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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75663 of 2023

(Arising out of Order-in-Appeal No. 63/SLG-ST/2023-24 dated 31.05.2023 passed by the Commissioner of Appeal, C.G.S.T. C.Ex., Siliguri (Appeal) Commissionerate, C.R. Building, Haren Mukherjee Road, Hakimpara, Siliguri – 734 001)

M/s. Beekay Warehousing Company **: Appellant**
Prop. Smt. Sikha Kundalia,
Kundalia House, S.F. Road,
Siliguri Bazar – 734 005

VERSUS

Commissioner of C.G.S.T. and Central Excise **: Respondent**
Siliguri Commissionerate
Siliguri Division, 35, Sarat Bose Road, Hakimpara,
Siliguri – 734 001

APPEARANCE:

Shri Debasis Sankhari, Authorized Representative
Smt. Stuti Tibrewal Khaitan, Authorized Representative,
For the Appellant

Ms. Suman, Authorized Representative,
For the Respondent

CORAM:

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

FINAL ORDER NO. 75452 / 2026

DATE OF HEARING / DECISION: 26.03.2026

ORDER:

The present appeal has been filed by M/s. Beekay Warehousing Company, Kundalia House, S.F. Road, Siliguri Bazar – 734 005 [hereinafter referred to as the "appellant"] who are engaged in rendering services under the categories of 'clearing and forwarding agency service', 'transportation of goods by road service' and 'renting of immovable property service'.

2. On scrutiny of the data received from the Income Tax Department as available in Form 26AS vis-à-vis the ST-3 Returns filed by the appellant during the period from 2014-15 to 2017-18 (April-June, 2017) and on comparison of the said data, it was gathered by the Revenue that there was some short payment of Service Tax on the part of the appellant during the concerned period.

3. Accordingly, a Show Cause Notice was issued to the appellant on 04.10.2019 demanding Service Tax of Rs.9,38,725/- (inclusive of cess), along with interest and penalty thereon.

3.1. Upon adjudication of the above notice, the demand of Service Tax of Rs.9,38,725/- (inclusive of cess), as demanded in the Show Cause Notice, was confirmed, along with interest, vide the Order-in-Original No. 34/DC/CGST/SLG-DIV/20-21 dated 25.02.2021. A penalty equivalent to the above Service Tax demand was also imposed on the appellant under Section 78 of the Finance Act, 1994 by the ld. adjudicating authority.

3.2. The appellant challenged the aforesaid Order-in-Original before the Ld. Commissioner (Appeals), who, vide the impugned order, has upheld the demands confirmed therein.

3.3. Aggrieved by the confirmation of the above demand of Service Tax, along with interest and penalty thereon, the appellant has filed this appeal.

4. At the outset, the Ld. Counsel appearing on behalf of the appellant submits that the demand of service tax confirmed by invoking the extended period of limitation is not sustainable as the essential ingredients thereof are absent; that they are

registered with the Department and were filing their ST-3 Returns regularly. They state that the Show Cause Notice was issued on the basis of the information contained in Form 26AS, as received from the Income Tax Department, and comparing the same with the information available in the ST-3 Returns filed by the appellant during the relevant period; that there was no suppression of any facts and figures on the part of the appellant. Thus it is the appellant's contention that as it is a fact that they have not suppressed any information from the Department and the Department has not conducted any independent verification so as to ascertain the nature of services being rendered by the appellant before raising the Service Tax liability, the invocation of the extended period of limitation in the present case cannot be sustained. In support of their above contention, the appellant has relied on the following case-law in their favour: -

i. *M/s. Munna Construction v. Commissioner of C.Ex. & S.T., Jamshedpur [Final Order No. 77625 of 2024 dated 22.11.2024 in Service Tax Appeal No. 76359 of 2014 (CESTAT, Kolkata)]*

ii. *M/s. Arya Logistics v Commissioner of C.Ex. & S.T., Rajkot [Final Order No. 11700 of 2023 dated 17.08.2023 in Service Tax Appeal No. 12389 of 2014 (CESTAT, Ahmedabad)]*

iii. *M/s. Balajee Machinery v Commissioner of C.G.S.T. & Excise, Patna-II [2022 (66) GSTL 440 (Tri.-Kol)]*

4.1. Regarding the merits of the case, the Ld. Counsel appearing on behalf of the appellant submitted that they were rendering 'Clearing and Forwarding Agents' service to M/s. Britannia Industries Limited, as per the agreement dated 24.08.2015 with M/s. Britannia Industries Limited; in the said Agreement, it has been specifically mentioned that apart from the remuneration, they received certain amounts from the principal on account of reimbursement of expenditure, which were incurred by the appellant on behalf of the principal; that such reimbursable expenses have been incurred by the appellant as a 'pure agent' and the same amount has been reimbursed by the principal. Accordingly, the appellant contends that the reimbursed amount received from the principal cannot be included in the taxable value of services for the purpose of computation of their Service Tax liability, in view of the specific exclusion such reimbursements from the taxable value under Rule 5 of the Service Tax (Determination of Value) Rules, 2006 as the amounts were claimed as a 'pure agent'.

4.2. In view of the above submissions, the Ld. Counsel for the appellant prays for setting aside the demand of Service Tax, along with interest and penalty, as confirmed against them vide the impugned order.

5. On the other hand, the Ld. Authorized Representative of the Revenue reiterated the findings in the impugned order. She submits that from May 14, 2015, the Finance Act, 2015, amended Section 67 to specifically include "reimbursable expenditure or cost incurred and charged by the service provider" in the value of taxable services. Thus, the exclusions claimed by the appellant cannot be allowed after the said amendment. Accordingly, she justified the demands confirmed in the impugned order.

6. Heard both sides and perused the records of the case.

7. With regard to the contentions raised by the appellant on the ground of limitation, I find that the appellant has been registered with the Department and also filing their Service Tax Returns regularly. It is on record that the Show Cause Notice dated 04.10.2019 was issued for raising the demand for the period from 2014-15 to 2017-18 (April to June, 2017) by invoking the extended period of limitation, on the basis of the information available in the Form 26AS Statement received from the Income Tax Department as well as the ST-3 Returns and Balance Sheet submitted by the appellant. It is seen from the records that in response to the letter dated 26.10.2018 issued by the Headquarter Anti-Evasion Unit, Siliguri C.G.S.T. & C.Ex. Commissionerate, the appellant had duly submitted all requisite documents vide their letter dated 26.12.2018. The appellant has disclosed all the relevant information in the statutory returns filed by them, which were also available with the Department for scrutiny. I find that the Department has not conducted any independent verification for raising the present demand on the differential amount found between the ST-3 Returns and Form 26AS Statements / ITR for the said periods. It is a well settled law that solely by relying on CBDT data and without conducting any independent investigation to establish the taxability of the said services, demands cannot be raised against an assessee, as has been held in a catena of decisions on the issue. I also do not find that any evidence has been brought on record by the Revenue to show that the appellant has indulged in any activity amounting to suppression or wilful mis-statement. Accordingly, I concur with the submission made by the appellant that the allegation of suppression of fact with the intent to evade

payment of tax on the part of the appellant has not been established in this case to justify the invocation of extended period of limitation. In this connection, I find it relevant to refer to the decision of this Tribunal in the case of *Balajee Machinery v. Commissioner of C.G.S.T. & Excise, Patna-II [2022 (66) G.S.T.L. 440 (Tri. – Kol.)],* wherein, under similar facts and circumstances, it has been held that the extended period of limitation is not invocable in the absence of the elements of fraud or suppression. The relevant portion of the said order reads as under: -

> *"8. We find that the very basis of the impugned demand is the figures appearing in the Income Tax Portal and the Profit and Loss account. We also find that the Ld. Commissioner has duly noted the fact that the Appellant was duly audited by the Service Tax Department for the compliance up to the financial year 2013-14. Since the records have been duly audited, the demand cannot be raised for the same period on account of change in the opinion. Further, we find that the Appellant had duly submitted the VAT Returns which have been recorded by the Ld. Commissioner in the impugned order.*
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> *9. In the VAT return for the financial year 2015-16, the Appellant has duly disclosed the sales turnover of Rs. 8,13,46,124/- on which VAT has been duly paid, whereas the impugned demand has been raised considering the value of taxable services to be Rs. 8,28,06,929/- by taking higher of the amount appearing in profit and loss account and the Income Tax Return. Similarly, for the financial year 2016-17, the value of taxable services have been considered to be Rs. 8,96,52,728/- whereas the appellant has duly disclosed the sales turnover of Rs. 8,79,88,828/- in its VAT return on which VAT has been paid at applicable rate. From the above, it appears that the major demand has been computed on the sales turnover.*
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> *10. In so far as the issue of limitation is concerned, we do not find any ingredient of fraud or suppression with an intent to evade payment of tax. In the case of Pappu Crane Services v. CCE, Lucknow (Final Order No. 71246 of 2019 in ST Appeal No. 70707 of 2018), the Co-ordinate Bench of Tribunal at Allahabad has held that where the demand is merely based on the data appearing in the Income Tax Portal, there cannot be said to any fraud or*

suppression so as to justify invocation of extended period of limitation. Therefore in the present case, in our view, the demand raised for the period up to March, 2015 is completely barred by limitation and accordingly the demand is set aside. Further, since there is no element of fraud or suppression, we are of the view that the entire penalty amount is liable to be set aside."

7.1. In view of the above, I find that the extended period of limitation cannot be invoked in the facts and circumstances of the present case. Consequently, the impugned demand, along with interest and penalty, to the extent confirmed by invocation of the extended period, stands set aside.

8. As the demand raised and confirmed against the appellant in this case for the period from 2014-15 to 2017-18 (up to June, 2017) is not wholly barred by limitation, I proceed to examine the appellant's submissions on the merits of the case.

9. Regarding the merits of the case, concerning the above period, the appellant has taken the ground that the amount of reimbursement received by them during the relevant period is not includable in the taxable value for the purpose of computation of their service tax liability, in terms of Rule 5 of the Service Tax (Determination of Value) Rules, 2006. I have perused the agreement dated 24.08.2015 placed on record by the appellant. On perusal of the same, I observe that the said agreement mentions two types of remunerations to be payable for the services rendered by the appellant. For ease of reference, the relevant clause contained in the said agreement have been extracted below: -

> *"6. PAYMENT*
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> *BIL shall pay the C&F Agent, a sum / consideration (excluding Service Tax) as detailed in Annexure-B attached hereto and shall also reimburse the C&F Agent for other expenses for handling and dispatching the Said Products from the Depot to destination towns or other places as directed by BIL in the manner as notified to the C&F Agent from time to time, on actual. The C&F Agent shall raise the bill on a monthly basis and the payment shall be made by BIL to the C&F Agent within 30 (thirty) days from the date of receipt of bill alongwith necessary supporting documents thereof."*

9.1. From the above, I find that the appellant has received a fixed remuneration as well as reimbursable expenses. As per 'Annexure-B' of the agreement, the appellant has received a fixed remuneration of Rs.58,500/- in terms of the clauses mentioned therein, on which the appellant has discharged Service Tax. There is no dispute on this.

9.2. However, the appellant has not paid Service Tax in respect of the other portion viz. reimbursable expenses received by them from the principal. A perusal of the above agreement indicates that the other expenses have been incurred by the appellant on behalf of the principal, as a 'pure agent' and the said expenses have been reimbursed by the principal on actual basis. Thus, I find that the above reimbursable expenses have been incurred by the appellant as a 'pure agent'. Prior to May 14, 2015, reimbursable expenses were generally not liable to service tax if they were actual expenses incurred by the service provider on behalf of the service recipient. However, with effect from May 14, 2015, the Finance Act, 2015 amended Section 67 to include "any reimbursable expenditure or cost incurred and charged by the service provider" in the value of taxable services. For reimbursements to be excluded from the taxable value after May 14, 2015, the conditions under Rule 5(2) pertaining to "pure agent" must be strictly met. For ease of reference, Rule 5(2) of the Service Tax (Determination of Value) Rules, 2006, as amended w.e.f. May 14, 2015' is reproduced below: -

> *"RULE 5. Inclusion in or exclusion from value of certain expenditure or costs. —*
>
> *"(2) Subject to the provisions of sub-rule (1), the expenditure or costs incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if all the following conditions are satisfied, namely :-*
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> *(i) the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured;*
>
> *(ii) the recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;*
>
> *(iii) the recipient of service is liable to make payment to the third party;*
>
> *(iv) the recipient of service authorises the service provider to make payment on his behalf;*
>
> *(v) the recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party;*
>
> *(vi) the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;*
>
> *(vii) the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and*
>
> *(viii) the goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.*

Explanation 1. - For the purposes of sub-rule (2), "pure agent" means a person who -

(a) enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;

(b) neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service;

(c) does not use such goods or services so procured; and

(d) receives only the actual amount incurred to procure such goods or services."

9.3. From a perusal of the documentary evidence available on record, I find that the appellant satisfies the conditions of "pure agent" within the meaning of Rule 5(2) of the said Rules, as the appellant has incurred the said expenditure on behalf of the principal as per the Agreement and received the reimbursements on 'actual basis'. Thus, I agree with the submission made by the appellant that the reimbursable expenses received by them from the principal in this case cannot be included in the taxable value for determination of their Service Tax liability. Accordingly, the demand of Service Tax, on such reimbursable expenditure incurred by the appellant as a 'pure agent', along with interest and penalty thereon, stands set aside.

10. In view of the above findings, I hold that the demand of Service Tax, along with interest and penalty, confirmed in the impugned order is not legally sustainable and hence, the same is set aside.

11. In the result, I set aside the impugned order and allow the appeal, with consequential relief, if any, as per law.

(Dictated and pronounced in the open court)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd