IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

Service Tax Appeal No.75316 of 2014

(Arising out of Order-in-Appeal No.87/ST/B-II/2013 dated 25.11.2013 passed by Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar)

M/s Maa Tarini & Co.
Barsuan,P.O.-Lahunipada, Dist.-Sundergarh, Odisha

Appellant

VERSUS

Commissioner of Central Excise,Customs & Service Tax, Bhubaneswar
C.R.Building, Rajaswa Vihar, Bhubaneswar 7, Odisha

Respondent

Appearance:

Shri Kartik Kurmy, Advocate for the Appellant
Shri S.S.Chattopadhyay, Authorized Representative for the Respondent

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

FINAL ORDER NO.75180/2022

DATE OF E-HEARING : 16.11.2021
DATE OF PRONOUNCEMENT **: 6 APRIL 2022**

Per P.K.Choudhary :

The present appeal has been filed by the Appellant M/s. Maa Tarini & co. covering the period from 2006-07 to 2010-11 (upto Dec 2011) aggrieved by the confirmation of demand by both the lower authorities under Cargo Handling Service category on the ground that the activity of transportation of the minerals from the stock yard to the railway siding, qualifies under the category of "cargo handling services". The authorities below have held that the Appellant has provided cargo handling services in terms of Section 65(23) read with Section 65(105)(zr) of Finance Act, 1994 and hence have demanded service tax on the gross amount received by the Appellant on the activity as stated above. It is the contention of the Appellant that the work undertaken by them does not fall under the category of "cargo handling services”. They have also stated that the recipient of services had examined the activities undertaken under the contract and had paid service tax under reverse charge mechanism on part of the contract under Transport of goods by road agency service.

2. The ld. Consultant extensively referred to the contents of the agreement and also the rate schedules of payment for various activities agreed upon, as per the said agreement. He stated that the activities as considered for cargo handling service by the department are part of the main activity of transportation of the minerals from the stock yard to the railway siding and loading the same onto railway wagons. He further stated that they have already paid service tax under cargo handling service on the loading component as per the agreement which is annexed at Annexure B to the appeal paper book. Following the decision of the Hon’ble High Court of Jharkhand in the case of CCE, Ranchi v. M/s. Modi Construction Company reported in 2011 (23) S.T.R. 6 (Jhar.) the activity of the Appellant cannot be called as “cargo handling services”. He further argued that the contract categorically brings out different scope of the work undertaken by the Appellant, which is transportation of mineral over a short distance and loading the same onto wagons. Both the activity being separately determined in the work order cannot be clubbed for taxation under Cargo Handling services. The ld. Consultant relied on various decided cases in support of his submissions. He also relied on certain clarifications of the C.B.E. & C. on this issue.

3. Learned Departmental Representative submits that the entire activity of the Appellant calls for taxation under the cargo handling services and they cannot bifurcate the contract into transport and loading separately to not pay service tax on transportation activity. In such situation, the original authority is correct in holding the appellant to tax liability under “cargo handling service”. It is further submitted that the responsibility of the appellant gets discharged only after completion of loading of limestone onto the railway wagons. Further, he reiterated the order in original and the order in appeal and

submitted that the demand has been rightly confirmed by the authorities.

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

5. The statutory definition of "cargo handling service" is as below :

> *"cargo handling service" means loading, unloading, packing or unpacking of cargo and includes cargo handling services provided for freight in special containers or for non-containerized freight, services provided by a container freight terminal or any other freight terminal, for all modes of transport and cargo handling services incidental to freight, but does not include handling of export cargo or passenger baggage or more transportation of goods."*

Section 65(105)(zr) defines 'taxable service' as under -

> *"taxable service" means any services provided or to be provided to any person, by a cargo handling agency in relation to cargo handling services."*

6. We have examined the terms of agreement which is the basis of the activities carried out by the Appellant. The agreement itself provides for detailed break-up of rates for each of the two activities to be undertaken by the Appellant. A plain reading of these rate schedules will show that the essence of the contract is transportation of mineral along with loading of the same in wagons. We note that a similar issue came up for consideration before the Tribunal in Hira Industries Ltd, 2012 (28) S.T.R. 23 (Tri.), wherein the Tribunal observed as under :

> *"18. The next issue is the classification of service rendered by the transport contractors whether it is Transportation of Goods or Cargo Handling Service. We are not in agreement with the argument that the service involved is cargo handling service and not transportation service. When there is composite service, the service should be classified as per provisions in Section 65A of*

Finance Act, 1994. As per this section the sub-clause which gives the most specific description is to be adopted. If this criterion fails then the service is to be classified as the service which gives the essential character of the service. The composite service has elements fitting into the definitions of both the services. So, recourses is to be taken to section 65A(2)(b). Here it cannot be considered that transportation is for the purpose of loading and unloading but the contrary is true. That is loading and unloading is for transportation. Any person dealing with the situation perceives the services as one for transportation and not for loading and unloading. So on this count we are not in agreement with the argument of Revenue."

Also, this Tribunal in COMMISSIONER OF SERVICE TAX, RANCHI Versus HEC LTD. 2018 (9) G.S.T.L. 403 (Tri. - Kolkata) on a similar issue has held that

"The activities carried out by the assessee-respondents are primarily transportation of goods and loading & unloading, etc., which are incidental to the transportation of goods. Such activities cannot be covered within the services of 'Cargo Handling' as has been rightly held by the lower authorities."

7. Since in the present case the contract is vivisectable, the demand for transport work under cargo handling service cannot succeed. Also there is no counter made to the claim of the Appellant on payment of service tax under reverse charge mechanism by the recipient on such amounts by the department. Accordingly, we set aside the impugned order and allow the appeal with consequential benefit to the appellants.

(Pronounced in the open court on **06.04.2022**)

Sd/

(P. K. Choudhary)
Member (Judicial)

Sd/

(Raju)
Member (Technical)

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