CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
KOLKATA.

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 76136 of 2018

(Arising out of Order-in-Appeal No. 50/BOL/ST/2017 dated 29.12.2017 passed by the Commissioner (Appeals), Gooda & Service Tax, Siliguri)

Howrah Gases Ltd **Appellant**
Crooked Lane Esplande, Kolkata,
West Bengal – 700 069

VERSUS

Commissioner of CGST & Central Excise, Howrah **Respondent**
MS Building, Customs House, 15/1,
Strand Rd., Kolkata, WB – 700 001

APPEARANCE:
Mr. Jitin Singhal, Advocate for the Appellant.
Mr. Joydip Chattopadhyay, Authorised Representative for the Respondent

CORAM:
HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.77415/2023

DATE OF HEARING: 06.06.2023
DATE OF DECISION: 20/10/2023

ANIL CHOUDHARY:

The issue involved in this Appeal is whether the demand for extended period has been rightly confirmed and further, whether the Appellants have exported their service under Joint Venture and further, the issue is whether, in the facts and circumstances, the situation is revenue neutral.

2. The brief facts of the case are that the Appellant is registered under the provisions of Service Tax and was engaged in providing 'Business Auxiliary Services' (BAS). The Appellant has jointly with 'M/s Kirtanlal Steel Export, Mumbai' (KSE) carried out sale and marketing of seamless steel pipes produced by 'M/s Mittal Steel, Romania' (MS) (Manufacturer – Principal) in the Indian market as per Memorandum of Understanding dated

24.12.2005 signed between the parties and have earned a commission of Rs.79,77,026/- for such services rendered between the period 01.01.2006 to 31.03.2006 and for which the Appellant has charged 50% of total commission received from M/s MS in terms of MoU between the Appellant and its business partner M/s KSE. The case of the Department is - such service provided by the Appellant would not qualify as 'export of service' in as much such services have not been directly provided to M/s MS and commission has not been received in freely convertible currency, rather they worked on behalf of M/s KSE for marketing the product of M/s MS. Accordingly, SCN dated 03.12.2010 has been issued to the Appellant to pay an amount of Rs.8,13,657/- on such services provided by the Appellant, as the same does not qualify as export of service for the period 01.01.2006 to 31.03.2006, by invoking extended period of limitation. The Appellant contested the SCN by refuting each and every allegation leveled by the department, however, the learned Adjudicating Authority confirmed the same vide OIO dated 04.05.2011. On Appeal, the learned Commissioner (Appeals) vide OIA dated 29.12.2017, rejected the Appeal filed by the Appellant. Being aggrieved, the Appellant is before this Tribunal.

3. Learned Counsel for the Appellant, inter alia, urges that admittedly, the Appellant was registered with the Service Tax department for providing BAS in Joint Venture with M/s KSE, to the principal M/s MS – manufacturer of seamless steel pipes located in Romania. The Appellant under MoU dated 24.12.2005 with M/s KSE, have provided service of marketing the products manufactured by M/s MS, in India. The main agreement for providing BAS of marketing service is between M/s MS and M/s KSE. The Appellant entered into Joint Venture agreement with M/s KSE for the purpose of providing BAS, to M/s MS of Romania. The service provided by the Appellant i.e., marketing of the goods to M/s MS, in Joint Venture with M/s KSE, is directly received by M/s MS of Romania. It does not make any material difference on the fact that M/s MS paid remuneration first to M/s KSE in India and M/s KSE, thereafter, shared 50% of such commission earned on the business achieved through this Appellant. The very essence of the Joint Venture agreement is that, service recipient is M/s MS of Romania. Accordingly, the Appellant, although disclosed the turnover for such services in their returns, they

claimed the same as service exempt, being export of service. Admittedly, under the facts of the present case, service has been provided from India and delivered outside India and used in business outside India by the principal located in Romania. Admittedly, the payment for such service was received by M/s KSE in convertible foreign exchange, which has been shared with this Appellant, as per the Joint Venture Agreement. The learned Commissioner (Appeals) has erred in holding that the service in question was not provided jointly but independently by the Appellant to M/s KSE in India and it was M/s KSE, who are the exporters of such service.

4. It is further an admitted fact that, also there is no privity of contract between this Appellant and M/s MS of Romania, but under the Joint Venture Agreement, it is evident that the recipient of the services provided by the Appellant is the manufacturer of the products located in Romania. Further, the element of Joint Venture is evident from the fact that the Appellant was entitled to 50% of the commission received by M/s KSE from M/s MS of Romania.

5. Learned Counsel further urges that admittedly, as the Appellant was registered with the Department and filed periodical returns regularly and have also disclosed such turnover in the returns, extended period of limitation is not available to the Revenue. It is further urged that the situation is wholly revenue neutral, as the service tax paid for such transaction or BAS was available to M/s KSE as Cenvat credit, which was available as refund to them for export of service, which is not disputed by the Department. Accordingly, the extended period of limitation is not available on the ground of revenue neutrality also. Accordingly, he prays for allowing the Appeal with consequential benefits.

6. Further, he relies on the following rulings:

a) CC, CE & ST vs Monsanto Manufacturer Pvt Ltd [2014 (35) STR 177 (All.)]
b) Uniworth Textiles Ltd vs CCE, Raipur [2013 (288) ELT 161 (SC)]
c) Aditya College of Competitive Exam vs CCE, Visakhapatnam [2009 (16) STR 154 (Tri-Bang)]

d) Mega Trends Advertising Ltd vs CCE & ST, Lucknow [2020 (38) GSTL 57 (Tri-All)

e) Jai Balaji Industries Ltd vs CCGST & CX, Bolpur [2022 (58) GSTL 313 (Tri-Kol)]

7. Opposing the Appeal, learned AR for Revenue stated that admittedly, there was no privity of contract between this Appellant and M/s MS of Romania. Thus, the Appellant has provided service to M/s KSE in India, who, in turn have provided the same service to M/s MS of Romania. Thus, in the facts and circumstances, Appellant cannot get the benefit of export of service under the Export of Service Rules, 2005. Learned AR also relies on the following rulings:

a) Faqir Chand Gulati vs Uppal Agencies Pvt Ltd [2008 (12) STR 401 (SC)]

b) CCE, Surat vs Neminath Fabrics Pvt Ltd [2010 (256) ELT 369 (Guj)]

8. Having considered the rival contentions, I find that the Appellant has provided services, being BAS, in Joint Venture or partnership, to M/s MS of Romania. As the service has been provided in respect of marketing of products manufactured by M/s MS of Romania, the Joint Venture partner - M/s KSE cannot be the recipient of such service in the first instance. I further find that the element of partnership is present in the MoU between the Appellant and M/s KSE, as they have agreed to share the profits from the commission earned by providing service to the foreign principal located at Romania. Further, it is an admitted fact that the service in question has been received by M/s MS of Romania who have paid for the same in convertible foreign exchange. I further hold that it does not make any material difference that the Appellants have received their share of commission through M/s KSE.

9. I further find that there is no element of fraud, suppression, mis-declaration, etc. The Appellant was registered with the Department and have disclosed such turnover or receipt of commission for BAS, and they have rightly claimed the same to be exempt, being export of service. Accordingly,

I hold that extended period of limitation is not invokable, in the facts and circumstances of the case.

10. In view of the aforementioned findings and observations, I allow the Appeal and set aside the Impugned Order. Appellant is entitled to consequential benefits, in accordance with law.

(Order pronounced in the open Court on 20/10/2023.)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Veda