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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 71248 of 2013

(Arising out of Order-in-Original No. 04/ST/ADJ/COMMR/DIB/13 dated 12.07.2013 passed by the Commissioner of Central Excise and Service Tax, Dibrugarh Milan Nagar Lane "F", P.O.: C.R. Building, Dibrugarh – 786 003)

M/s. ABC Tea Workers Welfare Services : Appellant
Beria Complex, Mancotta Road,
Chowkidinghee, P.O. Dibrugarh,
District: Dibrugarh – 786 001 (Assam)

VERSUS

Commissioner of Central Excise and Service Tax : Respondent
Dibrugarh Milan Nagar Lane "F", P.O.: C.R. Building,
Dibrugarh – 786 003

APPEARANCE:

Shri Arvind Baheti, Chartered Accountant for the Appellant

Shri S.S. Chattopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75561 / 2024

DATE OF HEARING / DECISION:07.03.2024

Order : [Per Shri K. Anpazhakan]

M/s. ABC Tea Workers Welfare Services (hereinafter referred to as the "Appellant") is a non-profit, public limited company registered under Section 25 of the Companies Act, 1956. During the period, 2007-08 to 2011-12, the Appellant was licensed as a wholesaler under the West Bengal Public Distribution System (Special Provision for Tea Gardens) Order, 2006 and the Assam Public Distribution of Articles Order, 1982 for carrying out the purchase and sale of the food grains covered under the Public Distribution System ("PDS"). In terms of the said Orders/Licenses the Appellant was required to supply food grains under the cover of cash memos/invoices. The teagardens were procuring food grains and supplying the same to the teagarden workers through Associations viz., Indian Tea Association ("ITA") and Darjeeling Tea Association ("DTA"). Prior to 2006, ITA/DTA appointed the Appellant as food grains handling agent to procure and supply food grains to the affiliates (member tea gardens) of the ITA and the DTA by executing a Power of Attorney ("POA") in the favour of the Appellant. However, the said position underwent a substantial change pursuant to West Bengal Public Distribution System (Special Provision for Tea Gardens) Order, 2006 and Circular No. FSA 166/97/204 issued by the Government of Assam.

2. Based on investigation and scrutiny of records of the Appellant, proceedings were initiated against them by issuing a Show Cause Notice dated 08.03.2013, on the ground that during the relevant period, the Appellant has provided "clearing and forwarding agent" service as against the "transportation of goods by road" service as declared by the Appellant. The Notice demanded service tax of Rs. 3,29,11,536/-, including Cess, from the appellant under the category of clearing and forwarding Agent service and proposed to adjust the amount of Rs. 16,99,594/- which was paid by the Appellant under the taxable category of transport of goods by GTA service. The Notice was adjudicated and the demand of Service Tax of Rs. 3,29,11,536/- along with interest and equivalent amount of tax as penalty was imposed vide the impugned order dated 12.07.2013. Aggrieved against the impugned order, the appellant has filed this appeal.

3. The appellant submits that they were undertaking sale/purchase of the food grains covered under the PDS and hence the activity cannot be termed as a "clearing and forwarding agent". During the relevant period, they were licensed as a whole seller for the purchase and sale of food grains under the State Orders issued pursuant to the Public Distribution System (Control) Order, 2001.They were procuring the food grains based on the allocation orders issued by the state government and making payments against such purchases to the Food& Supplies Department of the respective State Governments**.** The purchased food grains were sold to the teagardens under the cover of invoices raised in the name of the respective tea gardens. Therefore, it is evident that the Appellant was engaged solely in the activity of sale and purchase of food grains.

3.1. The impugned order has rejected the contentions of the Appellant on the ground that the Financial Statements of the Appellant showed the income as "Agency Remuneration". The appellant submits that the Ld. adjudicating authority has however failed to appreciate the following: **-**

a. The Appellant was acting an agent of ITA and DTA prior to 2006. Therefore, historically, the Appellant had been recording the said reimbursements of administrative costs as Agency Remuneration.
b. With effect from 2006, the nature of relationship changed from agency to principal-to-principal basis.
c. However, the manner of reflection in the Books of Accounts continued to remain same up to the Financial Year 2013 and thereafter

the same was changed based on the intimations received from the Department.

3.2. It is further contended that it is a settled principle of law that the manner of reflection in the books of accounts/Income and Expenditure Account is irrelevant for the determination of Service Tax Liability. Reliance in this regard is placed on the judgement of the Hon'ble Madras High Court in the case of *Firm Foundations & Housing Private Limited Vs. Principal Commissioner of Service Tax, Chennai [2018 (16) G.S.T.L. 209].*

3.3. The appellant submits that the Services provided by them are not in the nature of clearing and forwarding agent services. Normally, a clearing and forwarding agent receives goods from the factories or premises of the principal or his agents, stores these goods, despatches these goods as per orders received from the principal or owner, arranges transport, etc. for the purpose and prepares invoices on behalf of the principal. The essential characteristic of any services, to fall in the category of clearing and forwarding agent, is that the relationship between the service provider and receiver should be in the nature of principal (owner) and agent. The clearing and forwarding agent carries out all activities in respect of goods right from stage of their clearances from the premises of the principal to its storage and delivery to the customers. In the present case, the activities undertaken by the Appellant are substantially distinguishable from the activities of a clearing and forwarding agent of the Tea Associations. The Ld. Adjudicating Authority has held in the impugned order that the Tea Associations are the principals in this case. The appellant submits that in this case, the food grains were procured based on the allocation orders received from the state government and not from the Tea Associations. Further the food grains were being supplied to the respective teagardens as per the indents/orders received from the latter. Therefore, it is their contention that the Tea owners cannot be considered as their principal and the activities of the Appellant cannot includible within the ambit of a consignment agent.

3.4. It is also submitted that in order to qualify any service as "clearing and forwarding agent", both "clearing" and "forwarding" activities are required to be performed. Reliance in this regard is placed on the following judgements:

a. Commissioner of Central Excise, Panchkula Vs. Kulcip Medicines Private Limited [2009 (14) S.T.R. 908 (P&H)] maintained in 2009 (14) S.T.R. J20 (S.C.);

b. Videocon TV Manufacturers Private Limited Vs. Commissioner of Central Excise [2014 (33) S.T.R. 199 (Tri. – Delhi)]

3.5. It was also urged that in the present case, the Appellant is not providing any clearing services; it is evident that the Allocation Orders were issued in the name of the Appellant. Payments in favour of the state governments were also made by the Appellant. When the food grains were being procured by the Appellant on their own account, it cannot be said that they were providing "clearing" services. Accordingly, the Appellant submits that the activities undertaken by them cannot be taxed under the category of clearing and forwarding agent services.

3.6. The appellant submits that there can be no intention to evade payment of duty by a non-profit making entity which is duly registered with the Service Tax Authorities and has been duly informing the Department about the general nature of its Activity through periodical returns. Consequently, the demand for penalty is not sustainable.

3.7. Accordingly, the appellant prayed for setting aside the demands of service tax along with interest and penalty confirmed in the impugned order.

4. The Ld. Authorized Representative appearing on behalf of the respondent reiterated the findings in the impugned order.

5. Heard both sides and perused the appeal documents.

6. We observe that the in the impugned order demand of service tax of Rs.3,29,11,536/-, including Cess, has been confirmed under the category of clearing and forwarding agent service. The appellant submits that they were undertaking sale/purchase of the food grains covered under the PDS and hence the activity cannot be termed as a "clearing and forwarding agent".

6.1. In order to examine the liability of service tax on the activities undertaken by the appellant, it is necessary to examine the definition of clearing and forwarding agent as defined in Section 65(25) of the Finance Act, 1994, which is reproduced below: -

> *"(25) "clearing and forwarding agent" means any person who is engaged in providing any service, either directly or indirectly, connected with the clearing and forwarding operations in any manner to any other person and includes a consignment agent;"*

6.2. From the above definition of clearing and forwarding agent, we observe that in order to qualify any person as "clearing and forwarding agent", he has to undertake both "clearing" and "forwarding" activities. In the facts of the present case, the Appellant is not providing any clearing services. When the food grains were procured by the Appellant on their own account, it cannot be said that they were providing "clearing" services". Normally, a clearing and forwarding agent receives goods from the factories or premises of the principal or his agents, stores these goods, despatches these goods as per orders received from the principal or owner, arranges transport, etc. for the purpose and prepares invoices on behalf of the principal. The essential characteristic of any service, to fall in the category of clearing and forwarding agent, is that the relationship between the service provider and receiver should be in the nature of principal (owner) and agent. The clearing and forwarding agent carries out all activities in respect of goods right from stage of their clearances from the premises of the principal to its storage and delivery to the customers. In the present case, the activities undertaken by the Appellant are distinguishable from the activities of a clearing and forwarding agent as described above. Further, in this case, the food grains were procured based on the allocation orders received from the state government and not from the Tea Associations. The food grains procured were supplied to the respective teagardens as per the indents/orders received from them. Therefore, the Tea Associations cannot be considered as principals and the appellants cannot be considered as their agents. Accordingly, we hold that the demand of service tax along with interest under the category of clearing and forwarding Agent service is not sustainable.

6.3. We observe that the appellant is a non-profit making entity which is duly registered with the Service Tax Authorities. They have been duly informing the Department about the general nature of its activity through periodical returns. Thus, we hold that there can be no intention to evade payment of service tax by the appellant. Accordingly, we hold that the demand for penalty in this case is not sustainable.

7. In view of the above discussion, we set aside the impugned order and allow the appeal filed by the appellant.

(Operative part of the order was pronounced in open court)

Sd/-	Sd/-
(K. ANPAZHAKAN)	**(ASHOK JINDAL)**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

Sdd