IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH - COURT NO.1
Service Tax Appeal No.75187 of 2016
(Arising out of Order-in-Original No.25/COMMR/ST/BOL/15 dated 03.11.2015 passed by Commissioner of Central Excise, Bolpur.)

M/s. Jai Balaji Industries Ltd. (Unit-I)
(G-1, Mangalpur Industrial Estate, P.O.-Baktarnagar, Raniganj, Dist-Burdwan, West Bengal, Pin-713321.)

...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Bolpur
.....Respondent
(Nanoor Chandidas Road, Sian, Bolpur, Dist: Birbhum, West Bengal, Pin-731204.)

APPEARANCE

Shri S.Mohapatra, G.M.(Taxation) for the Appellant (s)
Shri P.K.Ghosh, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)
FINAL ORDER NO. 77546/2024

DATE OF HEARING : 07.11.2014
DATE OF DECISION : 07.11.2014

Per : R. MURALIDHAR :

The Appellant is registered with the Central Excise Department for providing service under the category of 'Renting of Immovable Property' and some other services. Based on the audit conducted in the month of June 2013, a point was raised that the Appellant was not paying the Service Tax under the category of 'Cargo Handling Services' for the consideration being received from two of their clients. On these clients, the Appellants were charging loading and unloading charges @ 75/- per M.T. towards a provision of wagon loading and wagon placement service at the Railway siding at Barbil. Subsequently, a Show Cause Notice was issued on 20.03.2014, wherein discarding the earlier stand taken by the audit team, the proposal was to recover the Service Tax under heading 'Renting of Immovable Property Service'. After due process, the Adjudicating authority confirmed the demand. Being aggrieved, the Appellant is before the Tribunal.

2. The Ld.Authorized Representative for the Company submits that the agreement entered with the parties shows that they are being paid

for loading and unloading and other handling services for placing the goods in the wagons for which the rate has been decided @ Rs.75/- per M.T. The Show Cause Notice itself clarifies that the charges are towards wagon loading and wagon placement service at Railway wagon siding at Barbil. Hence the Adjudicating authority is in error in confirming the demand under the category of 'Renting of Immovable Property Services'. The Department has not brought in any evidence to that effect in respect of this Service. As can be seen from the points raised by the audit team, the Department itself had taken the view that the service would fall under the category of 'Cargo Handling Services'. Upon their reply that the services are being used by the clients for export of their goods and hence even under this category no Service Tax is payable, the Department has changed its stand and has issued the Show Cause Notice and confirmed the same by resorting to new classification under the category of 'Renting of Immovable Property Services'. Based on these submissions he prays that the Appeal may be allowed on merits.

3. He further submits that the Appellant is already registered with the Department and has been filing their Returns properly. They were carrying on the work of 'Cargo Handling Services' for the clients who are exporting the goods. Therefore, they carried a *bona fide* belief that no Service Tax is required to be paid either under the category of 'Cargo Handling Services' or under the category of 'Renting of Immovable Property Services'. The Department has not brought in any evidence of suppression on the part of the Appellant so as to fasten them with the confirmed demand. Therefore, the Appeal may be allowed in respect of the confirmed demand for the extended period.

4. The Ld.AR for the Department reiterates the findings of the Adjudicating authority and justifies the confirmed demand.

5. After perusing the appeal papers and other documentary evidence placed before us, we find that the Department vide their letter dated 04.06.2013 has taken the stand that this service would fall under

the category of 'Cargo Handling Service'. The said letter is reproduced below:-

GOVERNMENT OF INDIA
MINISTRY OF FINANCE, DEPARTMENT OF REVENUE
OFFICE OF THE SUPERINTENDENT OF CENTRAL EXCISE,
MANGALPUR RANGE, SEN-RALEIGH ROAD, KUMARPUR MORE
ASANSOL BURDWAN

C.No. V(30)3/DAR/JBIL/MGR/13 /150 | Dated: - 04.06.2013

To,
M/s. Jai Balaji Industries Ltd. (U-I),
G-1, Mangalpur Industrial Estate,
P.O. Bakhtarnagar, Raniganj,
Dist. - Burdwan. (W. Bengal) PIN-713321

Dear Sirs,

Sub: - Submission of comments against DAR No. 40/2013-14

In course of audit by the Internal Audit Central Excise, Bolpur it was found that you have;

<u>Para-1)</u> irregularly availed Input Service Credit to the tune of Rs. 2,97,663/- (288986+5784+2893) on i) Commercial or industrial construction service, as defined in Section 65 (105) (zzq), construction of residential complex as defined in Section 65(105) (zzzh) of the finance Act, 1994 if it is used for (a) construction of a building or a civil structure or a part thereof; or b) laying of foundation or making of structures for a support of capital goods;

ii) Renting of a cab service, as defined in Section 65(105) (O),

iii) Membership of a club service

In terms of Notification No. 03/2011-CE (NT) dated 01/03/11, w.e.f 01/04/11 credit of above cited service have become inadmissible.

<u>Para-2)</u> irregularly availed Input Service Credit to the tune of Rs. 20,41,697/- (1982035+39641+20021) on "Motor Vehicle" under the category Supply of tangible goods service. In terms of Notification No. 03/2011-CE (NT) dated 01/03/11, w.e.f 01/04/11 motor vehicle has been excluded from the ambit of Input Service. .

<u>Para-3)</u> not paid Service tax on Cargo handling service amounting to Rs. 48,96,453/- (4753838+95077+47538) on the taxable consideration of Rs. 47538383/- due to provision of wagon loading and wagon placement service at railway siding Barbil, Orissa @ Rs. 75 per metric tonne of loading quantity of iron ore.

You are requested to submit your comments on the above cited paras with in three (3) days of receipt of this letter. In the event of failure to submit your comments within the mentioned time it will be presumed that you have nothing to say in this regard and action will be taken to safeguard the govt. Revenue.

Yours sincerely

04/6/2013

Superintendent Central Excise
Mangalpur Range, Asansol

6. Even the Show Cause Notice at para 2.1 stands as under:-

> *"2.1 In course of verification of records of the said assessee by the departmental officers it was noticed from their trial balance, railway siding income ledger, bills raised on account of wagon loading and wagon placement charges that they received a taxable consideration of Rs.5,41,25,710/- for wagon loading and wagon placement service at railway siding Barbil, Orissa @ Rs.75 per metric tone of loading quantity of iron ore during the period 2010-11 and 2011-12."*

7. From the description given in the Show Cause Notice, it is clear that this service falls under the category of 'Cargo Handling Services' and not under the category of 'Renting of Immovable Property Services'.

8. Therefore, based on the factual matrix of the case and the documentary evidence placed before us, we find that the impugned order is not legally sustainable. Accordingly, we dismiss the same and allow the Appeal filed on merits.

9. Since the issue stands decided on merits, we are not going into the factual details about filing of Returns and accounting for the service in the ST-3 Returns to comment on the time bar issue.

10. The appellant is 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)

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