IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA
<u>REGIONAL BENCH - COURT NO.2</u>

Service Tax Appeal No.75670 of 2014
(Arising out of Order-in-Appeal No.06/RAN/2014 dated 29.01.2014 passed by Commissioner(Appeals) of Central Excise & Service Tax, Ranchi.)

M/s. Central Coalfields Limited
(Darbhanga House, Ranchi)

...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Ranchi
.....Respondent
(5A, Main Road, Ranchi, Ranchi-834001.)

<u>APPEARANCE</u>

Shri Deepak Kr. Sinha & Shri Janak Kr. Mishra, both Advocates for the Appellant (s)
Shri K.Chowdhury, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

<u>FINAL ORDER NO. 76963/2024</u>

DATE OF HEARING : 10.09.2024
DATE OF DECISION : 10.09.2024

Per : R. MURALIDHAR :

The Appellant had paid Rs.2,72,54,295/- on Reverse Charge Mechanism basis on 'Goods Transport Operator Services' for the services rendered between 1997 to 1999. On the ground that the payment was made during March, April & October, 2002 for the Service Tax liability arising in the previous years, a Show Cause Notice was issued to the Appellant demanding interest payment for the Service Tax so deposited.

2. Being aggrieved, the Appellant had filed a Writ Petition No.4552 of 2003 before the Hon'ble High Court of Jharkhand. The Hon'ble High Court after noting the details of various other decisions cited by the Appellant, has held as under:-

> *"13. In view of the aforesaid decision, there was no liability to file return under Section 70 of the petitioner for Goods Transport Operators*

Services received by the petitioner for the period running from 16th November, 1997 to 1st July, 1998, as the petitioner has already deposited the tax on 16th March, 2002, 12th April 1002 and 8th October, 2002, total of which comes to Rs.2,95,14,899.21 paise. There is, thus, no question of the petitioner's liability to make payment of interest on the aforesaid amount whatsoever. We, therefore, quash and set aside the order passed by the Deputy Commissioner, Central Excise, Ranchi dated 10/11th January, 2003 at Annexure 9 to the memo of petition."

3. On the ground that the Hon'ble High Court has struck down the demand of interest raised by the Revenue, the Appellants filed their refund claim for Rs.2,95,14,899.21 on 21.12.2011. Thereafter Show Cause Notice was issued by the Department seeking to know as to why the same should not be rejected as the refund claim has been filed belatedly and also seeking to know as to why the same should not be rejected on the ground of unjust enrichment.

4. After due process, the Adjudicating authority rejected their refund claim. On appeal, the Ld.Commissioner(Appeals) dismissed their Appeal. Being aggrieved, the Appellant is before us.

5. The Ld.Counsel appearing on behalf of the Appellant vehemently argued that they are eligible to get the grant of refund since the Service Tax was not payable at all. He relies on the case law of **CCE, Vadodara-I vs. Gujarat Carbon And Industries Limited [2008 (9) SCC 518,** wherein it has been held that as there is no liability cast to file Return on the assessee, which was introduced w.e.f. Finance Bill, 2003, there was absolutely no necessity for the Appellant to pay the Service Tax on GTO Operations. Therefore, the amount collected by the Revenue is not at all Service Tax and hence the provisions of Section 11B are also not applicable.

6. The Ld.AR for the Department on the other hand submits that the case law of **Gujarat Carbon And Industries Limited**, cited supra, by the Ld.Counsel is distinguishable. In that case, demand under Section 73 was issued and this specific issue was before the Hon'ble Supreme Court. Whereas in the present case, the Appellant had already

deposited the entire Service Tax without paying the same "under protest". He further submits that even from the High Court's decision, it gets clarified that the Appellant did not contest the basic Service Tax paid by them, but was only contesting the interest portion for which relief was granted by the Hon'ble High Court. He also cites the case law of **E.I.D. Parry India Limited v. CESTAT, Chennai [2015 (39) S.T.R. 968 (Mad.)]**, wherein the Hon'ble High Court has held that the assessee is required to pay the Service Tax on Reverse Charge basis for the GTO services received by them. In view of these submissions, he prays that the Appeal may be dismissed.

7. Heard both sides and perused the appeal papers and other documents placed before us.

8. We find that the Appellant has deposited the entire amount during the period March 2002 to October 2002. While making the payment, they have not taken any stand that the same is being paid "under protest". Subsequently, when the Show Cause Notice was issued seeking to demand the interest on the belated payment of Service Tax, still they were reiterating the stand that the interest is not required to be paid on account of several case laws. We find that even before the Hon'ble Jharkhand High Court, they did not contest the basic Service Tax paid by them, but were only litigating the confirmed demand on account of interest. From the relevant Paragraph 13 of the High Court's judgement reproduced above we find that the Hon'ble High Court has quashed and set aside the order passed by the Deputy Commissioner which happens to be the order passed towards the interest amount alone.

9. Further on going through the Hon'ble Madras High Court decision in the case of **E.I.D. Parry India Limited**, cited supra, we find that the Hon'ble High Court has held as under:-

> ***11.*** *From a reading of the abovesaid decision of the Supreme Court and that of this Court, it is clear that the users of the service rendered by the Goods Transport Operators are liable to pay service tax. In the present case, <u>the appellant is using the services of the Goods</u>*

Transport Operators during different periods between 1997 to 1999. Hence, the appellant is liable to pay service tax. Since the appellant has already paid the service tax, as per the law laid down by the Supreme Court in the case of Gujarat Ambuja Cements Ltd. v. Union of India reported in 2006 (3) S.T.R. 608, the question of refund will not arise and the appellant is not entitled for refund. Hence, the Tribunal is justified in confirming the order of the Original Authority declining to grant refund.

***12.** Accordingly, following the abovesaid decision of the Supreme Court Gujarat Ambuja Cements Ltd. v. Union of India reported in 2006 (3) S.T.R. 608 and the decisions of this Court in the case of Commissioner of Central Excise v. Customs, Excise and Service Tax Appellate Tribunal and another (C.M.A. Nos. 1308 of 2009 batch dated 31-10-2013) and in the case of The Commissioner of Central Excise, Puducherry v. Customs, Excise and Service Tax Appellate Tribunal and Another (C.M.A. No. 1322 of 2009 dated 4-9-2014), the substantial questions of law admitted by this Court are answered against the assessee and in favour of the Revenue.*

***13.** In the result, all the above Civil Miscellaneous Appeals are dismissed. No costs.*

10. In view of the foregoing, we do not find any merit in the Appeal filed by the Appellant and the same is dismissed.

(Dictated and pronounced in the open Court.)

Sd/

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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