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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75855 of 2014

(Arising out of Order-in-Original No. 69/Comm/ST/KOL/20113-14 dated 06.03.2014 passed by the Commissioner of Service Tax Commissionerate, Kolkata Kendriya Utpad Shulk Bhawan (3rd Floor) 180 Shantipallly, Rajdanga Main Road Kolkata700107)

Commissioner of Service Tax, Kolkata : **Appellant**
Kendriya Utpad Shulk Bhawan (3rd Floor) 180 Shantipallly,
Rajdanga Main Road Kolkata700107

VERSUS

M/s. Jet Express (Cargo Courier) Private Limited : **Respondent**
40, Babu Bagan Lane, Dhakuria, Kolkata-700031

APPEARANCE:

Shri R. K. Agarwal, Authorized Representative for the Respondent

Shri N. K. Chowdhury, Advocate for the Appellant

CORAM:

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

FINAL ORDER NO.76720/2024

DATE OF HEARING / DECISION: 09.08.2024

Order: [PER SHRI ASHOK JINDAL]

The Revenue is in appeal against the impugned order.

2. The facts of the case are that the respondent was engaged in the activity of providing 'cargo handling service', 'goods transport agency service', 'manpower recruitment or supply agency service' and 'renting of immovable property service'. It was alleged in the Show Cause Notice that the respondent had not maintained their payment details, service category wise and that from the

available records, it could not be verified under which head the respondent had paid the Service Tax. Accordingly, a demand of Rs.1,07,66,420/- (including E. Cess and S.H.E. Cess) was proposed to be recovered from the respondent by way of the impugned Show Cause Notice alleging that the respondent had paid Service Tax to the tune of Rs.4,12,19,182/- whereas they were liable to pay Rs.5,19,85,602/- for the impugned period.

2.1. With regard to the demand relating to Cargo Handling Service, the respondent had taken the stand that the service value to the tune of Rs.8,59,10,458/- pertained to agricultural produce, such as pulses, wheat, copra, etc., and hence not taxable in terms of Notification No. 10/2002-S.T. dated 01.08.2002.

3. During adjudication, the ld. adjudicating authority vide the impugned order has accepted the contention of the respondent and confirmed the demand of Rs.3,35,162/-, along with interest and penalty, thereby dropping the demand to the tune of Rs.1,04,31,258/- in terms of Notification No. 10/2002-S.T. dated 01.08.2002 read with Notification No. 08/2004-S.T. dated 09.07.2004.

4. Against the said order, the Revenue is before us.

5. We find that the main issue in the present appeal is that the Notification No. 10/2002-S.T. dated 01.08.2002 exempts taxable service provided by a cargo handling agency "in relation to agricultural produce or goods intended to be stored in a cold storage" relying on which the ld. adjudicating authority has dropped the demand of Rs.1,04,31,258/- in the impugned order. The

Revenue has challenged the impugned order contending that the ld. adjudicating authority has wrongly allowed the benefit of the exemption Notification No. 10/2002-S.T. dated 01.08.2002 to the respondent for providing cargo handling service without ascertaining the fact as to whether such service was provided in relation to agricultural produce or goods intended to be stored in a cold storage or not.

5.1. The Ld. Authorized Representative appearing for the Revenue submitted that the Notification No. 10/2002-S.T. dated 01.08.2002 exempts the taxable service provided to any person by a cargo handling agency in relation to agricultural produce intended to be stored in a cold storage, from the whole of the service tax leviable thereon under Section 66 of the said Act, but the said Notification is not applicable to the case of the respondent in the instant case.

6. We have gone through the Notification No. 10/2002-S.T. dated 01.08.2002, which is extracted hereinbelow: -

<u>Notification: 10/2002-ST dated 01-Aug-2002</u>

> "In exercise of the powers conferred by section 93 of the Finance Act 1994 (32 of 1994) the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service provided to any person by a cargo handling agency in relation to, agricultural produce or goods intended to be stored in a cold storage, from the whole of the service tax leviable thereon under section 66 of the said Act
>
> 2. This notification shall come into force on the 16th day of August 2002."

Wherein the exemption is available for cargo handling service provided in relation to agricultural produce or goods intended to be stored in a cold storage. The Revenue has misunderstood the contents of the above Notification and did not read the Notification in its true spirits. If the Revenue had read the Notification in true spirits, then there was no need to file this appeal before the Tribunal. As the Notification is clear that the exemption is available to the respondent for providing cargo handling service in relation to agricultural produce, the demand confirmed in this regard is not sustainable and liable to be dropped. The Ld. adjudicating authority has done so.

6.1. In that view, we do not find any infirmity in the impugned order. The same is upheld.

7. In the result, the appeal filed by the Revenue is dismissed.

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

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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