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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No.72 of 2008

(Arising out of Order-in-Original No.Commr/BBSR I/ST-04/2008 dated 05.02.2008 passed by Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar)

M/s MMTC Limited
Regional Office, Alok Bharati Complex,7th Floor,Saheed Nagar, Bhubaneswar-751007

Appellant

VERSUS

Commissioner of Central Excise, Customs, S.Tax,Bhubaneswar
C.R.Building, Rajaswa Vihar, Bhubaneswar-751007

Respondent

APPERANCE :

Dr.Samir Chakraborty, Sr.Advocate & Shri Suman Bhowmik, Advocate for the Appellant
Shri A.Roy, Authorized Representative for Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO…75222/2013

DATE OF HEARING : 10 .04.2023
DATE OF PRONOUNCEMENT : 13.04.2023

Per Ashok Jindal :

The appellant is in appeal against the impugned order demanding service tax from them under the category of "Business Auxiliary Service" in terms of Section 65 (19) (1) of the Finance Act, 1994.

2. The facts of the case are that the appellant is a Public Sector Undertaking and was engaged in trading activity. The appellant entered into an agreement with M/s Neelachal Ispat Nigam Limited (NINL) for marketing and sale of the products of NINL during the material period. It was provided in the agreement that the property and risk in the goods shall continue to vest in NINL, even if the same are in possession of the appellant. The appellant was to be paid 3% commission of the sale value of the product sold in India for the services rendered by the appellant. The appellant was under the

impression that the activity of the appellant along with NINL was sale and purchase of the goods on principal to principal basis for which the appellant was registered with the Odisha Central States Tax Authorities and was also of the opinion that they are not liable to pay service tax on the premise that there was no service rendered by the appellant to NINL. Pursuant to an Audit of NINL by DGCEI in August, 2005, the appellant obtained legal advice on the demand of the jurisdictional Central Excise authority that the service tax was payable on the payment received from NINL by the appellant and requiring the appellant to make payment thereof. The appellant was advised that the activities carried out under the said agreement were that of a commission agent and that as such "Business Auxiliary Service" , the appellant was liable to make payment of service tax on the payments received from NINL under the said agreement w.e.f. 8th July, 2004 under "Business Auxiliary Service". Since by Notification No.13/2003-ST dated 20.06.2003, wherein service of a commission agent was exempted from service tax for the period 1st July, 2003 to 8th July, 2004. No service tax was payable by the appellant on the for the said period. Accordingly, the appellant obtained service tax registration and deposited the service tax under the Head of "Business Auxiliary Service" for the periods 9th July, 2004 to 31st March, 2005 and 1st April, 2005 to 30th November, 2005. However, investigation by DGCEI was continued and on 23rd January, 2006, a show-cause notice was issued to the appellant to demand service tax for the period 1st July, 2003 to 30th November, 2005 under the category of "Business Auxiliary Service". The payments made by the appellant were appropriated and the balance payment of Rs.62,11,908/- was confirmed against the appellant and penalty of Rs.2,89,11,609/- was imposed. Against the said order, the appellant is before us.

3. The ld.Sr.Counsel for the appellant submitted that the appellant was not covered under Clause (i) of Section 65 (19) of the Finance Act, 1994 as the appellant was not engaged under any activity of promotion or marketing or sale of goods produced or provided by or belonging to the client. The said activity was squarely covered by the exemption Notification No.13/2003-ST dated 20.06.2003 wherein the Commission Agent has been defined, which means "a person who causes sale or purchase of goods, on behalf of another person for a consideration which is based on the quantum of such sale or purchase". Therefore, the appellant is purely a commission agent as they were engaged in the activity of sale of goods on behalf of NINL for commission at the rate of 3% of the sale amount. Therefore, they are not liable to pay service tax for the said period. He also relied on the CBEC Circular No.59/8/2003-ST dated 20.06.2003, which clarifies the terms of commission agent and exempted from payment of service tax for the relevant period. Therefore, they are liable to pay service tax.

4. On the other hand, the ld.A.R. for the Revenue, submits that the appellants were engaged in the activity of promotion or marketing of the product from NINL, which is within the ambit of terms of agreement. Therefore, they are liable to pay service tax during the impugned period.

5. Heard the parties and considered the submissions.

6. On consideration of the submissions made by both the sides and on perusal of the records, we find that it is the fact on record that the appellant is receiving commission agent at the rate of 3% of the sale value of goods sold by NINL and the Notification No.13/2003-ST dated 20.06.2003, clearly spelt that the commission agent means, "a person who causes sale or purchase of goods, on behalf of another person for a consideration which is based on the quantum of such sale or purchase". As the appellant is getting his commission at the rate of 3% of the sale amount effected by that on behalf of NINL. In that circumstances, the appellant is entitled for benefit of Notification No.13/2003-ST dated 20.06.2003.

7. Therefore, we hold that the appellant is not liable to pay service tax during the period 01.07.2003 to 08.07.2004.

8. In view of this, we do not find any merit in the impugned order demanding service tax amounting to Rs.62,11,908/.

9. We further hold that no penalty is imposable on the appellant in the facts and circumstances of the case.

10. In the result, the appeal is allowed with consequential relief to the appellant, if any.

(Pronounced in the open court on 13.04.2023)

Sd/
(Ashok Jindal)
Member (Judicial)

Sd/
(Rajeev Tandon)
Member (Technical)

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