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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No. 57 of 2011
And
Service Tax Cross Objection No.48 of 2011

(Arising out of Order-in-Original No. 70/Commr./ST/Bol/10 dated: 23.11.2010 passed by the Commissioner of Central Excise, Bolpur)

Commissioner of Central Excise, Bolpur
(Nanoor Chandidas Raod, Sian, Bolpur, Dist.- Birbhum, Pin-731204)

...Appellant

VERSUS

M/s Adhunik Ispat Ltd.
(Raturia, Angadpur, Dist.- Bardhaman, Durgapur- 713215)

...Respondent

APPEARANCE :
Shri K. Chowdhury, Authorized Representative for the Appellant
Shri N. K. Chowdhury, Advocate, for the Respondent

CORAM:
HON,BLE MR. P. K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75862/2023

Date of Hearing : 07.06.2023
Date of Decision :07.06.2023

PER K. ANPAZHAKAN

M/s. Adhunik Ispat Ltd., Durgapur Unit (The Respondent) are a registered as manufacturer of excisable items. It appeared from the Balance Sheets of the Respondent that during the years 2004-05 to 2007-08, they have earned Rs.145714103/- as Commission Income from various clients. The Respondent was registered only as a Service Tax provider for GTA Service. Since no service tax was paid by them for the income earned as commission under the category of Business Auxiliary Service (BAS), a Show Cause Notice dated 14.10.2009 was issued to the Respondent demanding service tax of Rs 1,61,23,091/-, along with interest and penalty. The said Notice was adjudicated by the Commissioner vide Order-in-Original dated 23.10.2019, wherein he dropped the demands made in the Notice on the ground that the

Respondent is falling outside the jurisdiction of Bolpur Commissionerate and the adjudicating authority Commissioner, Bolpur has no jurisdiction to decide the case. Aggrieved against the impugned order, the department filed the present appeal against the dropping of the demands.

2. In their submissions, the Respondent stated that their Head Office at Kolkata has been registered for providing Business Auxiliary Service and paying service tax regularly. They stated that their Head Office charged Service Tax in their Bills for Services rendered by the Respondent (Durgapur Unit) also and shown Service Tax payable in their respective ledger on Commission Income Account. Since they have rendered the taxable service and there was no Centralized Service Tax Registration for discharging the Service Tax on such commissions received for providing business auxiliary services, the Head Office has paid the service tax under the category of BAS, during the years 2004-05 to 2007-08. Since their Head Office has already paid service tax on the Commission income under BAS, no service tax is again payable by the Respondent.

3. The Ld. A.R. reiterated the submissions in the grounds of Appeal.

4. Heard both sides and perused the Appeal records.

5. We observe that the Head office of the Respondent was registered with the Assistant Commissioner of Service Tax, Division – I, Kolkata for payment of Service Tax under the category of Business Auxiliary Services . In fact, they were the actual providers of taxable services dealt with in the Notice since they have raised the bills in respect of the services rendered by the Respondent also. It is observed that the show cause notice itself had relied upon the ledger accounts maintained by their Head Office at Kolkata to arrive at the taxable value. It is also seen that the Head Office only raised the Bills to whom they have provided such services. It has been recorded in the Order-in-Original that on verification by the jurisdictional Assistant Commissioner, it was found that the Respondent did not render or provide any such services

dealt with in the Show Cause Notice. Thus, we observe that the Show Cause Notice should not have been issued to the Respondent as their Head Office registered for providing BAS has already paid service tax for such services.

6. From the grounds of Appeal we observe that the contention of the department is that the order has been passed by the adjudicating authority without proper verification of facts as to whether the Respondent have rendered the services mentioned in the Show Cause Notice and whether service tax was paid by the Head Office at Kolkata for such services under the category of BAS. On this ground only the department reviewed the impugned order and filed the present appeal.

7. We observe that in the impugned order the adjudicating authority has clearly stated that the Respondent has not rendered such services (BAS) mentioned in the Notice. He also observed that on verification by the Assistant Commissioner, it was established that the Head Office has been paying service tax under the category of BAS. Under these circumstances, we hold that the demand of service tax made from the Respondent is not sustainable, since the Head Office of the Respondent has already paid service tax on such services. Accordingly we hold that the demand of service tax made against the Respondent is not sustainable.

8. In view of the above discussion, we reject the appeal filed by the department.

(Dictated and Pronounced in the open Court)

Sd/-

(P. K. Choudhary)
Member (Judicial)

Sd/-

(K. Anpazhakan)
Member (Technical)

Pinaki