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

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.277 of 2011

(Arising out of Order-in-Original No.59/Commr/ST/Kol/2010-11 dated 18.03.2011 passed by Commissioner of Service Tax, Kolkata.)

M/s. Mahadeolal Nathmal
(40B, Princep Street, Kolkata-700072.)

...Appellant

VERSUS

Commissioner of Service Tax, Kolkata

.....Respondent

(GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

APPEARANCE

Shri Tarun Chatterjee, Advocate & Ms.Binita Pandey, C.S. for the Appellant
Shri J.Chattopadhyay, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)

FINAL ORDER NO. 77425/2023

DATE OF HEARING : 31 October 2023
DATE OF DECISION : 31 October 2023

Per : R. MURALIDHAR :

The appellant has entered into a contract with M/s.TELCO for transporting their chassis along with engine by driving such vehicles to the destination as specified by TELCO. The Department issued Show Cause Notice on the ground that this amounts to 'Manpower Supply Service' and the demand has been confirmed after due process. Being aggrieved, the appellant is before the Tribunal.

2. The Ld.Counsel appearing on behalf of the Appellant submits that the contract entered with TELCO clearly proves that the service involved is that of contract for transportation of Tata Diesel Vehicles. He takes us through the various terms and conditions under this

contract and the amount given for this service by TELCO as per Annexure Schedule B of this contract. He points out that they are getting the amounts based on the Kilometers covered by their drivers. Therefore, he submits that during the period under consideration, this service cannot be termed as 'Manpower Recruitment Service' at all. He also relies on the case law of Canara Motors vs. Commissioner of C.Ex., Mangalore [2011 (21) S.T.R. 407 (Tri.-Bang.)]. In that case the Revenue had issued the Show Cause Notice on the ground that the service provided was that of 'Business Auxiliary Service'. Therefore, the Ld.Counsel submits that the Department itself has admitted that the service does not fall under 'Manpower Recruitment Services'. Therefore, he submits that on merits, the confirmed demand is required to be set aside.

3. He further submits that the appellant has obtained proper Service Tax registration and has been filing their returns for providing 'Business Support Services'. They have also been subjected to by audit by Central Excise and CAG teams. All their transactions are properly recorded in their books of accounts. Therefore, he submits that the Department is in error in invoking the extended period and confirming the demand for the extended period. He prays that the impugned order may be set aside even on the ground of limitation.

4. The Ld.AR for the Department reiterated the findings of the lower authorities.

5. We have heard both the sides and perused the appeal papers and documentary evidence placed before us.

6. On going through the contract entered between TELCO to the Appellant, it is clear that the contract is for transportation of Tata Diesel Vehicles. For providing this service, the Appellant is being paid based on the number of Kilometers covered by the driver. It is not the case of the Department that the driver's salary is being claimed as a consideration from TELCO. On going through the cited case law of Canara Motors (supra), it is seen that the identical issue on transportation of Tata Diesel Vehicles, the Department has taken the

stand that the service would fall under 'Business Auxiliary Services'. Therefore, we do not see any merits in the stand taken by the Revenue in the present case. The service definitely does not fall under the category of 'Manpower Supply Services'. Therefore, on merits, the appeal stands allowed.

7. Further, we also observe that the appellant has taken proper registration and has been filing their Returns under the category of 'Business Support Services'. Therefore, no case has been made out by the Department towards any suppression on the part of the appellant. We hold that the demand in respect of extended period is liable to be set aside on account of limitation also. We do so.

8. Accordingly, we allow the appeal with consequential relief, if any, as per law.

(Dictated and pronounced in the open Court.)

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/
(RAJEEV TANDON)
MEMBER (TECHNICAL)

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