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

REGIONAL BENCH - COURT NO.1

Service Tax Appeal No.370 of 2010

(Arising out of Order-in-Appeal No.29/ST/B-II/2010 dated 10.08.2010 passed by Commissioner(Appeals), Central Excise, Customs & Service Tax, Bhubaneswar.)

M/s. Banspani Iron Limited
(At/PO: Boneikala, Joda, Dist: Keonjhar, Orissa, Pin-758038.)
...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Bhubaneswar-II
.....Respondent
(C.R. Building, Rajaswa Vihar, Bhubaneswar-751007, Orissa.)

APPEARANCE

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

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

FINAL ORDER NO. 77181/2023

DATE OF HEARING : 22 September 2023
DATE OF DECISION : 22 September 2023

Per : ASHOK JINDAL :

The appellant provided services of conversion and shifting/transportation to their customer namely M/s. Patnaik Minerals Pvt.Ltd. and M/s. Rungta Mines Ltd. Conversion of iron ore lump supplied by the service recipient into sized iron ore of different sizes by crushing them into the crusher, the appellant is paying service tax on this conversion charges under the heading 'Business Auxiliary Service', which is not disputed. The appellant also providing the service of shifting and transportation by trippers from the crushing site to the customer site and receiving transportation charges. The Revenue is of the view that the said shifting and transportation charges collected from their customers for pushing conversion material i.e. iron ore lump which is part of conversion activity falls under the category of 'Business Auxiliary Service', therefore, they are liable to pay service tax under the category of 'Business Auxiliary Service'. On this set of facts, a show cause notice was issued to the appellant for demanding service tax on the activity of shifting transportation charges under the category of 'Business Auxiliary Service'. The appellant contested the said issue, but the demand was confirmed. Against the said order, the appellant is before us.

2. The Ld.Counsel for the appellant submits that the appellant provided 'Business Auxiliary Service' and they are paying service tax, that is not disputed and for transportation of the goods for recipient of service of GTA, the service recipient is paying service tax, that is also not in dispute. The only dispute by the revenue is that the activity of transportation is the part of their conversion activity, therefore, the said charges received by them for transportation of goods to be included in the 'business auxiliary service' and the appellant is liable to pay service tax. It is his submission that the appellant is receiving separately the charges, therefore, the same cannot be the part of conversion charges. He further submitted that the appellant is paying service tax and filing their service tax returns regularly, therefore, the show cause notice issued for the period 01.04.2006 to 31.03.2007 by issuance on 05.01.2009 is barred by limitation. The same has been issued by invoking extended period of limitation, therefore, the impugned order is to be set aside.

3. On the other hand, the Ld.AR supported the impugned order.

4. Heard the parties and gone through the agreements.

5. We find that there is separate agreement for shifting/transportation charges and crushing charges. When the agreements are separate, therefore, the transportation/shifting charges cannot be the part of the conversion charges as the appellant is providing two different services through two different contracts. In that circumstances, the appellant is not liable to pay service tax on transportation charges, as the same has been paid by the service

recipient under reverse charge mechanism. Therefore, we do not find any merit in the impugned order.

6. Accordingly, the same is set aside and the appeal is allowed with consequential relief, if any.

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

Sd/

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

sm