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

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.75110 of 2015

(Arising out of Order-in-Appeal No.919/Pat/S.Tax/Appeal/2014 dated 24.10.2014 passed by Commissioner (Appeals) of Customs,Central Excise & Service Tax, Patna)

M/s Bayer Crop Science Limited
(Ecospace Building No.3A, Unit No.502,5th Floor,59M wide (Row) Road, New Town, Rajarhat, Kolkata-700156)

Appellant

VERSUS

Commissioner of CGST & Excise, Patna
(C.R.Building, Birchand Patel Path, Patna-800001)

Respondent

APPERANCE :
Shri Tarun Chatterjee & Shri Raju Mondal, both Advocates for the Appellant
Shri S.Mukhopadhyay, Authorized Representative for the Respondent

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

FINAL ORDER NO.76780/2024

DATE OF HEARING : 30 .08.2024
DATE OF DECISION : 30.08.2024

Per Ashok Jindal :

The appellant is in appeal against the impugned order wherein the refund claim of Rs.12,48,360/- filed for the period June, 2013 to September, 2013, has been rejected on the ground that the commission on which the service tax has been paid by the Commission Agent, have not dealt with the sale or purchase of agricultural produce.

2. The ld.Counsel appearing on behalf of the appellant submits that it is an admitted fact that the service received by the appellant from their agent is with regard to agricultural produce only and the same is to qualify not to be paid service tax under Negative List. Therefore, whatever service tax borne by them were entitled for refund claim.

3. On the other hand, the ld.A.R. for the Revenue submits that it is admitted fact that the appellant has received the services in relation to the agricultural produce, but both the adjudicating authorities as well as the ld.Commissioner (Appeals) has not examined the issue whether it is a service relating to agricultural produce and whether the refund claim filed by the appellant is barred by limitation or barred by unjust enrichment. This issue has not been examined by the adjudicating authority. In that circumstances, the matter is to be remanded.

4. Heard both the parties and considered the submissions.

5. We find that in this case, both the authorities have examined the issues and thereafter, held that the appellant is not entitled for refund claim. The agent who has raised the invoices, does not cover under Negative List as per Section 66D(d)(vii) of the Finance Act, 1994. We find that it is not disputed that whatever service provided by the agent is with regard to agricultural produce. Therefore, whatever services rendered by the appellant are exempted from payment of service tax.

6. In that circumstances, the appellant is entitled to get refund claim. Therefore, we hold that the appellant is entitled for refund claim, but the same is to be examined by the authorities below.

7. In these terms, the appeal is allowed with the direction to the adjudicating authority to entertain the refund claim on its own merit.

(Dictated and pronounced in the open court)

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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