,580/- under the category of 'Cargo Handling Services' (CHS) for the period from October 2003 to April 2004 along with penalty under Section 76 of the Finance Act, 1994 (the Act) and applicable interest under Section 75 of the Act.

2. The Appellant, M/s. Ferro Scrap Nigam Ltd, is a PSU and is engaged in handling and processing of slag mixture generated by steel companies (clients of the Appellant) during the manufacturing process undertaken by them. The said processing of slag scrap mixture is undertaken for the purpose of obtaining iron and steel scrap from the said mixture by way of magnetic separation and the iron and steel so obtained is handed over to such clients for further use in the manufacture of dutiable goods. The Appellant has entered into similar agreements with Neelachal Ispat Nigam Ltd (NINL). The scope of work that is being undertaken by the Appellant involves handling and transportation of blast furnace slag and handling and processing of iron scrap. Since the rates have been separately mentioned, the department has classified the entire activity of recovery and processing of scrap and slag and transportation and loading/ unloading of scrap and slag within the plant under CHS.

3. Shri Rahul Tangri, Ld. Advocate for the assessee at the outset submitted that the issue stands decided in their own appeals by this Tribunal wherein it has been held that demand under both the category of services, viz, BAS and CHS would not be sustainable in identical set of facts. With regard to the demand under BAS for the period prior to 16.06.2005, the demand raised under the category of BAS has already been set aside by the Tribunal in their case reported as Ferro Scrap Nigam Ltd vs. CCE, Raipur 2014 (1) TMI 1049 CESTAT New Delhi as well as in the case of Auto Coats vs. CCE, Coimbatore 2009 (15) STR 398 (Tri-Chennai). For the period after 16.06.2005, he submitted that the processing services are held to be exempted in terms of Notification No.08/2005-ST as held by the Tribunal reported as Ferro Scrap Nigam Ltd vs. CCE, Ranchi 2019 (2) TMI 766 – CESTAT-Kolkata. With regard to the demand raised under CHS, he submitted that the activity of shifting, transportation, loading and unloading within the plant is not taxable as has been held in their case, reported as Ferro Scrap Nigam Ltd vs. CCE, Raipur 2014 (1)

TMI 1051 – CESTAT, New Delhi as well as in the case of Modi Constructions Co. vs. CCE Ranchi 2008 (12) STR 34 (Tri-Kol) as affirmed by the Hon'ble Jharkhand High Court reported in 2011 (23) STR 6 (Jhar), as well as in other cases. He also contested the imposition of penalty in the absence of any fraud or suppression and also the invocation of extended period of limitation.

4. Shri A.Roy, Ld. Authorized Representative for the Department reiterated the findings of the Ld. Commissioner in the impugned order and pleaded that the appeal filed by the assessee be rejected being devoid of any merit.

5. Heard both sides through video conferencing and perused the appeal records.

6. We find that the issue already stands decided in favour of the Appellant with regard to the demand raised on shifting, transportation, loading and unloading from one place to another inside the steel plant of the client itself, the Tribunal in their own case as reported in 2014 *(1) TMI 1051- CESTAT-New Delhi has observed that :-*

> *"7. In any case, we have seen the decision of the Tribunal as upheld by Hon"ble High Court in the case of Modi Construction Co. vs. CCE, Ranchi (supra), it stands clearly held by the Tribunal that service of shifting, transportation or raw materials, waste materials, and finished products from one place to another, inside the plant itself, does not fall under the taxing category of Cargo Handling Services. The activities undertaken by the appellant are admittedly within the plant itself. As such, we find that the ratio of the law declared by he Tribunal in the above referred matter, which also stands upheld by the Hon"ble Jharkhand High Court, is fully applicable to the facts of this case."*

In view of the aforesaid, the issue is no longer *res-integra*, since decided in favour of the assessee. We do not find any reason to take a contrary view and therefore, the demand raised vide the impugned adjudication order cannot be sustained and hence, the same is set aside.

The appeal filed by assessee is thus allowed with consequential relief as per law.

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

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

Sd/

(RAJU)
MEMBER (TECHNICAL)

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