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In the Bombay High Court

Case No : Central Excise Appeal No. 110 of 2014

Commissioner of Service Tax APPELLANT

Vs

Shah Coal Pvt. Ltd. RESPONDENT

Date of Decision : 20-07-2015

Acts Referred:

Finance Act, 1994 — Section 65(105)(j), 65(25)

Citation : (2015) 52 GST 687 : (2015) 39 STR 946

Hon'ble Judges : S.C. Dharmadhikari, J;G.S. Kulkarni, J

Bench : Division Bench

Advocate : Pradeep S. Jetly and S.D. Bhosale, for the Appellant; Vipin Kumar Jain and Prabhakar K. Shetty, Advocates for the Respondent

Judgement

1. We have heard both sides. This is an appeal of the Revenue directed against the order passed by the Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, Mumbai, dated 26th June, 2013 in Appeal No. ST/65/2007. The argument of Mr. Jetly appearing on behalf of the Revenue in support of this appeal is that the Tribunal''s order upholds the order of the Commissioner of Service Tax, Mumbai (order-in-original dated 17th January, 2007). These concurrent orders fail to take note of the fact that the appellant has been appointed for rendering supervisory services for coal handling. The nature of the services rendered are set out in extenso and our attention is invited in that behalf to the show cause-cum-demand notice based on which the order-in-original was passed. This show cause notice dated 18th October, 2005, in paragraph 2.3.3 and paragraph 3, running pages 24 and 26, enlists the supervisory services.

2. Then, our attention is invited to the definition of the term "taxable service" and particularly the part where it is a service rendered to a client by a clearing and forwarding agent in relation to clearing and forwarding operations in any manner. Mr. Jetly would submit that section 65(105)(j) is the definition of the term "taxable service" and in relation to clearing and forwarding of goods. The

term "clearing and forwarding agent" has also been defined in the Finance Act 1994 in Section 65(25) to mean any person who is providing any service, either directly or indirectly, connected with the clearing and forwarding operations in any manner to any person and includes a consignment agent. Mr. Jetly would submit that this definition has been completely misconstrued and misinterpreted in this case. The brief facts have been noted and what has been found is that the Director of the appellant in his statement described the activities, namely, trading in coal, transportation of coal by road and supervision of coal loading. In these circumstances, Mr. Jetly would submit that this appeal raises substantial questions of law.

3. On the other hand, Mr. Jain appearing on behalf of the assessee relied upon a recent pronouncement of the Hon''ble Supreme Court of India in the case of Coal Handlers Private Limited Vs. Commissioner of Central Excise Range KOLKATA - I(2015) 7 AD (SC) 353 : (2015) 279 CTR 233 : (2015) 51 GST 1 : (2015) 32 GSTR 306 : (2015) 4 MLJ 115 : (2015) 6 SCALE 58 : (2015) 38 STR 897 : (2015) 80 VST 465 . Mr. Jain would submit that this judgment concludes the issue in favour of the assessee as also against the Revenue. Therefore, the appeal does not raise any substantial questions of law.

4. After hearing both sides, the three questions at page 10 of the paper-book and projected as substantial questions of law essentially deal with activities undertaken by the present assessee and whether the services would fall within the purview of clearing and forwarding. The admitted facts are that the assessee is engaged in the business of trading in coal, transportation of coal by road and supervision of coal loading. In the order of the Commissioner as also in the Tribunal''s order, it is recorded that the appellant entered into a contract with M/s. Ambuja Cement Limited for movement of coal from various collieries to the latter''s plants. The main activity undertaken by the appellant included supervision of coal loading and transportation of coal by road. The Department was of the view that the appellant was rendering services classifiable under the above referred definition.

5. The assessee pointed out that the service mainly is supervision of loading of coal at the collieries and also arranging for transportation of coal either by rail or road to the client''s plant/factory. The assessee relied upon these facts and the earlier orders of the Tribunal.

6. The Tribunal in paragraph 4.3 noted that a decision of the Hon''ble Supreme Court in the case of Karamchand Thapar & Bros. (Coal Sellers) Ltd. v. Union of India - 2010 (20) S.T.R. 3 (Cal.) , the Calcutta High Court held that the activity of supervision and loading of coal would not come under the category of a ''Clearing and Forwarding Agent''s service'', but might merit classification under ''Business Auxiliary Services''. There was another decision of the Tribunal in the case of Coal Handlers Pvt. Ltd. and which was based on the earlier decision in the case of Prabhat Zarda Factory (India) Ltd. vs. Commissioner of Central Excise2002 (81) ECC 736 . A Larger Bench of the Tribunal had overruled the

decision in the case of L & T v. Commissioner - 2006 (3) S.T.R. 321.

7. The Tribunal referred to the definition and found that the Board clarified that functions undertaken by the clearing and forwarding agents in the normal course of business would denote as to how these services from the inception cannot be taken to be included in the definition. What requires attention in all these matters is if the activity is of supervision and loading of coal, then, it does not come under the category of clearing and forwarding service.

8. Mr. Jetly would submit that paragraphs 11 and 12 of the Hon''ble Supreme Court''s decision would support Revenue''s case. The Revenue had found that the Coal Handlers Pvt. Ltd. and the present assessee had detailed correspondence. That indicated as to how Coal Handlers Pvt. Ltd. appointed the present assessee for their coal loading supervision for coal to be loaded from various collieries of Western Coalfields to its clients M/s. MCW a unit of M/s. Gujarat Ambuja Cements Limited. Then the supervisor''s charges were paid. The supervisory services also were for coal handling. The assessee performed the job of coal handling cum loading supervising through representative for discharge of coal from various coal companies to M/s. Ambuja by road as well as by rail.

9. In the case of M/s. Coal Handlers Pvt. Ltd. who had been found to have contracted some work to the present assessee, the Hon''ble Supreme Court held that there is no role of M/s. Coal Handlers Pvt. Ltd. in getting the coal cleared from the collieries/supplier of coal. Movement of the coal is under the contract of sale between the coal company and Ambuja companies. Even the coal is loaded on the railway wagons by the coal company. The goods are not under any legal detention from which they need to be freed by the assessee. Therefore, once destination is known then the services which have been rendered are purely supervisory and liasoning with coal companies as well as the railways to see that the materials required by M/s. Ambuja is loaded as per schedule. The custody of the coal is not taken by M/s. Coal Handlers Pvt. Ltd. nor the transportation of the coal is arranged by M/s. Coal Handlers Pvt. Ltd. In the present case, relying upon these two paragraphs and some of the aspects which emerge from the terms and conditions of the contracts between M/s. Coal Handlers Pvt. Ltd. and the assessee before us, we cannot conclude that the services rendered fall within the definition and relied upon by the Revenue.

10. We are of the view that the Hon''ble Supreme Court''s decision concludes the issue. We cannot, therefore, ignore a binding precedent and entertain any question of law when it is not substantial but stands answered by the Hon''ble Supreme Court. In the circumstances, this appeal has no merit and is dismissed without any order as to costs.