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

Service Tax Appeal No.75087 of 2014

(Arising out of Order-in-Appeal No.49/ST/B-I/2013 dated 08.05.2013 passed by Commissioner (Appeals) of Central Excise, Customs & Service Tax,Bhubaneswar)

M/s Lal Traders & Agencies Private Limited
P.O.-Rairangpur, Dist.-Mayurbhanj, Odisha, Pin-757043

Appellant

VERSUS

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

Respondent

WITH

Service Tax Appeal No.76954 of 2016

(Arising out of Order-in-Original No.BSR-EXCUS-002-COM-002-16-17 dated 27.06.2016 passed by Commissioner (Appeals) of Central Excise, Customs & Service Tax,Bhubaneswar II)

M/s Lal Traders & Agencies Private Limited
P.O.-Rairangpur, Dist.-Mayurbhanj, Odisha, Pin-757043

Appellant

VERSUS

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

Respondent

Appearance:

S/Shri Jagabandhu Sahoo & Kajal Sahoo, both Advocates for the Appellant
Shri J.Chattopadhyay, Authorized Representative for the Respondent

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER
HON'BLE SHRI P.V.SUBBA RAO, TECHNICAL MEMBER

FINAL ORDER NO.75243-75244/2022

DATE OF E-HEARING : 21.01.2022
DATE OF PRONOUNCEMENT : 04 MAY 2022

Per P.K.Choudhary :

Both the appeals are taken up together for disposal as they involve identical issues spread over a period of time.

The Appellant is engaged in the business of mining activities having its mines at Odisha. The Appellant had engaged machineries like excavator in mines and also various transporters for the purpose of transportation of overburden/waste materials and iron ore to the vehicles of transporters which carry the materials to the specified places and unload those materials with the help of hydraulic lifting systems fitted in the vehicles within the mines at Badampahar, in the district of Mayurbhanj (Odisha). An audit of service tax records of the Appellant was conducted by the Internal Audit wing of the department for the period FY 2005-06 to 2009-10 wherein it was alleged that the Appellant is liable to pay service tax under reverse charge mechanism for the services of Goods Transport Agency. Accordingly, a Show Cause Notice Dated 20/10/2010 was issued to the Appellant proposing a service tax demand of Rs. 22,86,911/- along with interest and various penalties under Sections 76,77 and 78 of the Finance Act, 1994. The said SCN culminated in Order-in-Original dated 20.10.2011, wherein the entire demand was dropped. The revenue filed an appeal against the said Order-in-Original and vide Order-in-Appeal dated 08.05.2013, the same was allowed and the demand proposed in the Show Cause Notice stood confirmed along with interest and penalty under Section 78 of the Finance Act, 1994. Hence the present appeal by the assessee.

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

3. We find that the only issue involved in the case is whether the Appellant is entitled for exemption from service tax under Notification No. 34/2004- ST dated 03.12.2004. The Appellant has contended that since the price per trip fixed with the transporter is less than Rs. 750/- per trip, there cannot be levied any service tax on the Appellant under reverse charge basis. The said Notification reads as below:

03, December, 2004

Notification No. 34/2004 - Service Tax

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service provided by a goods transport agency to a customer, in relation to transport of goods by road in a goods carriage, from the whole of service tax leviable thereon under section 66 of the said Act, where,-

(i)	the gross amount charged on consignments transported in a goods carriage does not exceed rupees one thousand five hundred; or
(ii)	the gross amount charged on an individual consignment transported in a goods carriage does not exceed rupees seven hundred fifty
	Explanation .- For the purposes of this notification, "an individual consignment" means all goods transported by a goods transport agency by road in a goods carriage for a consignee.

2. This notification shall come into force on the first day of January, 2005.

F. No. 341/18/2004-TRU (Pt.)

V. Sivasubramanian
Deputy Secretary to the Government of India

On a plain reading of the above it is seen that what has been exempted is the gross amount charged on consignments transported in a goods carriage upto Rs. 1500/-. In the given case of the Appellant, the gross amount charged by the transporter per trip is Rs. 150/- which is clearly within the upper limit of exemption of Rs. 1500/.

4. We find that the said issue is no longer res integra in terms of the decision of the Tribunal in the case of Chhattisgarh Distilleries Ltd. 2017 (3) G.S.T.L. 255 (Tri. - Del.) wherein it was held as below:

> ***"4.*** *After hearing both sides and on perusal of record, it appears that the exemption of Rs. 1500/- is available to "a" single transaction but when the transactions are consolidate with the same parties, the said exemption is not available on the subsequent vouchers. In other words, the exemption is only available on first voucher and not on subsequent vouchers. In the instant case, the lower authorities have already disallowed the claim on the vouchers which are in numbers but each below Rs. 1500/-. Thus the order appears reasonable as per the Golden Rule of Interpretation for the reason that in the said Notification No. 30/2004 the word "a" transaction is already mentioned. Hence, we find no reason to interfere with the impugned order, the same is hereby sustained along with the reasons mentioned therein."*

5. We find in the given case also though each trip cost has been determined as Rs.150/trip, however, the total invoice raised by the transporter is much higher for all the trips concerned. Thus, we are inclined to uphold the order of the Ld. Commissioner (Appeals) and reject the appeal filed by the Appellant on merits.

6. As regards imposition of penalty, since the issue pertained to interpretation of the exemption notification, we exercise the powers under Section 80 of the Act to set aside the penalties as levied by the Commissioner (Appeals) under Section 78 of the Act.

7. As regards Appeal No.ST/76954/2016 covering the period 2009-10 to 2012-13 (upto 30/09/2012), we find that the second Show Cause Notice was issued on 21/06/2013 invoking extended period of limitation. Having regard to the judgment of the Hon'ble Apex Court in the case of **NIZAM SUGAR FACTORY Versus COLLECTOR OF CENTRAL EXCISE, A.P. (2006 (197) E.L.T. 465 (S.C.))** wherein it was held that, *"**9. Allegation of suppression of facts against the appellant cannot be sustained. When the first SCN was issued all the relevant facts were in the knowledge of the authorities. Later on, while issuing the second and third show cause notices the same/similar facts could not be taken as suppression of facts on the part of the assessee as these facts were already in the knowledge of the authorities. We agree with the view taken in the aforesaid judgments and respectfully following the same, hold that there was no suppression of facts on the part of the assessee/appellant.** 10. For the reasons stated above, Civil Appeal Nos. 2747 of 2001 and Civil Appeal No. 6261 of 2003 filed by the assessees are accepted and the impugned orders are set aside on the question of limitation only. The demands raised against them as well as the penalty, if any, are dropped. Civil Appeals @ Special Leave Petition (C) Nos. 9271-9278 of 2003 filed by the department are dismissed. Questions of classification and marketability are left open. Parties shall bear their own costs"*

we are of the view that the said Show Cause Notice is barred by limitation. However as per the learned Departmental Representative, some portion of the demand is within the normal period of limitation and for the limited purposes to verify the same, we remand the matter to the Ld. Adjudicating authority. If any demand is sustainable, the same would be payable by the Appellant with interest. Penalty is set aside for the reasons recorded above.

(Pronounced in the Open Court on **04.05.2022**)

Sd/-

(P. K. Choudhary)
Member (Judicial)

Sd/-

(P.V.Subba Rao)
Member (Technical)

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