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

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.37 of 2012

(Arising out of Order-in-Appeal No.13/Commr./ST/Kol/2011-12 dated 28.07.2011 passed by Commissioner of Service Tax, Kolkata)

M/s MSTC Limited
(225C, A.J.C.Bose Road, Kolkata-700020)

Appellant

VERSUS

Commissioner of Service Tax, Kolkata
(180,Shantipally, Rajdanga Main Road, Kolkata-700107)

Respondent

APPERANCE :

Shri A.N.Chatterjee & Shri Gautom Banerjee, both FCA for the Appellant
Shri S.S.Chattopadhyay, Authorized Representative for the Respondent

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

FINAL ORDER NO.76625/2024

DATE OF HEARING : 06.08.2024
DATE OF DECISION : 06.08.2024

Per Ashok Jindal :

By way of this appeal, the appellant is challenging the impugned order confirming demand of service tax under the category of "Business Auxiliary Service" for the period 2005-06 and 2006-07 by issuance of show-cause notice dated 13.10.2010 by invoking extended period of limitation.

2. The facts of the case are that the appellant is a Government of India Enterprise and engaged in the activity of procurement of goods on behalf of the clients, namely, M/s Akshata, M/s Haldia Petrochemicals Limited, M/s Essar Steel and M/s Ispat etc. The appellants have purchased the goods, such as, low ash metallurgical coke, naptha, anthracite etc. for their clients on high sea sale basis and later on, sold

to the clients. In their sale invoices in addition to purchase price, they also charged 1% of the sale price as "mark-up" charges. Revenue is of the view that this "mark-up" charges is known other than as "Business Auxiliary Service" under Clause (4) of Section 65(19) of the Finance Act, 1994. Therefore, the proceedings were initiated against the appellant to demand service tax under the category of "Business Auxiliary Service" for the period 2005-06 and 2006-07 by issuance of show-cause notice dated 13.10.2010.

3. The ld.Counsel for the appellant submits that the goods purchased on high sea sale basis, are leviable to VAT/Sale Tax, but exempted under the relevant notification. As the subject goods are chargeable to VAT/Sales Tax, therefore, once the goods are subjected to VAT/Sales Tax on the sale, the same cannot be subjected to service tax. Therefore, it is prayed that the proceedings against the appellant be dropped. Further, it is contended that as the issue is debatable, therefore, the extended period of limitation is not invokable and whole of the demand is barred by limitation.

4. On the other hand, the ld.A.R. for the Revenue, supported the impugned order.

5. Heard both sides and considered the submissions.

6. We find that on similar facts in the case of State Trading Corporation of India Limited Vs. Commissioner of Central Excise, Kolkata-I in Service Tax Appeal No.70572 of 2013 vide Final Order No.76404/2024 dated 24.07.2024, this Tribunal held that the activity undertaken by the appellant for purchase of goods on high sea sale basis and the same which are to be sold against the "mark-up" price, is

chargeable as "Business Auxiliary Service". Therefore, on merits, we hold that the appellants have no case, but the extended period of limitation is not invokable as the appellant being Government of India Enterprise, they have no malafide intention to evade the payment of service tax. In that circumstances, we hold that the extended period of limitation is not invokable. We find that the demand has been confirmed by invoking extended period of limitation. Therefore, the demand against the appellant is set aside holding that whole of the demand is barred by limitation. Consequently, no penalty is imposable on the appellant.

7. In view of this, we set aside the impugned order and allow the appeal on limitation.

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

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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