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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No.76622 of 2014

(Arising out of Order-in-Original No. 05/Commr/ST/GHY/14-15 dated 04.08.2014 passed by the Commissioner, Central Excise & Service Tax, Guwahati)

Commr. of Central Excise & Service Tax, Guwahati
(5th Floor, Sethi Trust Building, G. S. Road, Bhangagarh, Guwahati-781005, Assam)

Appellant

VERSUS

Shri Vishal Agarwal
(S/o, Late Surinder Kr. Agarwal,
House No. 32, Satya Bhawan, Indira Path,
Santipur Hill Side, Guwahati-781009, Assam)

Respondent

APPEARANCE :

Mr. Tariq Sulaiman, Authorized Representative for the Appellant
Mr. Soumyadipta Das, CA, for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.77844/2024

Date of Hearing : 04 December 2024
Date of Decision: 04 December 2024

PER R. MURALIDHAR:

The Respondent is providing services to various transporters for payment of Road Tax. For facilitating such tax payments, they get a commission from the transporters. The Department issued Show Cause Notice on the ground that the same will fall under the category of "*Business Auxiliary Services" in terms of Section 65(19)(iv) "procurement of goods or services, which are inputs for the clients".*

> *Explanation- For the removal of doubts,it is hereby declared that for the purposes if this sub-clause, 'inputs' means all goods or services intended for use by the client.*

While quantifying the amount, the Department has taken into account all the taxes paid by the respondent plus their commission amount.

2. The Adjudicating Authority after going through the case details has dropped the demand. Being aggrieved, the Revenue is before the Tribunal.

3. The Learned AR reiterates the Grounds of Appeal and submits that the Adjudicating Authority was in error in dropping the demand. Accordingly, he prays that the appeal filed by the Revenue may be allowed.

4. The Learned Consultant appearing on behalf of the Respondent submits that the activity undertaken by the Respondent would not amount to provision of "Business Auxiliary Services" during the period under consideration. They were only facilitating the payment for Road tax by the transporters. They were not providing any service to the transporters. Therefore, he submits that the Adjudicating Authority has correctly dropped the demands.

5. Heard both sides and perused the appeal papers and documentary evidence placed before us.

6. We find that the appellant was merely providing a service of facilitating payment of Road Tax. The road tax paid by them was being reimbursed by the transporters. For this activity, they were getting a small commission which does not fall under the category of 'Business Auxiliary Service'. The Adjudicating Authority has given the following detailed findings:-

> *2.6 <u>I am also of the considered opinion that road tax paid to district transport authorities under no stretch of imagination can be considered</u>*

as goods or services. That apart by paying road tax to district transport authority the noticee did not procure any goods or services for the client. The show cause notice also alleged that the noticee's activities satisfied clause (vii) of the definition of "Business Auxiliary Services". In terms of clause (vii) any service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi) is a taxable service under the category of "Business Auxiliary services". Incidental or auxiliary services mainly means support services provided in relation to "Business Auxiliary Services". Since the activities are not taxable as "Business Auxiliary Services" defined in the main sub clauses (i) to (vi), it can not be held that these activities were incidental or auxiliary to services specified in the main sub clauses (i) to (vi). I therefore hold the view that the noticee's activity of payment of road tax on behalf of the truck owners cannot be considered as provision of taxable service under the category of "Business Auxiliary Service" and consequently I hold that the noticee is not liable to pay service tax on the amounts received by them for payment of these taxes to the district transport authorities.

2.7 From the above discussions, I find that the noticee by carrying out the activities did not procure any goods or services which were inputs for the clients. Consequently I hold that the allegation in the show cause notice that the noticee by undertaking the activities provided taxable service under the category of "Business Auxiliary Services" in terms of clause (iv) of definition in erstwhile section 65(19) of the Finance Act, 1994 fails for the period from 01/04/2008 to 30/06/2012.

2.8 xxxxx

It is an undisputed fact that the noticee carried out an activity for his clients for consideration and the activities carried out by the noticee were not covered by any of the exclusionary clauses of the definition of service under section 65B(44) of the Finance Act, 1994 and as such undoubtedly the activities carried out by the noticee was within the definition of 'service' w.e.f. 01/07/2012. 1 also find that the activities carried out by the noticee are not covered by the negative list in section 66D of the Finance Act, 1994 nor are those covered by *any of the exemption notifications. As such the amounts received by the noticee for providing such services is taxable. The noticee contended that they were eligible for threshold exemption in each of the financial years. <u>As it has been already held in foregoing paras that the services provided by the noticee were not taxable under the category of "Business Auxiliary Services" for the period from 01/04/2008 to 30/06/2012, I do not see any need for going into the details of amounts received during that period. However, I find that the gross amount received by the noticee during the period from 01/07/2012 to 31/03/2013 according to the show cause notice was Rs.58,133.00 and the noticee's liability for service tax during that period was worked out on that amount. Thus the noticee's taxable value for the financial year 2012-13 was much below the threshold limit of Rs.10.00 lakhs. Therefore without going into the merits of other submissions of the noticee, I hold that he was eligible for threshold exemption under notification no. 33/2012-ST dated 20/06/2012. Consequently I hold that the noticee was not liable to pay any service tax for this period either.</u>*

[Emphasis supplied]

7. We do not find any reason to interfere with the detailed findings given by the Adjudicating Authority for dropping the demands.

8. Accordingly, we dismiss the appeal filed by the Revenue.

(Dictated and pronounced in the open court.)

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

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

Pooja