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

REGIONAL BENCH - COURT NO.1

Service Tax Appeal No.13 of 2010

(Arising out of Order-in-Original No.14/ST/Commr./2009 dated 15.10.2009 passed by Commissioner, Central Excise & Service Tax, Ranchi.)

M/s. Lodunlod Enterprises
(80, Burwan Compound, Ranchi-834001.)

...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Ranchi
.....Respondent
(5, Main Road, Ranchi-834001, Jharkhand.)

<u>APPEARANCE</u>

Shri N.K.Lal, 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. 76279/2023</u>

DATE OF HEARING : 2 August 2023
DATE OF DECISION : 2 August 2023

Per : ASHOK JINDAL :

The appellant is in appeal against the impugned order, wherein demand of service tax has been confirmed under 'cargo handling services' for the period 2003-08 by issuance of show cause notice dated 21.10.2008.

2. The facts of the case are that the appellant was registered with service tax department under 'manpower recruitment and supply agency services' from 07.09.2005 for providing services to M/s. Hindalco Industries Ltd.of loading of different bagged/loose materials such as Alumina Hydrate, Vanadium Sludge into Truck/Wagon, unloading of different bagged/loose materials such as Coal, Bauxite,

Lime Starch, Alumina Hydrate from Truck/Wagon, Bagging of Alumina from silo into Gunny/Hdpe bags, sieve, Staking in storage area, weighing, machine stitching, stacking etc. continuously since beginning of the firm and paid service tax. The Revenue was of the view that the said services provided by the appellant have merit classification under 'cargo handling services' on which service tax is leviable w.e.f. 16.08.2002, therefore, a show cause notice dated 21.10.2008 was issued to demand service tax for the period 2003-08 under the 'cargo handling services'. The matter was adjudicated, demand of service tax was confirmed along with interest and penalty equal to service tax was confirmed under section 78 of the Finance Act, 1994. Aggrieved from the said order, the appellant before us.

3. The Ld.Counsel for the appellant submits that the activity undertaken by the appellant was well within the knowledge of the respondents since 07.09.2005 as and when the appellant took registration under the category of 'manpower recruitment and supply agency services'. The appellant is also paying service tax on their activity under the said classification and filing regularly ST-3 returns which has been accepted by the department, in that circumstances extended period of limitation is not invocable. He further submitted that small demand is within the period of limitation. For that he submits that whatever service tax paid by the appellant the same may be treated as paid under 'cargo handling services', therefore, no demand is sustainable against the appellant.

4. Heard the Ld.Counsel for the appellant.

5. We find that as submitted by the Ld.Counsel for the appellant that the activity undertaken by the appellant is well within the knowledge of the department from the day on which the appellant took registration under 'manpower recruitment and supply agency service' on 07.09.2005. It is a fact on record that the appellant is filing their ST-3 returns and paying service tax. If at all revenue is of the view that the activity undertaken by the appellant falls under 'cargo handling services', the show cause notice was required to be issued immediately

which respondent failed to do so. In that circumstances, as the activity was known to the respondent, the extended period of limitation is not invocable in the facts and circumstances of the case.

6. We further do agree with the argument advanced by the Ld.Counsel for the appellant that as they have discharged their service tax liability under the category of 'manpower recruitment and supply agency service', but the revenue is of the view that the said service falls under the category of 'cargo handling services', therefore, whatever service tax is paid by the appellant, the same is to be considered under 'cargo handling services'. In that circumstances we hold that nothing is payable by the appellant.

7. In that circumstances, without going into the issue of classification, we hold no demand is sustainable and no penalty is imposable on the appelant. Therefore, 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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