

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH,
COURT NO. I

SERVICE TAX APPEAL NO. 50129 OF 2018

[Arising out of the Order-in-Appeal No. BHO-EXCUS-002-APP-229-17-18 dated 26/09/2017 passed by Commissioner (Appeals), Customs & Central Excise, Nagpur.]

Paramjit Singh,

House No. D-5, Maruti Enclave,
Tantibandh, Raipur.

...Appellant

Versus

**The Commissioner,
Customs & Central Excise,**

Central Excise Building, Tikrapara,
Raipur – 492 001.

...Respondent

APPEARANCE:

Ms. Kainaat, Advocate for the appellant.
Shri Sanjeev Kumar Rai, Authorized Representative for the
Department

CORAM:

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

FINAL ORDER NO. 51688/2023

DATE OF HEARING/DECISION : 11.12.2023

P.V. SUBBA RAO

The order in appeal¹ dated 26.9.2017 passed by the Commissioner (Appeals) Raipur is assailed by M/s. Paramjit Singh² in this appeal. By the impugned order, the Commissioner (Appeals) rejected the appeal of the appellant and upheld the Order in Original dated 20.2.2017 passed by the Assistant

**1. Impugned order
2. appellant**

Commissioner whereby he confirmed demand of service tax of Rs. 89,340/- under section 73 of the Finance Act, 1994³ along with interest under section 75 and imposed an equal amount as penalty under section 78 and a penalty of Rs. 2,000/- under section 77 on the appellant.

2. We have heard learned counsel for the appellant and learned authorised representative for the Revenue.

3. The facts of the case are that an audit team of the department visited M/s. Bajrang Metallic Pvt. Ltd. to whom the appellant was providing manpower supply services and audited its records. The audit took a view that the appellant had provided "Cargo Handling Agency Service" to the appellant during the period 2004-05 to M/s. Bajrang Metallic and issued a show cause notice⁴ which was confirmed by the order-in-original dated 27.2012 passed by the Assistant Commissioner.

4. According to the appellant, thereafter, recovery proceedings were initiated and its bank accounts were seized when the appellant came to know that the Order in Original was passed. So, it approached the department, obtained a copy of this order-in-original and filed an appeal before the Commissioner (Appeals) who, by order dated 21.10.2016, remanded the matter to the Assistant Commissioner. In the remand proceedings, the Assistant Commissioner passed Order in Original dated 20.2.2017 confirming the demand with interest and penalties. The appellant

3. the Finance Act

4. SCN

appealed to the Commissioner (Appeals), who, by the impugned order, upheld the order of the Assistant Commissioner.

5. Learned counsel for the appellant made the following submissions:

a) The appellant only provided manpower supply services and never provided any Cargo Handling Services. There is no evidence that it had provided Cargo Handling Service.

b) Even if it is presumed that the appellant provided service of Cargo Handling, the appellant being an individual business and not an agency, no service tax could have been charged from the appellant. Reliance is placed on CBEC's letter No. B11/1/2002-TRU dated 1.8.2002 which clarified that service tax can be levied under Cargo Handling Agency Service only from agencies and it cannot be charged from individual businesses.

c) The ledger of Shri Bajrang Mettalic Industries Pvt. Ltd. which had entries against their name also shows that they had provided R M Processing work which refers to raw material processing work. Nothing in the records indicates that the appellant had provided Cargo Handling Agency Service.

d) The appellant had a belief and still believes that no service tax was payable and hence it had not paid it. Therefore, extended period of limitation could not have been

invoked in the case and penalties also should not have been imposed.

6. Learned authorised representative for the Revenue supports the impugned order.

7. We have considered the submissions on both sides. The order of the Assistant Commissioner states that the SCN was issued because the audit of the records of M/s. Bajrang Metallica Pvt. Ltd. indicated that the appellant had provided cargo handling services and received an amount of Rs. 8,98,458/- and never paid service tax on it. He further went on to confirm the demand on the ground that the appellant had not established through documents the nature of service rendered by it is not cargo handling services. He also rejected the appellant's reliance on the CBEC's Circular stating that individuals are exempted from Cargo Handling Agency Service stating that M/s. Bajrang Metallica had not employed the workers directly but gave that job to the appellant and hence the appellant is an agency. The Commissioner (Appeals) has repeated, almost verbatim, the Order in Original and upheld it.

8. If Revenue is alleging that the appellant had provided Cargo Handling Agency Services during the relevant period, it is for the Revenue to establish that the appellant had indeed provided that services. All that is established by the Revenue is that the appellant had received certain sum from M/s. Bajrang Metallica Pvt. Ltd., which fact the appellant does not dispute.

Both the lower authorities have erred in concluding that the appellant had provided Cargo Handling Agency Services during the relevant period without establishing it. Instead, they wrongly confirmed the demand on the ground that the appellant could not establish that it had not provided this service. The onus of proving that a taxable service has been rendered when issuing a SCN rests on the Revenue and not on the assessee. No evidence has been adduced by the Revenue that this service was rendered.

9. We also find that the appellant is an individual and not an agency and hence was squarely covered by the CBEC's Circular. Unless it is established by the Revenue that the appellant is an agency and that it had provided Cargo Handling Agency Service, no demand can be confirmed. There is no evidence to the effect in the impugned order.

10. In view of the above, the appeal is allowed and the impugned order is set aside with consequential relief to the appellant.

(Order dictated and pronounced in open court.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)