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

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.77841 of 2018

(Arising out of Order-in-Appeal No.213/S.Tax-II/Kol/2018 dated 28.03.2018 passed by Commissioner of CGST & CX (Appeal-I), Kolkata.)

M/s. Singhania & Sons Private Limited
(3D, Duckback House, 41, Shakespeare Sarani, Kolkata-700017.)
...Appellant

VERSUS

Commissioner of CGST & CX, Kolkata South Commissionerate
.....Respondent
(GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

APPEARANCE

Shri Rahul Dhanuka, Advocate for the Appellant (s)
Shri S.Mukhopadhyay, Authorized Representative for the Respondent (s)

CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)

FINAL ORDER NO. 75536/2022

DATE OF HEARING : 8 June 2022
DATE OF DECISION : 27 September 2022

P.K.CHOUDHARY :

The instant Appeal arises out of the Order-in-Appeal No.213/S.Tax-II/Kol/2018 dated 28.03.2018 passed by the Commissioner of CGST & CX (Appeal-I), Kolkata. The facts of the case in brief are that the Appellant is engaged *inter alia* in the business of export of iron ore fines and import of industrial chemicals and distribution thereof, all across India. Against the Order-in-Original dated 23.09.2010, both the Appellant and the Department preferred appeals before the first Appellate authority. The Appeal filed by the Department was primarily on the following grounds contending that an amount of Rs.2,80,659/- has been erroneously refunded to the Appellant:-

a. Invoices issued by AB Commercial (total 9) were related to Cargo Handling Service and not Goods Transport Agency (GTA) as claimed by the Appellant and there is no provision for exemption under Notification No.17/2009 for Cargo Handling Service. Hence, an amount of Rs.2,22,119/- has been erroneously refunded vide Order-in-Original.

b. The unloading dates in invoices issued by Maa Transport Company (total 2) were beyond the LEO date of Shipping Bill and therefore the refund claim of Rs.58,540/- is not tenable.

2. The Appellant filed its Memorandum of Cross Objections against the Appeal filed by the Department on the following grounds:-

a. The invoice issued by AB Commercial was for transportation of iron ore fines only and the said fact has also been reflected in the bills itself. Further the Appellant also submitted various other documents to substantiate the fact that the services received from AB Commercial was of GTA and not Cargo Handling Services.

b. In so far as invoices of Maa Transport Company is concerned, it was submitted that the Appellant was not having any domestic sales of iron ore during the relevant period and all the expenses incurred for transportation was in relation to exported goods only. Further, it was not practically possible for the Appellant to correlate the freight charges with the export documents.

3. The Ld.Commissioner(Appeals) disposed of the Appeals filed by the Department vide Order-in-Appeal dated 28.03.2018.

4. The Ld.Advocate, appearing on behalf of the Appellant submitted Written Submissions and a compilation of the relevant provisions and the relied upon case laws and reiterated the grounds of Appeal.

5. The Ld.Advocate, vehemently argued that the services received by the Appellant from AB Commercial was for 'GTA' and not 'Cargo Handling Service' as alleged in the instant proceedings and therefore the refund claim of Rs.2,22,119/- was correctly allowed to the Appellant vide Order-in-Original dated 23.09.2010. It is his submission that if the main object is to transport the goods from one place to another and to accomplish such purpose, if other services are provided by the

transporter, then the essential character would be of transportation service and such service would be taxed under the taxable category of "GTA Service". He further submits that services provided by AB Commercial was for transportation of goods to Paradeep Port and to accomplish such service, the loading charges were also recovered from the Appellant. In which case, the essential character of services rendered by AB Commercial was of transportation service taxable under 'GTA Service' on Reverse Charge basis. The said fact can also be corroborated from the invoices issued by AB Commercial which clearly reflects that the amount has been charged for transportation of iron ore fines. Copies of invoices issued by AB commercial have also been filed with the Appeal Paperbook and marked as Exhibit-H. Documentary evidences in the form of Service Tax payment Challans and Service Tax Returns have also been filed by the Appellant to substantiate that the Service Tax has been duly discharged by the Appellant on services received from AB Commercial under the taxable category of 'GTA'.

6. The Ld.Advocate also referred to the Circular No.104/7/2008-ST dated 06.08.2008 issued by the CBEC which *inter alia* states that a composite service of transportation of goods by road may include various intermediate and ancillary services provided in relation to the principal service including services like loading/unloading, packing/unpacking. These services are not provided as independent activities, but are the means for successful provisions of the principal services, namely, transportation of goods by road. Further, the method of invoicing does not alter the single composite nature of the service. It has also been clarified that the service provided by 'GTA' for transportation of goods by road and the amount charged for the services provided is inclusive of packing, then the services shall be treated as 'GTA Service' and not 'Cargo Handling Service'. He relied upon the following decisions of the Tribunal in support of his submissions:-

a) Rungta Projects Ltd. Vs. CCE & ST, Allahabad
[2018 (9) GLTL 404 (CESTAT Allahabad)]

b) DRS Logistics Pvt.Ltd. Vs. Commissioner of ST, Delhi-I
[2017 (7) GSTL 352 (CESTAT-Delhi)]

c) CCE, Raipur Vs. Drolia Electrosteels Pvt.Ltd.
[2016 (43) STR 261 (CESTAT Delhi)
d) Leo Packers & Movers Vs. Commissioner of CE, Customs & ST, Hyderabad-II
[2017 (3) GSTL 242 (CESTAT-Hyderabad)]

7. The Ld.Advocate also submitted that in the light of the above Circular and relied upon decisions, services rendered by AB Commercial was clearly transportation services and the Service Tax paid on such services under Reverse Charge Mechanism (RCM) is eligible for refund under Notification No.17/2009 dated 07.07.2009 and prayed for setting aside of the impugned order.

8. The Appellant has also contended that while passing the impugned order the Appellate Authority has traversed beyond the scope of the Show Cause Notice. It is their submission that vide the Show Cause Notice dated 29.03.2016, the Adjudicating authority sought to deny refund of Service Tax by alleging that the services rendered by AB Commercial were 'Cargo Handling Service' and not 'GTA' since 'Cargo Handling Service' is not specified in Notification No.17/2009 and therefore exemption cannot be claimed by the Appellant. The Adjudicating authority has *inter alia* confirmed the demand on the alleged ground that the Appellant has violated the provisions of Rule 4(7) and Rule 9(2) of the Cenvat Credit Rules 2004 as the invoice issued by AB Commercial does not contain the details of taxable service provided. The said allegation has been raised by the Adjudicating authority for the first time during the entire proceedings. In support of the above submissions they have relied upon the decision of the Hon'ble Calcutta High Court in the case of Ganpati India International Pvt.Ltd. Vs. CCE, Bolpur [2014 (35) STR 709 (Cal.)]. The Ld.Advocate made the Bench go through the *de novo* Order-in-Original dated 03.02.2012 whereby on page 10 in Para A, it has been observed as under:-

> A) In respect of the 9 bills of M/s. A.B. Commercial at Sl.No.36 to 44 as per the Annexure-I below, services received by the claimant were towards transportation charges only and not for cargo handling as certified by the Company Auditor and service tax payable in respect of such bills is found to have been paid by them as per the statements

and copies of challans for the relevant period submitted and thereafter refund was claimed as per notification No.17/2009-service tax dated 07/07/2009 and the refund sanctioned amounting to Rs.2,22,119/- in respect of the above bills is within the purview of the said notification.

However, the Ld.Adjudicating authority while passing the *de novo* order upheld the demand of Rs.2,22,119/- without giving any cogent reasons whatsoever even after duly accepting the fact that the services received by the Appellant were towards transportation charges only and not for 'Cargo Handling Services'.

9. The Ld.Authorized Representative for the Department justified the impugned order and prayed that the Appeal filed by the Appellant be dismissed being devoid of any merits.

10. Heard both sides and perused the Appeal records.

11. The only issue before me is regarding the disallowance of refund claim amounting to Rs.2,22,119/- in respect of invoices issued by AB Commercial for transportation of iron ore fines would qualify under 'GTA' or 'Cargo Handling Services'.

12. I find that the Adjudicating authority vide Order-in-Original dated 23.09.2010 had allowed the refund claim of the Appellant in respect of the transportation Bills issued by AB Commercial totaling to Rs.2,22,119/- observing that the goods were carried upto the point of port of export from origin and that this is sufficient to have a nexus with the exportation of the goods. Thus, the amount of Rs.2,22,119/- is liable to be considered for sanction. Subsequent to the above order of the Adjudicating authority sanctioning the refund, the Department had preferred an Appeal before the Commissioner of Central Excise (Appeal-I) alleging that the invoices issued by AB Commercial were related to 'Cargo Handling Services' and not 'Goods Transport Agency (GTA)' as claimed by the Appellant and there is no provision for exemption under Notification No.17/2009 dated 07.07.2009 for 'Cargo Handling Services'. Hence, the amount of Rs.2,22,119/- has been erroneously refunded vide Order-in-Original.

The Appellate authority vide the Order-in-Appeal dated 08.03.2011 remanded the matter to the Adjudicating authority for re-adjudication and to verify whether Service Tax was paid by the Appellant under 'GTA' or otherwise in respect of invoices issued by AB Commercial. Subsequently the matter was re-adjudicated and the Appellant was served with a fresh Show Cause Notice dated 11.08.2011. After following the due process of law, the Ld.Adjudicating authority vide *de novo* Order-in-Original dated 03.02.2012 disallowed the refund claim of Rs.2,22,119/-. Against the said *de novo* order, the Appellant filed Appeal before the Ld.Commissioner(Appeals) and the Ld.Commissioner(Appeals) vide the impugned Order-in-Appeal rejected the Appeal filed by the assessee holding that the refund sanctioned on the invoices issued by M/s. AB Commercial to the tune of Rs.2,22,119/- is not admissible.

13. I find that under the Finance Act, 1994, 'Cargo Handling Service' has been defined as under:-

> (23) "cargo handling service" means loading, unloading, packing or unpacking of cargo and includes, -
>
> > (a) cargo handling services provided for freight in special containers or for non-containerised freight, services provided by a container freight terminal or any other freight terminal, for all modes of transport, and cargo handling service incidental to freight; and
> >
> > (b) service of packing together with transportation of cargo or goods, with or without one or more of other services like loading, unloading, unpacking,
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> but does not include, handling of export cargo or passenger baggage or mere transportation of goods;].

14. Further, under Circular No.104/7/2008-ST dated 06.08.2008, the issue and clarifications are as under:-

3. ***Issue :*** *GTA provides service to a person in relation to transportation of goods by road in a goods carriage. The service provided is a single composite service which may include various intermediary and ancillary services such as loading/unloading, packing/unpacking, transshipment, temporary warehousing. For the service provided, GTA issues a consignment note and the invoice issued by the GTA for providing the said service includes the value of intermediary and ancillary services. In such a case, whether the intermediary or ancillary activities is to be treated as part of GTA service and the abatement should be extended to the charges for such intermediary or ancillary service?*

Clarification : *GTA provides a service in relation to transportation of goods by road which is a single composite service. GTA also issues consignment note. The composite service may include various intermediate and ancillary services provided in relation to the principal service of the road transport of goods. Such intermediate and ancillary services may include services like loading/unloading, packing/unpacking, transshipment, temporary warehousing etc., which are provided in the course of transportation by road. These services are not provided as independent activities but are the means for successful provision of the principal service, namely, the transportation of goods by road. The contention that a single composite service should not be broken into its components and classified as separate services is a well-accepted principle of classification. As clarified earlier vide F.No. 334/4/2006-TRU, dated 28-2-2006 (para 3.2 and 3.3) [2006 (4) S.T.R. C30] and F. No. 334/1/2008-TRU, dated 29-2-2008 (para 3.2 and 3.3) [2008 (9) S.T.R. C61], a composite service, even if it consists of more than one service, should be treated as a single service based on the main or principal service and accordingly classified. While taking a view, both the form and substance of the transaction are to be taken into account. The guiding principle is*

to identify the essential features of the transaction. The method of invoicing does not alter the single composite nature of the service and classification in such cases are based on essential character by applying the principle of classification enumerated in section 65A. Thus, if any ancillary/ intermediate service is provided in relation to transportation of goods, and the charges, if any, for such services are included in the invoice issued by the GTA, and not by any other person, such service would form part of GTA service and, therefore, the abatement of 75% would be available on it.

4. ***Issue 2 :*** *GTA providing service in relation to transportation of goods by road in a goods carriage also undertakes packing as an integral part of the service provided. It may be clarified whether in such cases service provided is to be classified under GTA service.*

Clarification : *Cargo handling service [Section 65(105)(zr)] means loading, unloading, packing or unpacking of cargo and includes the service of packing together with transportation of cargo with or without loading, unloading and unpacking. Transportation is not the essential character of cargo handling service but only incidental to the cargo handling service. Where service is provided by a person who is registered as GTA service provider and issues consignment note for transportation of goods by road in a goods carriage and the amount charged for the service provided is inclusive of packing, then the service shall be treated as GTA service and not cargo handling service.*

15. I find that in the case of Rungta Projects Ltd. Vs. CCE & ST, Allahabad reported as 2018 (9) GSTL 404 (CESTAT Allahabad), the assessee was engaged in the transportation of coal along with the activity of loading and unloading of coal, the Department sought to tax the said services under the taxable category of 'Cargo Handling

Services'. The said contention of the Department was not accepted by the Tribunal by placing reliance upon the Circular dated 06.08.2008 and holding that transportation of coal was the essential service provided by the assessee and the activity of loading and unloading of coal was instantly for transportation and therefore service rendered by the assessee did not fall within the definition of 'Cargo Handling Service'. Similar view has been taken by the Tribunal in the following cases:-

a) DRS Logistics Pvt.Ltd. Vs. Commissioner of ST, Delhi-I
[2017 (7) GSTL 352 (CESTAT-Delhi)]
b) CCE, Raipur Vs. Drolia Electrosteels Pvt.Ltd.
[2016 (43) STR 261 (CESTAT Delhi)
c) Leo Packers & Movers Vs. Commissioner of CE, Customs & ST, Hyderabad-II
[2017 (3) GSTL 242 (CESTAT-Hyderabad)]

I find that the facts of the present case are squarely covered by the aforesaid decisions of the Tribunal.

In view of the above discussions and the settled legal principles, the impugned orders cannot be sustained and is accordingly set aside. The Appeal filed by the Appellant is allowed with consequential relief as per law.

(Order pronounced in the open court on 27 September 2022.)

Sd/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

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