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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75915 of 2016

(Arising out of Order-in-Original No.BSR-EXCUS-002-Com-016-15-16 dated 29.02.2016 passed by the Commissioner of Central Excise Customs and Service Tax, Bhubaneswar-II, Commissionerate Central Revenue Building Rajaswa Vihar Bhubaneshwar-751007)

M/s. Nava Bharat Ventures Ltd., **: Appellant**
Po Kharagprasad Near Meramundali Railway Station

VERSUS

Commissioner of Central Excise, Customs And Service Tax, **: Respondent**
Bhubaneswar-II, Commissionerate
Central Revenue Building Rajaswa Vihar Bhubaneshwar-751007

APPEARANCE:

Shri Rahul Tangri, Advocate for the Appellant

Shri Tariq Sulaiman, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO.77121/2024

DATE OF HEARING / DECISION: 23.09.2024

Order: [PER SHRI ASHOK JINDAL]

The appellant is in appeal against the impugned order wherein demand of Service Tax has been confirmed against the appellant under the category of 'intellectual property rights service' for supply of technical drawing and other documents which have been imported by the appellant in physical form by filing of bills of entry, on payment of appropriate customs duty, for the period 2007-08 by issuance of a Show Cause Notice dated 19.10.2012, by invoking the extended period of limitation.

2. The facts of the case are that the appellant is a manufacturer of Ferro alloy products. During the relevant period viz. 2007-08, the appellant had placed a purchase order on M/s. Excel Rich Management Limited, Hong Kong for supply of industrial drawing and other technical documents, for installation of 1x64 MW Expansion Unit of its power plant. The industrial drawing along with technical documents were imported in four consignments and bills of entry were filed accordingly. "Design and drawings" were exempt from customs duty vide Sl. No. 164 of Notification No.21/2002-Cus. Dated 01.03.2002, whereas on the technical documents the appellant paid Basic Customs Duty @10% as per Sl. No. 28 of Notification No.21/2007-Cus. Dated 01.03.2007.

3. An audit was conducted at the appellant's unit in the month of April 2009 wherein it was observed that in the consolidated balance sheet, for the period 2007-08, an amount of Rs.8,87,97,250/- was shown by the appellant as 'expenditure towards import of industrial drawing from M/s. Excel Rich Management Ltd., Hong Kong'. Subsequently, the appellant was directed to pay Service Tax under the category of 'intellectual property rights service', along with interest.

4. Thereafter, a Show Cause Notice was issued to the appellant proposing to demand Service Tax from the appellant under the category of 'intellectual property rights service' and after adjudication, the demand of Service Tax was confirmed vide the impugned order.

4.1. Against the said order, the appellant is before us.

5. The Ld. Counsel appearing on behalf of the appellant submits that the issue is no longer res integra as this Tribunal has held that "design and drawings" which have been imported by filing bills of entry cannot be subjected to Service Tax in the case of *Hooghly Met Coke & Power Co. Ltd. v. Commissioner of Service Tax, Kolkata [2024 (8) TMI 611 - CESTAT, Kolkata].* He therefore submits that the impugned order is not sustainable.

6. On the other hand, the Ld. Authorised Representative of the Revenue supported the impugned order.

7. Heard the parties and considered their submissions.

8. We find that the short issue involved in this matter is whether Service Tax can be levied under the category of 'intellectual property rights service' on the supply of industrial drawings and other technical documents imported by filing bills of entry on payment of appropriate customs duty, or not.

8.1. We find that the said issue has been examined by this Tribunal in the case of Hooghly Met Coke & Power Co. Ltd. (supra) wherein it was held as under:-

> 6. We observe that for the purpose of setting up the Heat Recovery Coke Oven Project in their factory, the appellant entered into five Agreements with Beijing Sino-Steel Industries and Trade Group Corp. One of the Agreements was meant for supply of designs and drawings for manufacture of indigenous equipment and civil structure utilities and other services for the purpose of erection, start-up commissioning and demonstration of performance test, etc. The Department has alleged that supply of designs and drawings, by SSIT amounts to providing the taxable service of "Intellectual property services" (IPR Services) as defined in Section 65(55b) read with Section 65(5a), which was taxable in terms of

> Section 65(105)(zzr) of the Act. At the insistence of the Department, the appellant started paying service tax 'under protest.
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> 6.1. Regarding liability of service tax, the appellant submitted that these designs and drawings were considered as goods under Customs Act, 1962 and customs duty has already paid on the same at the time of importation of the goods; hence, no service tax is payable on the designs and drawings under the category of taxable service of "Intellectual property services (IPR Services). We find merit in the contention of the appellant. The designs and drawings have been considered as 'goods' at the time of importation and customs duty has already been paid on the same. Hence, we hold that the imported drawings and designs cannot be considered as taxable service under the category of "intellectual property services". Accordingly, we hold that the demand of service tax on the drawings and designs supplied by SSIT under the category of "intellectual property services" in the impugned order is not sustainable.

8.2. As the issue already stands decided by this Tribunal, therefore, we hold that no Service Tax is payable by the appellant under the category of 'intellectual property rights service' for supply of industrial drawings and other technical documents which have been imported by the appellant by filing of bills of entry and by payment of appropriate customs duty thereon.

9. Therefore, the impugned order deserves no merits and accordingly the same is set aside.

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

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

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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