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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.76932 of 2019

(Arising out of Order-in-Appeal No.01/LTU/Kol/2019 dated 09.04.2019 passed by Commissioner of CGST & CX, (Appeal-I), Kolkata.)

M/s. Titagarh Wagons Limited
(Titagarh Towers, 756, Anandapur, E.M. Bypass, Kolkata-700017.)

...Appellant

VERSUS

Commissioner of CGST & CX, Kolkata North Commissionerate

.....Respondent

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

APPEARANCE

Shri Joydip Basu & Ms. Meghna Chanda, both Consultants for the Appellant
Shri P.K.Ghosh, Authorized Representative for the Revenue

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

FINAL ORDER NO. 75539/2024

DATE OF HEARING : 14.03.2024
DATE OF DECISION : 14.03.2024

R. MURALIDHAR :

The Appellants have procured lump sponge iron from M/s. Tata Sponge Iron Ltd. (TSIL). The transport is arranged by TSIL and freight is also paid by them. For the goods dispatched, TSIL raised two invoices, one invoice for the quantity of lump sponge iron wherein the rate per M.T., total value and Excise Duty details are given. The Appellant is taking the Cenvat Credit for the Excise Duty paid under such invoices. TSIL is also raising simultaneously one more invoice for the freight element. In this invoice, which is reimbursement of the transportation charges (freight charges) initially paid by TSIL, they are charging Service Tax of 14%. The Appellant has taken the Cenvat

Credit of such Service Tax also. The Department issued Show Cause Notice stating that the Appellant is not eligible to take the Cenvat Credit of the Service Tax paid on such freight Bills issued by TSIL. After due process, the lower authorities have confirmed the demand. Being aggrieved, the Appellant is before the Tribunal.

2. The Ld.Consultant, appearing on behalf the Appellant, submits that they have documentary proof that for each and every consignment dispatched by TSIL, they are raising two invoices. One for lump sponge iron and another towards the freight cost incurred by TSIL. In case of goods, TSIL is charging an Excise Duty and in case of freight, they are charging the Service Tax. The Appellant is taking the Cenvat Credit on both these invoices, since they are eligible to take the Cenvat Credit. He submits that they have correctly taken the Credit, since no objection has been raised by the jurisdictional authorities of TSIL about the Service Tax paid by them or freight charges reimbursed to them. In view of these submissions, he prays that the present Appeal may be allowed. He also submits that as they have disclosed the details of Cenvat taken in their monthly Returns, there is no suppression. Hence, the confirmed demand for the extended period may be set aside on account of limitation.

3. The Ld.AR for the Department reiterates the findings of the lower authorities. He submits that TSIL is not the service provider providing any freight services to the Appellant. They are only manufacturers of lump sponge iron, therefore, the invoice issued by TSIL towards the freight charges along with Service Tax is not proper document in terms of Rule 9 of the Cenvat Credit Rules, 2004. He therefore justifies the confirmed demand.

4. Heard both the sides and perused the appeal papers and documentary evidence produced before me.

5. Admittedly, there is no dispute that the goods in question, i.e. lump sponge iron have been received by the Appellant in their manufacturing area and the same has been used for manufacture of finished goods on which Excise Duty has been paid. Similarly, there is

no dispute that the goods in question were transported by TSIL through a specified GTA. As per the agreement between both the parties, TSIL has initially paid the freight charges to the transporters and has raised a separate invoice on the Appellant charging Service Tax thereon. Admittedly, there is no dispute that the Appellant has paid for the invoices of TSIL for the freight charges and Service Tax raised by them, and they have received the goods and have also paid the freight charges to TSIL. The Appellants have taken the Cenvat Credit for the Excise Duty and Service Tax. Strictly speaking, I agree with the Ld.AR for the Department that TSIL is not the GTA and is not the service provider of GTA service. However, it is seen that they have charged the Service Tax and are also registered with the Department. This shows that the jurisdictional authorities at the end of TSIL have not raised any question as to how TSIL has paid the Service Tax towards these invoices. When this is not questioned at the end of the jurisdictional authorities of the TSIL, it has been held in catena of decisions that these questions cannot be raised at the end of the receiver of the goods. Therefore, I do not find any justification for the confirmed demand on merits. I allow the Appeal on merits.

6. I also observe that the Show Cause Notice has been issued on 24.01.2017 for the period April 2014 to March 2016. Since the Appellants have been claiming Cenvat Credit based on the invoices raised by TSIL and the same were being reflected in their ER-1 Returns, the Department cannot take the stand of any suppression on the part of the Appellant. The confirmed demand in respect of the extended period is set aside on account of limitation also.

7. Thus the Appeal stands allowed with consequential relief, if any, as per law.

(Dictated and pronounced in the open Court.)

Sd/

(R. MURALIDHAR)
MEMBER (JUDICIAL)

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