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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No.132 of 2012

(Arising out of Order-In-Appeal No. 74/JSR/2011 dated 19/12/2011 passed by Commissioner (Appeals), Central Excise & Service Tax, Ranchi.)

M/s. India Carrier Private Ltd.
(NH-33, Asanbani, Chandil, Saraikela Kharsawan, Jamshedpur, Jharkhand)

Appellant

VERSUS

Commr. of Central Excise & Service Tax, Jamshedpur
(Circuit House Area, Bistupur, Jamshedpur-831001)

R**espondent**

APPEARANCE :
Mr. S. P. Siddhanta, Consultant, for the Appellant
Mr. S. Mukhopadhyay, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.77317/2023

Date of Hearing : 12 October 2023
Date of Decision: 12 October 2023

PER R. MURALIDHAR:

The Appellant is providing service of C & F Vendor service to ITC. The Appellant claims that they were not undertaking the "clearing and " activities and hence they were not liable to pay the Service Tax under this service. The Department issued Show Cause Notice on the ground that they were providing C & F Agency Service and they were not paying the Service Tax on godown Charges, Security charges, Guard charges, Electricity Charges etc. After due process, the demands were confirmed along with interest and penalty. Being aggrieved, the Appellant is before the Tribunal.

2. The Learned Consultant submits that they are only "C&F Vendors'' to ITC and hence are not providing the service of "clearing and forwarding" on behalf of ITC. Further he submits that in case of reimbursement, they are not required to pay the Service Tax and rely

on the case law of **Sri Bhagavathy Traders Vs Commissioner of Central Excise, Cochin-2011 (24) S.T.R. 290 (Tri.LB).** Further he submits that even the Service Tax paid in the normal course along with interest has not been considered for appropriation by the lower authorities. In view of the foregoing, he prays that the present Appeal may be allowed.

3. The Learned AR points out to the Agreement copy and submits that it is not a mere Agreement for providing "C & F Vendor" Service. Para 2 very specifically shows that the Appellant is required to take the delivery of the goods from Railway Station and other places and store the same properly and should clear the same to various clients of the principal. Therefore, he submits that the Service falls under C & F Agency service only. Further he points out that the Annexure 2 of the Agreement very clearly shows that the expenses on account of Rent, Security, Guard, Electricity charges etc. are shown as "remuneration" and as "inclusive of Service Tax". Accordingly, he submits that these are all the normal cost incurred by the C & F Agent and not are in the nature of reimbursement received by the Appellant from their client. Accordingly, he prays that the present Appeal may be dismissed.

4. Heard both sides and perused the documents.

5. From the Agreement, it is seen that the Appellant is required to take delivery of the goods from Railway Station and other places and store the same properly and they should clear the same to various clients of the principal. These activities very clearly show that the Appellant is carrying the activity of Clearing and Forwarding service. Therefore, we reject the Appellant's submission that they are only carrying on the 'C & F Vendor' services.

6. On going through Annexure 2 of the Agreement, it is seen that the amounts mentioned under the headings Rent, Security and Guards etc. are rounded figures and reflect that these are expenses which are being incurred by the Appellant. It is not mentioned

anywhere that the expenses are being incurred on behalf of the principal to qualify as reimbursable expenses.

7. The Larger Bench in the case of Sri Bhagavathy Traders Vs Commissioner of Central Excise, cited supra has held as under-

> ***6.2*** *Similar is the situation in the transaction between a service provider and the service recipient. Only when the service recipient has an obligation legal or contractual to pay certain amount to any third party and the said amount is paid by the service provider on behalf of the service recipient, the question of reimbursing the expenses incurred on behalf of the recipient shall arise. For example, when rent for premises is sought to be claimed as reimbursement, it has to be seen whether there is an agreement between the landlord of the premises and the service recipient and, therefore, the service recipient is under obligation for paying the rent to the landlord and that the service provider has paid the said amount on behalf of the recipient. The claim for reimbursement of salary to staff, similarly has to be considered as to whether the staff were actually employed by the service recipient at agreed wages and the service recipient was under obligation to pay the salary and it was out of expediency, the provider paid the same and sought reimbursement from the service recipient.*
>
> **6.*4*** *The claim for reimbursement towards rent for premises, telephone charges, stationery charges, etc. amounts to a claim by the service provider that they can render such services in vacuum. What are costs for inputs services and inputs used in rendering services cannot be treated as reimbursable costs. There is no justification or legal authority to artificially split the cost towards providing services partly as cost of services and the rest as reimbursable expenses. [Emphasis Supplied]*

8. We do not see any merits in the submissions made by the Appellant.

9. However, taking into consideration the fact that the Appellant has enclosed various challans at Page No. 49 to 57 of the Appeal Book, showing normal payment of Service Tax of Rs.60,346/- along with interest of Rs.1934/-, we are of the opinion that out of the total confirmed demand, after proper verification, the amounts already paid should be adjusted. For this limited purpose, we remand the matter back to the Adjudicating Authority who will get these facts verified and confirm the demand for the net amount. On this net amount, the Appellant is required to pay interest under Section 75 of the Finance Act, 1994. Since, the issue is that of interpretation and majority of the Service Tax already stands paid by the Appellant, we set aside the penalties imposed on the Appellant.

10. The Appeal is disposed of thus.

(Dictated and pronounced in the open court.)

Sd/-
(R. Muralidhar)
Member (Judicial)

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

Pooja