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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No. 75650 of 2015

(Arising out of Order-in-Original No. 03/S.Tax/Commr/2015 dated 31.03.2015 passed by Commissioner of Central Excise & Service Tax, Ranchi-I)

M/s A. K. Transport
(Piska More, Dayal nagar, Ratu Road, Ranchi-834005)

Appellant

VERSUS

Commr. of Central Excise & Service Tax, Ranchi-I
(Central Revenue Building, 5-A, Main Road, Ranchi-834001)

R**espondent**

With

Service Tax Appeal No. 75678 of 2015

(Arising out of Order-in-Original No. 03/S.Tax/Commr/2015 dated 31.03.2015 passed by Commissioner of Central Excise & Service Tax, Ranchi-I)

Commr. of Central Excise & Service Tax, Ranchi-I
(Central Revenue Building, 5-A, Main Road, Ranchi-834001)

Appellant

VERSUS

M/s A. K. Transport
(Piska More, Dayal nagar, Ratu Road, Ranchi-834005)

R**espondent**

APPEARANCE :
Mr. Arbind Modi & R. R. Mittal, both CA for the Appellant/Respondent
Mr. S. Mukhopadhyay, Authorized Representative for the Respondent/Appellant

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

FINAL ORDER NO. 77740-77741/2023

Date of Hearing : 19 December 2023
Date of Decision: 19 December 2023

PER R. MURALIDHAR:

In the present Appeals, the assessee has filed their Appeal before the Tribunal being aggrieved by the following confirmed demands:-

(i) Mining Services-3,22,77,175/- [Extraction and Transfer of Coal]
(ii) Cargo Handling Services-Rs. 12,92,81,341/- [Shipping of Coal to various points and loading of coal into tipping tunnels]

2. The Department is in Appeal since the Adjudicating Authority has held that the extended period provisions are not applicable in respect of the 'Cargo Handling Services'.

3. We have taken up both the appeals for disposal together.

4. The Learned Chartered Accountant submits that they are not disputing the fact that the Mining services were under the Service Tax bracket during the period under consideration. Since they carried a genuine belief that the service falls under GTA service for which the Service Tax is payable by the recipient. Initially they have not paid the Service Tax. After issue of Show Cause Notice, they have gone through the statutory provisions and after finding that they were required to discharge Service Tax on this service, they have paid Service Tax of Rs. 2,92,05,028/-. He submits that because of their belief that there is no necessity to pay Service Tax, they have not charged the Service Tax on their clients. He takes us through Page no. 241 to 242 of the Appeal Paper Book wherein, it can be seen that for the period 01/04/2007 to 30/11/2009, they have not charged any Service Tax. For the subsequent period from 01/12/2009 onwards, they have been charging the Service Tax and also remitting the same to the Department. The demand is for the period 01/04/2007 to 30/11/2009 only. He also takes us through letter issued by the Central Coal Fields Ltd. (CCL), vide their letter dated 05/09/2012, under which the Agreements entered with CCL has been submitted to the Range Superintendent. He takes us to Page No. 241 and 242 of the Appeal Paper Book where the Invoice-wise Statement is provided and CCL officials have certified that no Service Tax has been reimbursed by them to the Appellant. Keeping these facts in view, he prays that the Service Tax payable may be re-quantified by granting them the benefit of cum tax in terms of Section 67 (2) of Finance Act,

1994. He submits that they are agreeable to pay the interest on finally arrived at amount of Service Tax, if any.

5. So far as the confirmed demand under 'Cargo Handling Services' is concerned, he submits that the very same issue has been decided by this Bench vide Final Order No. 77699-77700 on 19/12/2023. Relying on the same, he submits that the confirm demand on account of "Cargo Handling Services" may be set aside.

6. The Learned AR reiterates the findings of the Adjudicating Authority and justify the confirmed demands. He relies on the Grounds taken in their Appeal to submit that the Adjudicating Authority should not have dropped the demands for the extended period and consequent penalty

7. Heard both sides and perused the other documents placed before us.

8. We find that in case of "Mining Services", the Appellant is not disputing that they are required to pay the Service Tax. From the Invoice-wise statement provided at Page No. 241 & 242, it is seen that for the period 01/04/2007 to 30/11/2009, they have not charged any Service Tax. Even the officials of CCL have certified that the Service Tax amount have not been reimbursed to the Appellant. In such as case, the Appellant would be eligible for Cum-tax benefit in terms of 67(2) of the Finance Act, 1994. For this limited purpose, we remand the matter to the Adjudicating Authority, for re-quantifying the demand.

9. The Appellant is required to provide all the documentary evidence by way of the Statements provided before the Tribunal and also copies of the invoices to the Adjudicating Authority who should follow the principles of natural justice and pass the order within 4 months from the date of receipt of the communication of this order.

10. In respect of the confirmed demand of Rs. 12,92,81,341/- on account of Cargo Handling Services, we find that very same issue in

respect of M/s. B K B Transport Pvt. Ltd. Vs. CCE, Ranchi had come up before us and the matter was heard in detail on 12/12/2023 and Final Order No. 77699-77700 has been passed on 19/12/2023. This Bench has held as under:-

> *10. Thus, by relying on the decisions cited above, we hold that the Appellant has rendered transportation service. In terms of Rule 2(1)(d)(v) of the Service Tax Rules, 1994, the recipients are liable to pay service tax for the GTA services received by them. Hence, we hold that the demand of service tax from the Appellant under the category of 'Cargo Handling Service' is not sustainable.*

11. Since the issue is identical, we do not see any reason to take a different view in the present appeal. Accordingly, we set aside the confirmed demand of Rs. 12,92,81,341/- in respect of the Cargo Handling Services.

12. The Adjudicating Authority has given detailed findings towards dropping the demand and penalty in respect of the extended period. Further as held above the major part of the confirmed demand stands set aside. Therefore, we do not see any merits in the Appeal filed by the Revenue.

13. The Appeal of the assessee is allowed partly thus.

14. The Appeal filed by the Revenue is dismissed.

(Dictated and pronounced in the open court.)

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

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

Pooja