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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No.95 of 2010

(Arising out of Order-in-Appeal No.04/ST/2010 dated 13.01.2010 passed by Commissioner (Appeals) of Central Excise, Kolkata)

M/s Eldyne Electro System Private Limited
Profulla Kanan, Kolkata-700059

Appellant

VERSUS

Commissioner of Service Tax, Kolkata
180, Shantipally, Rajdanga Main Road, Kolkata-700107

Respondent

APPERANCE :
Shri S.P.Majumder, Advocate for the Appellant
Shri K.Chowdhury, Authorized Representative for the Revenue

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO……75096/2023

DATE OF HEARING : 02 .03.2023
DATE OF DECISION : 02 .03.2023

Per Ashok Jindal :

The appellant is in appeal against the impugned order demanding service tax on business support service provided to the Principal located outside India.

2. Facts of the case are that the appellant is an Agent-Principal located outside India to procure market for sale of the product of their Principal in India to Railways. Appellants withdrew their Certificate Purchase Orders and provided to their Principal for supply of goods to Railways from outside India. The appellant received certain commission from Principal located outside India.

3. Revenue of the view that the service rendered by the appellants has been consumed by the Railways. Therefore, the service was provided in India. Accordingly, the appellant is liable to pay service tax. In these circumstances, the show-cause notice was issued for demand of service tax along with interest and to impose various penalties under the Finance Act, 1994.

4. The matter was adjudicated. Demand of service tax along with interest was confirmed. Various penalties under the Finance Act, 1994 were also imposed.

5. Being aggrieved with the said order, the appellant is in appeal before us.

6. Heard both sides.

7. As the facts are not in dispute that appellant is an Agent for Principal located outside India for procurement of purchase order for Principal in India to sale the product by their Principal located outside India. In that circumstances, the service provided by the appellant is a service provided by the Principal located outside India, which is located in India. We, therefore, hold that it is a case of export of service, on which no service tax is leviable on the appellant. The same view has been taken up by the various decisions, which are as under :

(i) CCE, Jaipur Vs. National Engineering Industries Ltd. :
2018 (11) GSTL 235 (Raj.)

(ii) CST, Mumbai VI Vs. A.T.Enterprises Pvt. Ltd.
2018 (8) GSTL 123 (Bom.)

(iii) M/s IXIX Technologies Pvt. Ltd. Vs. CST
2020 TIOL 968 CESTAT KOL

(iv) CCE, Noida Vs. Graphics Mega Times Ltd.
2018 (14) GSTL 382 (Tri.-All)

(v) Hitachi Metal (I) Pvt. Ltd. Vs. CCE & ST,Gurgaon I.

8. As the issue has already been settled in favour of the appellants, therefore, following the above cited decisions, we hold that the appellant is not liable to pay the service tax. Accordingly, we set aside the impugned order and allow the appeal with consequential relief, if any.

(Dictated and pronounced in the open court)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(K.Anpazhakan)
Member (Technical)

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