IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.1

Service Tax Appeal No.8 of 2011

(Arising out of Order-in-Original No.COMMR/BBSR-I/ST-03/2010 dated 31.03.2010 passed by Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-I.)

M/s. Ferro Scrap Nigam Limited
(C/o M/s. NilaCHAL Ispat Nigam Ltd.,
Duburi, Kalinga Nagar, Dist: Jajpur, Orissa.)

...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Bhubaneswar-I
.....Respondent
(C.R. Building, Rajaswa Vihar, Bhubaneswar, Orissa.)

<u>APPEARANCE</u>

Shri Rahul Tangri, Advocate & Ms.Payal Bharwani, Chartered Accountant for the Appellant (s)
Shri J.Chattopadhyay, Authorized Representative for the Revenue

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

<u>FINAL ORDER NO. 76263/2023</u>

DATE OF HEARING : 31 July 2023
DATE OF DECISION : 31 July 2023

Per : ASHOK JINDAL :

The appellant is in appeal against the impugned order wherein demand of service tax of Rs.92,38,371/- along with interest has been confirmed and penalties were also imposed.

2. The fact of the case are that the appellant being a public sector undertaking entered into two long term contracts with Nilachal Ispat Nigam Limited (NINL) for carrying out the following activities:-

a. Handling and processing of BF slag (granulated and ungranulated) within NINL plant premise as is obtained from BF Slag Pit, Ladle Repair Shop and Pig Casting Machine including loading, unloading and transportation of processed slag within and outside plant pemise.

b. Loading, unloading and transportation of BF coke, Nut Coke and Breeze Coke within NINL plant premise.

3. Revenue is of the view that the aforesaid activities falls under the category of 'cargo handling services' therefore a show cause notice dated 02.03.2009 was issued to the appellant for the period May 2004 to March 2007 to demand service tax along with interest and to impose penalty. The matter was adjudicated and demand of service tax was confirmed. Against the said order, the appellant is before us.

4. The Ld.Counsel appeared before us and submits that in their own case this Tribunal vide Final Order No.75163/2022 and 2021 (1) TMI 711 (CESTAT-Kolkata) has decided the issue that the activity undertaken by the appellant does not fall under the category of 'cargo handling services', therefore, the impugned order is to be set aside.

5. Heard the parties.

6. Considering that in appellant's own case for the earlier period this matter ame up before this Tribunal and this Tribunal has observed as under:-

> *"6. We find that the issue already stands decided in favour of the Appellant with regard to the demand raised on shifting, transportation, loading and unloading from one place to another inside the steel plant of the client itself, the Tribunal in their own case as reported in 2014 (1) TMI 1051- CESTAT-New Delhi has observed that :-*
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> > *"7. In any case, we have seen the decision of the Tribunal as upheld by Hon"ble High Court in the case of Modi Construction Co. vs. CCE, Ranchi (supra), it stands clearly held by the Tribunal that service of shifting, transportation or raw materials, waste materials, and finished products from one place to another, inside the plant itself, does not fall under the taxing category of Cargo Handling Services. The activities undertaken by the appellant are admittedly within the plant itself. As such, we find that the ratio of the law declared by he Tribunal in the*

> *above referred matter, which also stands upheld by the Hon"ble Jharkhand High Court, is fully applicable to the facts of this case."*
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> *In view of the aforesaid, the issue is no longer res-integra, since decided in favour of the assessee. We do not find any reason to take a contrary view and therefore, the demand raised vide the impugned adjudication order cannot be sustained and hence, the same is set aside."*

7. Therefore, following the decision in the appellant's own case for the earlier period, wherein this Tribunal held that the activity undertaken by the appellant does not fall under the category of 'cargo handling services, we hold that the activity undertaken by the appellant does not fall under the category of 'cargo handling services'.

In view of this, we set aside the impugned order and allow the appeal with consequential relief, if any.

(Operative part of the order was pronounced in the open Court.)

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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