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

REGIONAL BENCH - COURT NO.1

Service Tax Appeal No.488 of 2011

(Arising out of Order-in-Original No.19/S.Tax/Commissioner/2011 dated 25.07.2011 passed by Commissioner of Central Excise & Service Tax, Jamshedpur.)

M/s. Radha Transport Company
(Gamharia-832108, Dist. Saraikela Kharsawan, Jharkhand.)

...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Jamshedpur
.....Respondent
(Outer Circle Road, Bistupur, Jamshedpur, Jharkhand.)

APPEARANCE

Shri N.K.Chowdhury, Advocate 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)

FINAL ORDER NO. 77145/2023

DATE OF HEARING : 20 September 2023
DATE OF DECISION : 20 September 2023

Per : ASHOK JINDAL :

The appellant is in appeal against the impugned order. The issue in this case is that whether the appellant is liable to pay service tax under the 'Cargo Handling Services' or not?

2. The facts of the case are that the appellant was undertaking transportation of iron ore from Tatanagar Goods Shed to the factory of M/s. Tyo Rolls Ltd., Gamharia in terms of Work Order dated 06.06.2005 and others. The rate of inclusive of loading and unloading of iron from the wagon. The said rate includes demurrage and work warfarage charges. The transportation of iron ore is the principal activity and for that purpose, they are also doing the job of loading and unloading. The revenue is of the view that the activity undertaken by them falls under

the category of 'cargo handling services' as they were doing loading, unloading of the goods. The appellant did not take registration, but the proceedings were initiated against the appellant to demand service tax from the appellants under the category of 'Cargo Handling Services'. Aggrieved from the said order, the appellant is before us.

3. The Ld.Counsel appearing on behalf of the appellant submits that the main activity of the appellant is transportation of iron ore from Tatanagar Goods Shed to the factory of M/s. Tyo Rolls Ltd., therefore, it cannot be said that the appellant is engaged in the activity of 'Cargo Handling Services'. In support of his argument, he relied on the decision of the Tribunal in the case of Pradeep v. Commissioner of Central Excise & Service Tax, Indore [2021 (47) GSTL 28 (Tri.-Del.)].

4. Heard the parties, considered the submissions.

5. We find that as per the work order dated 06.06.2005 and 26.07.2005 issued by M/s. Tyo Rolls Ltd., issued in favour of the appellant, which gives the discretion of job of transportation of iron ore from Tatanagar Goods Shed to M/s. Tyo Rolls Ltd.. The rate is inclusive of loading, unloading of raw materials. The said rate includes demurrage and warfarage charges. Therefore, it is evident that the main activity as per the work order is transportation of iron ore and appellant is engaged in the said transportation. The job of loading, unloading from wagon is incidental to the main service of transportation of goods as no charges for loading, unloading are separately paid to the appellant. In that circumstances, relying on the decision of the Tribunal in the case of Pradeep (supra), we hold that the main activity of the appellant is transportation of goods, wherein this Tribunal observed as under:-

> ***"6.*** *…………………………..*
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> *With regards to demand for Cargo Handling Service we find that mere transportation of goods is not covered under the category of cargo handling services. Moreover, where the cargo handling service the activity of loading and unloading of cargo is not liable to service tax, the said view was taken by Tribunal in the case of Dalveer Singh v.*

Commissioner of Central Excise, Jaipur reported in 2008 (9) S.T.R. 491 (Tri. - Del.), therefore, we hold that appellant is not liable to pay service tax under the cargo handling service."

6. Therefore, we hold that the main activity of the appellant is transportation, the same cannot be termed as 'cargo handling service'. In that circumstances, 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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