IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75346 of 2014

(Arising out of Order-in-Appeal No.88/ST/B-II/2013 dated 09.12.2013 passed by Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar)

M/s. Subhashree Enterprises **: Appellant**
New Rampela, P.O.-Rengali, Dist: Sambalpur, Odisha. Pin-768 212.

VERSUS

Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar. **: Respondent**
C.R. Building, Rajaswa Vihar, Bhubaneswar-751 007, Odisha.

APPEARANCE:

None for the Appellant

Shri P.Das, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 76769 / 2024

DATE OF HEARING :22.08.2024

DATE OF DECISION:22.08.2024

Order : [Per Shri Ashok Jindal]

The appellant is in appeal against the impugned order.

2. The facts of the case are that during the course of scrutiny of profit and loss account of the appellant it was found that appellant is engaged in transporting and handling of cargo of various parties from 2005-06 onwards and receiving service charges for providing said services.

3. On verification and reconsideration of the financial reports, such as balance sheet and profit and loss account of the appellant for the period 2006-07 to 2008-09. It was revealed that the

charged amount of service during that period towards handling charges and it was noticed that during the period 2006-07 they have received the amount as material handling charges but did not paid any Service Tax payable on such taxable service under Cargo Handling Service.

4. In view of that it was alleged that appellant was providing Cargo Handling Service. Consequently, the Show Cause Notice was issued to the appellant on 28.10.2010 by invoking extended period of limitation for the period 2006-07 to 2007-08.

5. The matter was adjudicated, demand of service tax was confirmed.

6. Aggrieved from the said order, the appellant is before us.

7. The Appellant has requested to decide the issue on merits on the basis of available records. Therefore, appeal is taken up for consideration.

8. The bone contention of the appellant is that they have undertaken the job of transportation of goods from Sambalpur city station to plant site of Viraj Steel and Energy Ltd. and others and for the purposes of such transportation, they have undertaken loading and unloading. The Appellant also undertaken transportation of raw material from railway site to plant site for which loading and unloading has been undertaken.

9. Therefore, it is the contention of the appellant that the principal activity undertaken by the appellant is transportation of goods for providing GTA service. For the purpose of transportation, the activity of loading and unloading activities also undertaken.

10. In that circumstances, the activity undertaken by the appellant does not fall under Cargo Handling Service.

11. Therefore, no demand is sustainable against the Cargo Handling Service.

12. On the other hand, the Ld. Authorized Representative supported the impugned order and submitted that the appellant has undertaken the activity of loading and unloading and transportation. In that circumstance, the correct transportation of service is 'Cargo Handling Service'.

13. Heard the Ld. Authorized Representative and perused the record.

14. We find that the main activity undertaken by the appellant is Transportation of goods from station/railway site to the plant site, the activity of loading and unloading was an ancillary service for providing the main service i.e. transportation service which has been reflected from the purchase order itself wherein the main activity is shown as Transportation Service.

15. As we find that the main activity of the appellant is Transportation of goods Service, therefore, appropriate classification should be Goods Transport Agency Service and for that Service Tax is payable under Reverse Charge Mechanism by the service recipient.

16. In that circumstances, no liability arise against the appellant and the activity undertaken by the appellant does not fall under Cargo Handling Service.

17. In that circumstances, whole of the demand raised against the appellant is set aside and no penalty is imposable on the appellant.

18. In result, appeal is allowed with consequential relief, if any.

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

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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