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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No. 76235 of 2016

(Arising out of Order-In-Original No.65/COMMR/ST-II/KOL/2015-16 Dated 23/03/2016 passed by Commissioner of Service Tax-II, Kolkata)

M/s. R. V. Logistics
(6 Ho Chi Minh Sarani, Flat No. 9A, Kolkata-700071)

Appellant

VERSUS

Commr. of Service Tax-II, Kolkata
(180, Shantipally, Rajdanga Main Road, Kolkata-700107)

R**espondent**

APPEARANCE :
Mr. Shovendu Banerjee, Advocate for the Appellant
Mr. S. Dey, Authorized Representative for the Respondent

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

FINAL ORDER NO.77862/2024

Date of Hearing : 16 December 2024
Date of Decision: : 16 December 2024

PER R. MURALIDHAR:

The Learned Counsel submits that the issue is in a very short compass. The appellant is providing C & F Agency Service (BAS) to various clients. They have been getting reimbursement for the expenses incurred on behalf of the clients. The appellant have claimed that such expenses reimbursed by the clients are not exigiable to Service Tax. However, the Adjudicating Authority has given a finding that for the services provided by various service providers, they have charged Service Tax which has been taken as Cenvat Credit by the appellant. Therefore, this cannot be in the nature of reimbursement of expenses. On this ground, the demand of Rs.66,48,262/- has been confirmed.

2. The learned Counsel submits that all the invoices raised by the service providers are directly in the name of principal showing the details of their Service Tax registration. All the payments have been made by way of debiting in the account of such principals. Therefore, even hypothetically, it is not possible for the appellant to avail any Cenvat Credit for such documents. He assures that they have all the

documentary evidence to prove that in respect of such invoices which are being claimed as reimbursement by the appellant, no Cenvat Credit has been taken.

3. Considering this specific undertaking by the learned Counsel, we find that the matter is required to be verified by the Adjudicating Authority. Accordingly, the matter stands remanded to the Adjudicating Authority for causing necessary verification.

4. In respect of the second confirmed demand, the Learned Counsel submits that for the some services directly received and availed by the appellant from other service providers, in the normal course the appellant is eligible to take the Cenvat Credit. However, the Adjudicating Authority has confirmed the demand of Rs. 28,06,020/- on the ground that the appellant has not provided proper documentary evidence towards availment of such Cenvat Credit. The appellant once again assures that all the documents are available and can be produced if sought by the Adjudicating Authority. Therefore, even in this case, the Adjudicating Authority is required to cause necessary verification. Therefore, we remand even this matter to the Adjudicating Authority.

5. Thus, both the issues in respect of the impugned order are being remanded to the Adjudicating Authority who should follow the principals of natural justice and give opportunity to the appellant to file all documentary evidence and pass a considered order within four months from the date of receipt of this order.

6. The appeal is disposed of thus.

(Dictated and pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Sd/-

(K. Anpazhakan)
Member (Technical)

Pooja