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

REGIONAL BENCH - COURT NO.1

Service Tax Appeal No.270 of 2012

(Arising out of Order-in-Appeal No.05/ST/BBSR-I/2012 dated 12.03.2012 passed by Commissioner(Appeals), Central Excise, Customs & Service Tax, Bhubaneswar..)

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

...Appellant

VERSUS

M/s. Ferro Scrap Nigam Limited

.....Respondent

(C/o. Nilachal Ispat Nigam Ltd., Duburi, Kalinga, Jajpur-755019, Odisha.)

APPEARANCE

Shri J.Chattopadhyay, Authorized Representative for the Revenue
Ms.Payal Bharwani, Chartered Accountant for the Respondent

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

FINAL ORDER NO. 76384/2023

DATE OF HEARING : 4 August 2023
DATE OF DECISION : 4 August 2023

Per : ASHOK JINDAL :

The Revenue is in appeal against the impugned order wherein the Ld.Commissioner(Appeals) dropped the proceedings against the respondent.

2. The facts of the case are that the respondent entered into agreement 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 Slat Pit, Ladle Repair Shop and Pig Casting Machine including loading, unloading and transportation of processed slag within and outside plant premise.

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

3. The Revenue is of the view that the aforesaid activities falls under the category of 'cargo handling services' therefore, the proceedings were initiated against the appellant for the period April 2007 to March 2008 by issuance of a show cause notice dated 22.10.2008. The matter was adjudicated. The adjudicating authority confirmed the demand of service tax against the respondent and also imposed penalty. The said order was challenged before the Ld.Commissioner, who after examining and going into the factual matrix of the case, dropped the proceedings against the respondent. Against the said order, Revenue is before us.

4. Heard the parties.

5. We find that for the earlier period in appellant's own case this Tribunal has observed as under:-

"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."*
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> *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'.*"

6. As the issue has already been decided in favour of the respondent holding that the impugned activity undertaken by the respondent does not fall under the category of 'cargo handling services' and dropped the proceedings against the appellant, in that circumstances, we do not find any infirmity in the impugned order. The same is upheld and the appeal filed by the revenue is dismissed.

(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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