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

REGIONAL BENCH - COURT NO.1

Service Tax Appeal No.70685 of 2013

(Arising out of Order-in-Original No.37/COM/ST/SLG/12-13 dated 21.03.2013 passed by Commissioner, Customs, Central Excise & Service Tax, Siliguri.)

M/s. ABC Tea Workers Welfare Services
(Pradhan Building, Rishi Aurobindo Road, Siliguri, District-Darjeeling, West Bengal.)
...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Siliguri
.....Respondent
(C.R. Building, 4th Floor, Haren Mukherjee Road, Hakim Para, Siliguri-734001.)

APPEARANCE

Shri Arvind Baheti, C.A. for the Appellant (s)
Shri S.S.Chattopadhyay, Authorized Representative for the Revenue

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

FINAL ORDER NO. 75654/2024

DATE OF HEARING : 19.03.2024
DATE OF DECISION : 19.03.2024

Per : ASHOK JINDAL :

The Ld.Counsel appearing on behalf of the appellant submits that in their own case, this Tribunal has examined the issue and dropped the proceedings against the appellant vide Final Order No. 75561 / 2024 dated 07.03.2024.

2. Heard the parties.

3. Considering the fact that identical issue in the appellant's own case has been decided by this Tribunal, wherein the Tribunal has observed as under:-

> *"6. We observe that the in the impugned order demand of service tax of Rs.63,41,798/-, 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."

4. In view of the above, as the issue is already decided by this Tribunal, we hold that that the appellant is a non-profit making entity which is registered with Service Tax authorities and they have informed about their activity through periodical returns, therefore, there is no intention to evade payment of duty by the appellants.

5. We hold that the food grain procured/supplied to the respective tea garden as per the indents/order received from them, the tea associations cannot be considered as principals and appellant cannot be considered as their agent. Therefore, the appellant cannot be held that they are clearing and forwarding agents.

6. In view of that, we hold that demand of service tax against the appellant is not sustainable under the category of 'Clearing & Forwarding Agent Service'. Therefore, no penalty is imposable on the appellant.

7. In view of this, we set aside the impugned order and allow the appeal with consequential relief, if any.

(Operative part of the order was pronounced in the open Court.)

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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