IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.1

<u>Service Tax Appeal No.63 of 2012</u>
(On behalf of Appellant)

(Arising out of Order-in-Original No.29/ST/Commr./2011 dated 23.11.2011 passed by Commissioner of Central Excise & Service Tax, Jamshedpur)

M/s The Tinplate Company of India Limited
Golmuri, Jamshedpur-831003

Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Jamshedpur
143, New Baradwari, Sakchi, Jamshedpur

Respondent

<u>APPERANCE :</u>

Dr.Samir Chakraborty,Sr.Advocate & Shri Abhijit Biswas,Advocate for the Appellant
Shri Mihir Ranraj, Special Counsel for the Respondent

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

FINAL ORDER NO…77240/2023

<u>DATE OF HEARING : 25.09.2023</u>
<u>DATE OF DECISION : 25.09.2023</u>

<u>Per Ashok Jindal :</u>

The appellant is in appeal against the impugned order wherein the demand of service tax under the category of "support of services of business and commerce" is confirmed.

2. The facts of the case are that the appellant is engaged in the manufacture and sale of excisable goods. The appellant entered into an agreement with M/s Tata Steel Limited for manufacturing job as Conversion Agent of Tata Steel Ltd. (TSL). The appellant operated as Conversion Agent of TSL in terms of the Conversion Agency Agreement. The appellant was also appointed as Consignment Agent of TSL for handling the said converted steel material on, inter alia, the terms and

conditions set out in the Consignment Agency Agreement. With reference to the said Conversion Agreements, a third Agreement was entered into by and between TCIL and TSL, whereunder TCIL was appointed as Marketing Agent for marketing of TSL's products converted by it, on the terms and conditions as specified in the said Marketing Agency Agreement.

2.1 The appellant continued to remain responsible for safe custody of TSL's materials right from the time the materials for conversion were received by it till they were delivered after conversion to the designated or nominated or identified party or parties of TSL, for and on its behalf.

2.2 As per the said Conversion Agency Agreement TCIL, upon receiving the Hot Rolled Coil from TSL, converted the said raw material into finished products and sent the same to various stockyards for sale therefrom under Central Excise Invoices. The converted finished products were sent to the stockyards/Consignment Agents' places by lorry and, for the same, Consignment Notes were issued by the transporters. On receipt of the material at the stockyard, the duty element thereof is posted at the RG23D Register as per the invoice received. Thereafter the finished products are sold to TSL's designated/identified customers under invoices issued by TCIL as their consignment Agent. While selling the finished products from the stockyards the same duty is posted in the RG23D Register, the Consignment Agent who handles the material at the stockyards thereafter raises "Handling Charges Bill" on TCIL wherein the service tax payable for such handling services is clearly stated along with cess payable thereon. It is this service tax amount and cess thereon paid, of which cenvat credit is availed by TCIL, as and by way of input service, in its factory.

2.3 Thereafter, it is evident that the service in question rendered by TCIL during which its Consignment Agent carried out the handling job on which service tax is payable and was paid has nothing to do with any service rendered or to be rendered by TCIL under the Marketing Agency Agreement with TSL.

2.4 The Revenue is of the view that in terms of Marketing Agency Service, the appellant is providing the services under the category of "support of services of business and commerce" and liable to pay service tax thereon.

2.5 Therefore, the proceedings were initiated against the appellant for demanding the same.

2.6 The matter was adjudicated. The demand of service tax was confirmed.

2.7 Against the said order, the appellant is before us.

3. The ld.Counsel for the appellant submits that the appellants are engaged by M/s Tata Steel Ltd. (TSL) for conversion of raw materials on job work basis. It is his submission that the goods manufactured out of raw materials supplied by M/s TSL, were cleared by the appellant on payment of duty of excise. The demand notice has been issued alleging non-payment of service tax on the services rendered by the appellants under the category of "Business Support Service" (BSS) as the appellant has handled the goods manufactured on job work basis in the capacity of "Marketing and Consignment Agent" . The case of the Revenue is that the appellant has engaged transporters for transporting

the job-worked goods to various stockyards of TSL, discharged freight and also paid appropriate service tax under GTA services and availed cenvat credit thereon. M/s TSL reimbursed the freight charges on actual basis but it is the contention of the appellant that they neither charged nor reimbursed the amount paid. The allegation of the Revenue is that the appellant was providing marketing and consignment agency services to TSL. It is his submission that the appellants have not received any amount except conversion charges and freight charges for transportation of goods from the factory of the appellants to various strockyards/consignment. Therefore, they are not liable to pay service tax under the category of "Business Support Service".

3.1 To that effect, the facts have been verified by the Department and the Commissioner of Central Excise, Jamshedpur, has confirmed that the appellant has not received any amount towards marketing agency agreement. Therefore, they are not liable to pay service tax at all.

4. Heard both sides and considered the submissions.

5. We find that during the course of hearing of the Stay Petition by this Tribunal, a report was sought from the Commissioner, Jamshedpur to the effect that whether the appellant has received any amount towards marketing and consignment agency services and the said report has been submitted by the ld.Commissioner. For ready reference, the said report is extracted below :

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GOVERNMENT OF INDIA
OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE: JAMSHEDPUR

C.No. V(30)24/Rev/JSR-IV/2011/ 11783 Dated: - 13.09.2013

To
Shri D.K.Acharyya,
Retd. Member, CBEC.
10-A, Lake View Road, 2nd Floor,
Kolkata- 700029.
Phone No. 033- 24659778,
Mobile-09830196140

Sir,

Subject: Stay Petition No.ST/S/125/12 in Appeal No.ST-63/12 filed by M/s Tinplate Company of India Limited, JSR against the Order-Order-in-Original No.29/S.Tax/Commr./2011 dtd.24.11.2011.

Please refer to your letter dtd. 03.09.2013 on the subject mentioned above.

A brief overview of the facts involved in the case is being given hereunder:

M/s Tinplate Company of India Limited (hereinafter "TCIL") are engaged in the conversion of M/s Tata Steel Limited's (hereinafter "TSL") products and are "manufacturers" in terms of Central Excise Law as the conversion activity undertaken amounts to manufacture.

TCIL, however, are not the owners of these products and though they are manufacturers in terms of Central Excise Law, the ownership of the goods all along remains with TSL and the "converted" finished products are marketed as TSL's products and priced& sold at TSL's depot prices.

The material is transported to TSL's depots/consignment agents and this entire chain of post manufacturing activity of transportation, handling, billing etc. is entrusted to TCIL in terms of the Marketing Agency Agreement and Consignment Agent's Agreement.

TCIL are, therefore, rendering services to TSL in terms of the Marketing Agency Agreement and Consignment Agency Contract.

TCIL pay service tax on the freight paid on transportation of the converted finished products to TSL's depots and take cenvat credit of the tax so paid. This freight is reimbursed to them by TSL.

As such, the transportation has been arranged for TSL and hence, the reimbursed freight, is taxable in the hands of TCIL under the category of BSS. The payments received by TCIL in terms of the Consignment Agent's Agreement are also taxable in their hands and form part of a separate case and hence in the present case, service tax demand has been made on taxable value equal to the reimbursed freight amount.

As TCIL are availing credit of service tax paid on freight they are not "pure agents" of TSL as defined under Rule 5(2) of Service Tax (Determination of Value) Rules, 2006 and are hence not allowed to exclude the cost incurred from the value of taxable service.

The desired report and comments point wise are as hereunder:

1. So far claim of TCIL about double taxation of same service is concerned, the contention of TCIL is flawed. While TCIL was liable to pay service tax under the category of GTA, as service recipient and they have also availed input service credit on the said service, they are liable to pay service tax as service provider under the category of Business Support Service for providing the service of BSS to M/s Tata Steel Ltd. in terms of their Marketing Agency Agreement (Annexure-11 of the SCN) with TCIL. TCIL have neither paid service tax under any other category in their capacity as output service provider nor has the same been demanded from them, except under BSS

category. Moreover, this fact has very clearly been dealt in para- 4.16 of the Order in Original No.29/S.Tax/Commr/2011 dated 24.11.2011 .

2. As regards claim of TCIL that Excise duty on Rs.76.90 Crore (amount as shown in Annexure-1 of the SCN) has already been paid by including it in assessable value of the goods at the time of clearance of the same and therefore service tax cannot be demanded on it under any category, TCIL's stand is incorrect. They have suppressed the fact that the amount has actually been re-imbursed to them by M/s Tata Steel Ltd. in terms of Notes-6 of the Payment Terms contained in the para-11 of the Conversion Agreement dated 30.03.1998 (Annexure-10 of the SCN). Thus, though they have included the amount in cost of the final products on which Excise Duty has been paid by them, the amount which they have claimed as re-imbursement, is nothing but value of the service rendered under BSS, over and above the price of the final goods and claimed by them from M/s Tata Steel Ltd. under the cover of "re-imbursement of freight" by camouflaging the Marketing Agency Agreement, only to escape the service tax liability on it. The service tax demanded is on the same value. Moreover, this fact has very clearly been dealt in paras – 4.6 to 4.15 of the Order in Original No.29/S.Tax/Commr/2011 dated 24.11.2011.

Encl: Copy of Show Cause Notice issue vide C.No. V(12)05/CEP/JSR/ 10/1898 dated 18.02.11

Yours faithfully,

13.05.13

(J.K.Jha)

Commissioner

6. It is evident from the records and the reports submitted by the ld.Commissioner, Jamshedpur that the appellant has not received any amount towards marketing agency agreement, therefore, the question of demanding service tax does not arise.

7. Under the above circumstances, we do not find any merit in the impugned order and the same is set aside.

9. In the result, the appeal is allowed with consequential relief, if any.

(Operative part of the order was pronounced in the open court)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(K.Anpazhakan)
mm **Member (Technical)**