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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 76258 of 2016

(Arising out of Order-in-Original No. 01/Commr/ST/BOL/16 dated 11.04.2016 passed by the Commissioner of Central Excise and Service Tax, Bolpur, Commissionerate Adjudication Cell, Sian, Bolpur, Birbhum, West Bengal, 731204)

M/s. B D Singh, **: Appellant**
Durga Mandir Road Rupnarayan Bazaar,
Po. Rupnarayan, Burdwan-713364

VERSUS

Commissioner of Central Excise And Service Tax-II, **: Respondent**
Bolpur, Commissionerate Adjudication Cell, Sian, Bolpur,
Birbhum, West Bengal, 731204

APPEARANCE:

Ms. Taniya Roy, Advocate for the Appellant

Shri S. Chakravorty, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO.77141/2024

DATE OF HEARING / DECISION: 25.09.2024

Order: [PER SHRI ASHOK JINDAL]

By way of this appeal, the appellant is contesting the demand of service tax confirmed against them for the period from April 2008 to March 2013 by issuance of a Show Cause Notice dated 11.04.2014 by invoking the extended period limitation.

2. The facts of the case are that the appellate is a contractor providing services to M/s. Eastern Coal Field India Limited (hereinafter referred to as 'ECL')

under various work orders / tenders issued to him. The appellant was issued work orders.

> *"work order from ECL for carrying out activities such as loading of RO and coal into tippers at Chitra A depot, using payloaders, transportation within a lead range of 26-27 km, unloading at Jamtara railway station, picking out shale cobalt stone from coal block of Chitra A mine, breaking of cleaning coal, loading of clean coal into tippers at Chitra-A depot using pay-loaders, transportation within a lead range of 26-27 km, unloading at Jamtara Railway Station, picking out shale/stone from coal block of Chitra-A mine, breaking of clean coal, loading of clean coal into piper."*

3. The appellant was getting consideration for the said service rendered on per metric tonne basis. The appellant was discharging Service Tax on loading services and for transportation activity, the service recipient was discharging service tax under reverse charge mechanism.

4. An audit was conducted at appellant's premises and it was found that appellant was providing services on the activity of loading of coal by payloaders, wherein certain documents were also asked from the appellant to substantiate the payment of service tax on other activities under the work orders issued by ECL. The appellant furnished certain documents and thereafter, a Show Cause Notice was issued to the appellant on 11.04.2014 by invoking the extended period of limitation, proposing to demand service tax on the entire consideration received by the appellant under the work orders. The appellant produced sample work order.

5. After examining the said work order, the demand pertaining to the said sample work order was dropped, but the remaining demand has been confirmed by the ld. adjudicating authority vide the impugned order.

5.1. Against the said order appellant is before us.

6. Today when the matter was called, it was admitted by the Ld. Counsel appearing on behalf of the appellant that they have not produced all the work orders before the adjudicating authority with regard to ascertaining the fact that the appellant is discharging service tax on their activity of loading and unloading. It is submitted that the transportation activity is undertaken by appellant separately in terms of the work orders and paid separately, on which the service recipient has discharged their service tax liability.

7. We find that as these documents were not produced by the appellant before the adjudicating authority, in these circumstances, it would be in the interests of justice to remand the matter back to the adjudicating authority, with a direction to the appellant to provide all the work orders before the adjudicating authority in order to ascertain the fact as to whether the appellant is discharging two separate activities of 'loading and unloading' and 'transportation of goods', which were paid separately to the appellant and that on the transportation activity, the service recipient is discharging service tax liability under reverse charge mechanism.

7.1. In these terms, we set aside the impugned order and remand matter back to the adjudicating authority to examine the documents and thereafter pass an appropriate order in accordance with law. The appellant is directed to produce all the work orders before the adjudicating authority for its consideration.

8. The appeal is disposed of, by way of remand.

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

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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