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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 76892 of 2016

(Arising out of Order-in-Appeal No. 203/ST/HAL/2016 dated 12.08.2016 passed by the Commissioner of Central Excise (Appeal-I), Kolkata, 169, A.J.C. Bose Road, Bamboo Villa, 4th Floor, Kolkata – 700 014)

M/s. Industrial Handling **: Appellant**
IOC Gate No. 1, P.O.: Haldia Refinery,
Haldia, Purba Medinipur – 721 606

VERSUS

Commissioner of Central Excise **: Respondent**
Haldia Commissionerate,
25, Princep Street, 3rd Floor, Kolkata – 700 072

APPEARANCE:

Shri K.R. Sriram, Chartered Accountant (FCA),
For the Appellant

Shri Sameer Chitkara, Authorized Representative,
Shri P.K. Ghosh, Authorized Representative,
For the Respondent

CORAM:

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)
HON'BLE SHRI ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER NO. 75748 / 2025

DATE OF HEARING / DECISION: 24.03.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

M/s. Industrial Handling, IOC Gate No. 1, P.O.: Haldia Refinery, Haldia, Purba Medinipur – 721 606(hereinafter referred to as the "appellant") is a proprietorship firm engaged in providing material handling equipment to various business concerns. The appellant has been supplying cranes, etc. (tangible goods) to clients without transferring the right of possession and effective control. The Service Tax Authorities had issued two Show Cause Notices bearing SCN No V(15)15/DSCN/IH/ST/Adjn./Hal-

1/09/199 dated 24th April 2009 and C. No-V.ST(15)77)/CE/Hal Adjn/09/17462 dated 5th October 2009. Demand of Service Tax of Rs.4,36,058/-, Education Cessof Rs. 8,721/- and Secondary & Higher Education Cess of Rs. 4,361/- was proposed vide the first Show Cause Notice and demand of Service Tax of Rs.22,55,394/-, Education Cessof Rs. 45,108/- and Secondary & Higher Education Cess of Rs. 45,108/- was proposed vide the second Show Cause Notice. In addition,penalty and interest, as applicable, were also proposed to be demanded by way of the said notices.

2. The issues in the two Show Cause Notices mentioned above were identical inasmuch as the Revenue proposed to tax the service of "hire of cranes" as business support services which were taxable under Section 65(104c) of the Finance Act, 1994 as 'Taxable Service'. The Appellant however contended that these services were taxable under sub-clause (zzzzj) of Sec 65(105) of the said Act as "supply of tangible goods", which was introduced only with effect from 16.05.2008 and hence not liable to service tax for the period prior to 16.05.2008. The above two Show Cause Notices were issued covering the period prior to 16.05.2008. - The first SCN pertains to the period from 11.03.2008 to 31.03.2008 and the second SCN pertains to the period from 01.04.2008 to 15.05.2008.

2.1. The above Show Cause Notices were adjudicated by the Ld. Assistant Commissioner of Central Excise, Haldia Commissionerate vide Oder-in-Original No. 28-29/Addl.Commr/CE/Haldia/Adjn/2010 dated 06.08.2010, confirming the demands raised on the appellant.

2.2. Being aggrieved, the appellant filed an appeal with Ld. Commissioner of Central Excise (Appeal-1) Kolkata, who, vide the impugned order, upheld the Order-in-Original dated 06.08.2010 confirming the demands raised against the appellant.

3. Against the said order, the appellant has filed the present appeal before this Tribunal.

4. During the course of arguments, the Ld. Counsel appearing on behalf of the appellant submits that the services rendered by them are rightly classifiable under the category of "supply of tangible goods" service as defined under Section 65(105)(zzzzj) of the Finance Act, 1994, which came into the Service Tax net only with effect from 16.05.2008, while the present demand pertains to the periods from 11.03.2008 to 31.03.2008 and from 01.04.2008 to 15.05.2008.The appellant therefore submits that the impugned demand pertains to the period prior to 16.05.2008 when there was no liability to Service Tax for the equipment hired under the category of "supply of tangible goods". Thus, it is his contention that the demand raised in the present case under the category of "business support services" is not sustainable in law.

4.1. It is further submitted by the appellant that in their own case, for a prior period, the demand raised has been dropped by the Tribunal, Kolkata vide *Final Order No. 76552 of 2018 dated 05.07.2018 in Service Tax Appeal No. 148 of 2009 (CESTAT, Kolkata)*

4.2. Accordingly, the appellant prays that the present demand raised for the period prior to 16.05.2008 in the impugned order be set aside.

5. The Ld. Authorized Representative of the Revenue reiterates the findings in the impugned order.

6. Heard both sides and perused the appeal records.

6.1. We find that the appellant has been rendering services of providing material handling equipment to various clients. The service rendered by the appellant is rightly classifiable under the category of "supply of tangible goods" service as per Section 65(105)(zzzzj) of the Finance Act, 1994, which came into the Service Tax net only with effect from 16.05.2008. We observe that the demand raised in this regard against the appellant pertains to the period prior to this date.

6.2. We find that a similar issue has been dealt with by this Tribunal in the appellant's own case vide *Final Order No. 76552 of 2018 dated 05.07.2018 in Service Tax Appeal No. 148 of 2009 (CESTAT, Kolkata)*wherein this Tribunal has already held that the service rendered by the appellant is not liable to be taxed under the category of "business support services" for the period under dispute. For the sake of ready reference, the relevant part of the said decision is reproduced below: -

> *"6. Our views are also fortified by the decision of Hon'ble Bombay High Court in the case of Indian National Shipowners' Association(supra), the relevant extract of which is reproduced as under:-*
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>> *"38. If the Department's contention is accepted that would mean that the activities of the members of the 1st petitioner are covered by entry(zzzy) and entry (zzzzj). Such a result is difficult to comprehend because entry (zzzzj) is not a specie of what is covered by entry (zzzy). Introduction of new entry and inclusion of certain services in*

that entry would presuppose that there was no earlier entry covering the said services. Therefore, prior to introduction of entry (zzzzj), the services rendered by the members of the 1st petitioner were not taxable. Creation of new entry is not by way of amending the earlier entry. It is not a carve out of the earlier entry. Therefore, the services rendered by the members of the 1st petitioner cannot be brought to tax under that entry."

7. In view of above, we are of the considered view that the services provided by the appellant is not covered under the support service of business or commerce. The service provided by the appellant will fall under the category of 'support of tangible goods' with effect from 16.5.2008. In the case demand pertains to the period from 1.4.2006 to 10.3.2008 and hence non-taxable under the Finance Act. Accordingly, we set aside the impugned order with consequential benefit, if any, in accordance with law."

7. In view of the settled position of law the appellant's own case, we hold that the service rendered by the appellant is not liable to be taxed under the category of "business support services".

8. Accordingly, we set aside the demands confirmed in the impugned order and allow the appeal filed by the appellant, with consequential relief, if any, as per law.

(Dictated and pronounced in the open court)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sd/-
(ANGAD PRASAD)
MEMBER (JUDICIAL)

Sdd