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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal Nos. 76312, 76315 of 2014

(Arising out of Order-in-Appeal Nos. 35-37/JSR/2014 dated 17.06.2014 passed by Commissioner of Central Excise, & Service Tax, Jamshedpur.)

M/s Ashima,
(D-Ramdas Batta, Bistupur, Jamshedpur-831001 (Jharkhand))

..Appellant

VERSUS

Commissioner of CGST & Central Excise, Jamshedpur,
605, Mahabir Tower, Main Road, Ranchi-834001.

.. ...**Respondent**

APPERANCE :
Shri Rajesh Chhibber, Advocate for the Appellant
Shri J. Chattopadhyay, Authorized Representative for the Respondent

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

FINAL ORDER No...77215-77216/2024

DATE OF HEARING : 12.09.2024
DATE OF DECISION : 12.09.2024

PER R. Muralidhar:

The appellants have obtained Service Tax Registration Number AKXPS9070KST001 and were providing various services under the category of Business Auxiliary Service, GTA, Pandal and Shyamena service etc. The appellants were supplying trucks along with labour for movement of goods within the factory of TISCO/JESCO, Jamshedpur. Initially, the Department took the view that this would amount to providing service under the category of "Cargo Handling Services". Show Cause Notice was issued for the period 2009-10 the Category of "cargo handling services". Subsequently, the Department changed its stand and issued two Show Cause Notices for the period 2008-09 and 2009-10 demanding the Service Tax under the category of Supply of

Tangible Goods Services. After due process, the adjudicating authority confirmed the demand of Rs 52,744/- for the period 2008-09. He confirmed the service tax of Rs.162,583/- for the period 2009-10. Being aggrieved, the appellants filed their appeals before the Commissioner (appeals). He affirmed the orders passed by the lower authority and dismissed the appeals filed by the appellant. Being aggrieved the appellant is before the Tribunal.

2. The Learned Counsel appearing on behalf of the appellant takes us through the orders issued by TISCO. He submits that the appellants had given their trucks along with their own drivers and other workers for movement of the goods. The effective control was never given to TISCO to use the trucks in whatever way they wanted to do. The appellant was carrying the goods of TISCO from one place to another by engaging their own vehicle with their own workers. Therefore, he submits that the Revenue is in error in classifying this service under the category of "supply of tangible goods services". He submits that the earlier audit conducted itself took the stand that this amounted to "cargo handling services". Since they found that this was also not amounting to "cargo handling services", the Department switched over the classification to "supply of tangible goods services" and confirmed the demands. Since the factual details clarify that the appellant is not providing the "Supply of Tangible Goods Service" the appeal may be allowed on merits.

4. The AR reiterates the findings of the lower authorities.

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

6. We find from the records that the appellant has only provided the trucks along with their workers for movement of goods from one place to another. It is not the case where TISCO has hired out the entire truck and used the same as per their own will and pleasure by engaging their own workers. The workers driving and handling the trucks are also provided by the appellant. Therefore, this does not establish that the appellant has provided the "supply of tangible goods services" to the client.

7. Accordingly, we allow the appeal by dismissing the impugned orders. The appellant would be eligible for consequential relief, if any, as per law.

(Dictated and pronounced in the open court)

Sd/-
(R. Muralidhar)
Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

Tushar Kr.