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

REGIONAL BENCH – COURT NO.2

<u>Service Tax Appeal No.490 of 2011</u>

(Arising out of Order-in-Appeal No.250/ST/Kol/2011 dated 11.08.2011 passed by Commissioner of Service Tax, Kolkata)

Deepak Agarwal
194,S.P.Mukherjee Road, Kolakta-700026

Appellant

VERSUS

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

Respondent

<u>APPERANCE :</u>

Shri Vinay Shraff, Advocate for the Appellant
Shri J.Chattopadhyay, Authorized Representative for Respondent

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

FINAL ORDER NO…75235/2023

<u>DATE OF HEARING : 10 .04.2023</u>
<u>DATE OF DECISION : 10 .04.2023</u>

<u>Per Ashok Jindal :</u>

The appellant is in appeal against the impugned order demanding service tax under "Rent-a-Cab" services.

2. The facts of the case are that on the basis of information furnished by the Public Vehicles Department, Kolkata and information collected from yellow pages, web sites etc. and scrutiny of income tax records of the appellants, which reveals that the appellant is engaged in the business of renting of cabs during the period from 2002-03 to 2004-05, for which the appellant has received certain amounts for rending services and has not paid service tax under the category of "Rent-a-Cab" services, therefore, show-cause notice dated 22.10.2007 was issued for demanding service tax for the period from 2002-03 to 2004-

05. The matter was adjudicated. Demand of service tax was confirmed with interest and penalty was also imposed.

3. Against the said order, the appellant is before us.

4. The ld.Counsel for the appellant, submits that the appellant is not engaged in the activity of Rent-a-Cab Services as the appellants themselves are providing services of the transportation and the drivers are the employees, for which, he has produced the salary bills of the drivers, who are running taxies on behalf of the appellants. The said fact has been certified by the Chartered Accountant. To this effect, a Certificate has been filed by the appellant. He further submits that the demand has been raised on the basis of third party records and no investigation was done at appellant's end. In that circumstances, the show-cause notice is not sustainable. He, therefore, prayed that the impugned order is to be set aside.

5. On the other hand, the Ld.Authorised Representataive for the Revenue, supported the impugned order and submits that the appellant has failed to provide the required documents, therefore, the demand is rightly confirmed.

6. Heard both sides and considered the submissions.

7. We find that in this case, no investigation was conducted at the end of the appellant. Only on the basis of information furnished by the Public Vehicles Department, Kolkata and information collected from yellow pages, web sites etc. and scrutiny of income tax records of the appellants, the demands have been raised, which is not sustainable in law as held by this Tribunal in the case of Luit Developers (P) Ltd. Vs. Commissioner of CGST & Excise, Dibrugarh reported in 2022 136

taxmann.com 109 (Kolkata-CESTAT) [23.02.2022]. Therefore, we hold that the demand against the appellant is not sustainable. Moreover, the appellant has produced the salary bills of the drivers and a Certificate from the Chartered Accountant to this effect certifying that the appellant is engaged in plying metered taxies not rent a cab and the appellant was operating the same through drivers himself. In that circumstances also, the demands are not sustainable.

8. In view of the above discussions, we do not find any merit in the impugned order and the same is set aside.

9. In the result, the appeal is allowed with consequential relief, if any.

(Operative part of the order was pronounced in the open court)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

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