

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

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.75843 of 2018

(Arising out of Order-in-Appeal No.178/ST/HAL/2017 dated 17.07.2017 passed by Commissioner of CGST & CX, (Appeal-I), Kolkata.)

M/s. Beterman Engineering Private Limited

(NH-6, Chamrail, Liluah, Howrah-711204.)

...Appellant

VERSUS

Commissioner of CGST & CX, Haldia Commissionerate

.....Respondent

(15/1, Strand Road, Customs House, M.S. Building, Kolkata-700001.)

APPEARANCE

Shri N.K.Chowdhury, Advocate for the Appellant (s)

Shri A.Roy, Authorized Representative for the Respondent (s)

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

FINAL ORDER NO. 75547/2022

DATE OF HEARING : 14 October 2022

DATE OF DECISION : 14 October 2022

P.K.CHOUDHARY :

The Appellant is engaged in the manufacture of Pollution Control Equipment and other fabricated structure of iron and steel. The Appellant purchased goods from M/s. Jindal Steel & Power Limited, (Raigarh, Chhattisgarh), M/s.M.Rajkrishna & Company (Kolkata), M/s. Shree Ganesh Trading Company (Howrah) and M/s. Nizone Tubes. During Audit for the period 2008-09, it was observed by the audit party that it had paid Rs.4,31,426/- as freight charges and had paid Service Tax on an amount of Rs.1,51,847/- only, and it was alleged that they had not paid the Service Tax on the balance transport charges amounting to Rs,2,79,579/- involving Service Tax amounting to Rs.34,556/-. A Show Cause Notice dated 29.04.2011 was issued to demand and recover Rs.34,556/- along with applicable interest and for

imposition of penalty under Section 76, 77 & 78. It is the case of the Appellant that in respect of invoices of M/s. Jindal Steel & Power Limited, it has been categorically mentioned in the invoice "to be billed Raigarh". So, the freight was paid by the consignor of the goods. Regarding delivery charges included in the invoice billed by M/s. M. Rajkrishna & Company, M/s. Shree Ganesh Trading Company and M/s Nizone Tubes, the goods were transported to the Appellant's factory by transporters arranged by the consignors and the Appellant has not made any payment directly to any transporter for the transportation of goods from the consignor's premises to their factory. The Appellant further submitted that initially the amount of freight charges has been borne by the supplier of the goods and Service Tax liability, if any, will be borne by the supplier of the goods. The Adjudicating authority however confirmed the demand as proposed in the Show Cause Notice and imposed penalty of Rs.3,224/- under Section 76, penalty of Rs.5,000/- under Section 77 and penalty of Rs.34,556/- under Section 78 of the Finance Act, 1994. On Appeal, the Ld.Commissioner(Appeals) upheld the Order-in-Original and rejected the Appeal. Hence the present Appeal before the Tribunal.

2. Heard both sides and perused the Appeal records.

3. On perusal of the invoices issued by the supplier of the goods I find that in the case of M/s. Jindal Steel & Power Limited, it has been categorically mentioned that the freight charges are to be borne by the consignor. Therefore the amount of freight delivery charges calculated in Annexure-A in respect of M/s. Jindal Steel & Power Limited, does not sustain and is accordingly set aside.

4. Regarding other suppliers, it is submitted that the consignor has paid the freight charges and hence the liability to pay Service Tax was on the consignor. It is the case of the Appellant that the goods were transported to the Appellant's factory, but no consignment note was issued to the Appellant and the Appellant did not pay any amount to the truck owners/truck drivers and only paid the amount against the

Bill raised by the supplier which was inclusive of delivery charges. The Appellant did not pay any freight charges separately.

5. I find that the Appellant has all along taken the view that the service is not taxable service as it was not provided by the goods transport agency, but by goods transport operator and/or individual truck owners namely an individual either owning or operating. This plea has been taken in all the proceedings at the initial stage as well as at the appellate stage and also before the Tribunal. Therefore the Appellant's submission that the service received from the goods transport operators/individual truck owners is acceptable. This being so, the decision of the Tribunal in the case of CCE & C, Guntur Vs. Kanaka Durga Agro Oil Products Pvt.Ltd. [2009 (15) S.T.R. 399 (Tri.-Bang.)] and [2009-TIOL-1122-TRI-BANGALRE] holding that there is no liability on the recipient of service in the case of transportation by the individual truck owners and/or individual truck operators and not by goods transport agency to pay Service Tax is squarely attracted. Following the ratio of the above decision I set aside the demand in respect of the other three suppliers.

In view of the above discussion, the impugned orders are set aside and the Appeal filed by the Appellant is allowed with consequential relief, as per law.

(Dictated and pronounced in the open Court.)

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