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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [CENTRAL EXCISE]
ORIGINAL SIDE

CEXA/65/2024
IA NO: GA/1/2024, GA/2/2025
COMMSSIONER OF SERVICE TAX KOLKATA
VS
M/S JETEX PARCEL SYSTEMS PRIVATE LIMITED

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
DATE : 26th February 2025.

Appearance :
Mr. Uday Shankar Bhattacharyya, Adv.
Mr. Tapan Bhanja, Adv.…for appellant.

Mr. Vinay Shraff, Adv.
Mr. Dev Agarwal, Adv.
Mrs. P. Paul, Adv. …for respondent.

The Court:- Heard learned advocates on either side.

There is a delay of 95 days in filing the appeal. As we are satisfied with the explanation offered in the application for condonation of delay, the delay in filing the appeal is condoned. The application is allowed.

This appeal has been filed by the revenue under section 35G of the Central Excise Act, 1944 read with section 83 of the Finance Act challenging the order dated 4.3.2024 passed by the Customs, Excise and Service Tax Appellate Tribunal, Kolkata [Tribunal] in Service Tax Appeal No.71181 of 2013.

The revenue has raised the following substantial questions of law for consideration.

"1. Whether the respondent is liable to service tax, interest and penalty confirmed by the adjudicating authority under the category of 'Business

Support Service' in terms of provision of section 65[104c] read with section 65[105][zzzq] of the Finance Act, 1994?

2. Whether the Learned Tribunal committed gross error of law by relying upon the Circular No.341/43/96-TRU dated 31.10.1996 to support the finding that the activities rendered by the respondent as a co-loader to courier agency are exempted from payment of service tax when the service rendered by the respondent are squarely come within the purview of business support service in terms of section 65[104c] read with section 65[105][zzzq] of the Finance Act, 1994?
3. Whether the finding of the Learned Tribunal that 'services rendered by the respondent as a co-loader to the courier agency M/s. Blue Dart' suffers from perversity in as much as the Learned Tribunal while arriving such finding failed to examine the finding of the adjudicating authority at para 4.8 of the order-in-original dated 24.06.2013?
4. Whether the Learned Tribunal is right and justified in allowing the appeal of the respondent relying upon the decision in the case of United Business Xpress India P. Ltd. v. Commissioner of S.T., Delhi [2017 (48) S.T.R. 270 (Tri. – Del.)] when the Special Leave petition against the said decision was admitted and is pending before the Hon'ble Supreme Court of India?"

The core issue which was decided in the instant case by the adjudicating authority is with regard to the classification. The show cause notice issued to the assessee proposed that the services provided by them as business support service. The assessee contested that the show cause notice. However, the adjudicating authority by order dated 24.6.2013 confirmed the proposal in the show cause notice which was challenged before the tribunal and the assessee was successful before the tribunal.

Since the core issue to be decided relates to classification which will have a sheer relationship to the rate of service tax payable in terms of section 35L appeal lies to the tribunal. Therefore, the appeal stands disposed of on the said ground leaving it open to the revenue to file the appeal before the Hon'ble Supreme Court, if they are so advised.

The registry is directed to return the certified copy of the impugned order passed by the learned tribunal to the learned advocate appearing for the appellant/revenue after retaining a photocopy of the same.

Consequently, the application, GA/2/2025 stands closed.

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(T.S. SIVAGNANAM)
CHIEF JUSTICE

(CHAITALI CHATTERJEE (DAS), J.)

pkd/S.Das.