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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **SERTA 13/2024**

PRINCIPAL COMMISSIONER CGST DELHI

SOUTH

.....Appellant

Through: Mr. Akshay Amritanshu, SSC
with Mr. Samyak Jain, Ms.
Drishti Saraf & Ms. Pragya
Upadhayay, Advocates

versus

M/S HAIKO LOGISTICS PVT INDIARespondent

Through: Mr. Yogendra Aldak, Mr.
Agrim Arora & Mr. Rishav
Kumar, Advocates

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

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05.09.2024

CM APPL. 25244/2024 (2 Days Delay in filing) & 25245/2024 (15 Days Delay in Refiling)

1. Bearing in the mind the disclosures made, the delay of 02 in filing and the delay of 15 days in refiling the appeal is condoned.
2. The applications shall stand disposed of.

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3. The Principal Commissioner CGST seeks to impugn the order of Customs Excise and Service Tax Appellate Tribunal [“CESTAT”] dated 10 August 2023 and has posed the following questions for our consideration:-

“c. Whether the demand of Service Tax of Rs. 14,99,54,386/- dropped by the Ld. CESTAT on the income shown as non-taxable in Financial Data Summary Sheets (FDSS) by entirely relying upon the



findings of Adjudicating Authority is correct, without taking into consideration additional evidence including bills, challans of duty payments and other supporting documents to ascertain the correctness of Chartered Accountant Certificate as produced before the Adjudicating Authority?

d. Whether the Respondent / Assessee is liable to pay Service Tax on difference in figure of 'Income' in Form ST-3 and Form 26AS?"

4. The issue itself arises in the context of the functioning of the respondent as a Multi-Modal Transport Operator and who is stated to have made payments toward customs duty, air freight, ocean freight and surcharges for and on behalf of various clients.

5. From the material which was gathered in course of the enquiry as well as the verification details provided, the authorities had found that the payments made by the respondent were being reimbursed by the individual clients and the issue was thus clearly confined to that of a reimbursement of expenses incurred for and on their behalf. The respondent also did not place reliance on any material which may have indicated that the reimbursements were subject to a mark up that may have been charged by the respondent.

6. It is on an overall conspectus of the aforesaid that the CESTAT has ultimately observed as follows:

“26. The demand has been rightly dropped in the order dated 22.05.2018. By letters dated 01.01.2016 and 15.01.2016, the appellant was asked to provide details of the value shown as non-taxable under financial data summary sheet earned for activities covered under BSS. In the third show cause notice dated 11.04.2016, which was issued for period 2014-15 the demand was proposed on the amount under the category or BSS only. There is no mention of section 65B(44) of the Finance Act. Thus, the demand was proposed under BSS which was not even in existence during the period in dispute from 2014-15. This specific submission was made by the appellant when it submitted data by letter dated 29.1.2016, but the show cause notice dated 11.04.2016 did not advert to this issue. The demand cannot, therefore, be sustained as it is based on obsolete provisions and under a category



which ceased to exist. In this connection reliance can be placed on the decisions of the Tribunal in **M/s. Kusum Healthcare Pvt. Ltd. vs. Commissioner of Central Excise & Service Tax, Alwar (Raj.)** and **Commissioner of Service Tax, Bangalore vs. M/s. The Peoples Choice.**

27. The non-taxable amount includes amounts like customs duty, BAF & CAF charges, ocean freight and air freight. All these amount are paid by the appellant on behalf of the client and later on are reimbursed . Thus, same cannot be taxed as they are in nature of reimbursements.”

7. Bearing in mind the aforesaid, we find no substantial issue of law that can be said to arise in this appeal. It shall consequently stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

SEPTEMBER 5, 2024/MR