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

REGIONAL BENCH - COURT NO.1

Service Tax Appeal No.341 of 2012

(Arising out of Order-in-Appeal No.139/ST/Kol/2011 dated 06.05.2011 passed by Commissioner of Central Excise (Appeal-I), Kolkata.)

M/s. J.K. & Company
(7/1, Lord Sinha Road, Room No.509, Kolkata-700071.)

...Appellant

VERSUS

Commissioner of Service Tax, Kolkata

.....Respondent

(180, Shantipally, 3rd Floor, Rajdanga Makin Road, Kolkata-700107.)

APPEARANCE

Shri Sushil Goyal, Chartered Accountant for the Appellant (s)
Shri K.Chowdhury, Authorized Representative for the Revenue

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

FINAL ORDER NO. 76622/2023

DATE OF HEARING : 8 September 2023
DATE OF DECISION : 8 September 2023

Per : ASHOK JINDAL :

In this appeal, the appellant has challenged the demand of service tax under the category of 'clearing and forwarding agent service'.

2. The facts of the case are that the appellant was engaged in the providing various services relating to purchase of coal from M/s. Coal India Ltd. for various customers. Basically, acting as purchasing, lesioning and movement agent. The appellant was also arranging for placing of multi consumer rate to the supplier's end i.e., dispatch points of M/s. Coal India Ltd. for loading of coal for different consumers by maintaining liaison with the railways. The loading activity is performed by the company. Monitoring loading programme of coal in the wagons placed by railways at the dispatch point of suppliers in order to ensure loading of coal quality. Security of the loaded wagon from the supplier's end to its destination to ensure that materials safely reach the hands of

the customers. They deliver the letter of receipt to the customers and the customers take delivery of the material at their cost from the Railways. The services start from collection of purchase order for various customers and submit the purchase request to the company and make the payment for the material. The show cause notice was based on the decision of this Tribunal in the case of Coal Handlers Pvt.Ltd. vs. CCE, Kolkata-I, wherein the services provider was held that they are liable to pay service tax under the category of 'clearing & forwarding agent service'. The matter was adjudicated, demand of service tax was confirmed. Against the said order, the appellant is before us.

3. Today, when the matter was called, appellant submits that the decision of this Tribunal in the case of Coal Handlers Pvt.Ltd. vs. CCE, Kolkata-I has been set aside by the Hon'ble Apex Court as reported in 2015 (38) S.T.R. 897 (S.C.) holding that the activity undertaken by the appellant is not coming under the category of 'clearing & forwarding agent' services, therefore, the impugned order is to set aside.

4. On the other hand, the Ld.AR for the department reiterated the findings of the impugned.

5. Heard the parties, considered the submissions.

6. We find that the show cause notice is based on the decision of this Tribunal in the case of Coal Handlers Pvt.Ltd. vs. CCE, Kolkata-I (supra) and the said decision of this Tribunal has been set aside by the Hon'ble Apex Court holding as under:-

> ***"11.*** *From the reading of the definition contained in the aforesaid provision, together with its dictionary meanings contained in Legal and Commercial dictionaries, it becomes apparent that in order to qualify as a C&F Agent, such a person is to be found to be engaged in providing any service connected with 'clearing and forwarding operations'. Of course, once it is found that such a person is providing the services which are connected with the clearing and forwarding operations, then*

whether such services are provided directly or indirectly would be of no significance and such a person would be covered by the definition. Therefore, we have to see as to what would constitute clearing and forwarding operations. As is clear from the plain meaning of the aforesaid expression, it would cover those activities which pertain to clearing of the goods and thereafter forwarding those goods to a particular destination, at the instance and on the directions of the principal. In the context of these appeals, it would essentially include getting the coal cleared as an agent on behalf of the principal from the supplier of the coal (which would mean collieries in the present case) and thereafter dispatching/forwarding the said coal to different destinations as per the instructions of the principal. In the process, it may include warehousing of the goods so cleared, receiving dispatch orders from the principal, arranging dispatch of the goods as per the instructions of the principal by engaging transport on his own or through the transporters of the principal, maintaining records of the receipt and dispatch of the goods and the stock available on the warehouses and preparing invoices on behalf of the principal. The Larger Bench rightly enumerated these activities which the C&F Agent is supposed to perform.

12. *On the facts of the present case, we find that none of the aforesaid activities are performed by the appellant. There is no role of the appellant in getting the coal cleared from the collieries/supplier of the coal. Movement of the coal is under the contract of sale between the coal company and Ambuja companies. Even the coal is loaded on to the railway wagons by the coal company. The goods are not under any legal detention from which they need to be freed by the appellant. Not only this, destination of the goods is known to the coal company and the railway rakes are placed by the coal company for the said destinations. The destination is the factories of the principal* *itself, namely, Ambuja companies, where the coal is to be delivered by the coal company as per pre-determined/agreed covenants between them. Therefore, there is no occasion for Ambuja companies to instruct the appellant to dispatch/forward the goods to a particular destination which is already fixed as per the contract between the coal company and the Ambuja companies. The appellant does not even undertake any loading operation. The primary job of the appellant, as per the contract between the appellant and the Ambuja companies, is of supervising and liaisoning with the coal company as well as the Railways to see that the material required by Ambuja companies is loaded as per the schedule. At no stage custody of the coal is taken by the appellant or transportation of the coal, as forwarders, is arranged by the appellant. We are, thus, of the clear opinion that the services rendered by the appellant would not qualify as C&F Agent within the meaning of Section 65(25) of the Act."*

therefore, following the said decision of the Hon'ble Apex Court in the case of Coal Handlers (supra), we hold that the activity undertaken by the appellant do not qualify as 'clearing & forwarding agent' service.

7. Hence, no service tax is payable by the appellant. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Dictated and pronounced in the open Court.)

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

sm