

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

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.248 of 2011

(Arising out of Order-in-Original No.60/Commr/ST/Kol/2010-11 dated 18.03.2011 passed by Commissioner of Service Tax, Kolkata.)

Commissioner of Service Tax, Kolkata

(Kendriya Utpad Shulk Bhawan, (3rd Floor), 180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

...Appellant

VERSUS

M/s. Walzen Strips Private Limited

(Benaras Road, Biradingi, Howrah-711108.)

.....Respondent

APPEARANCE

Shri J. Chattopadhyay, Authorized Representative for the Revenue

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

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

FINAL ORDER NO. 75317/2023

DATE OF HEARING : 4 May 2023

DATE OF DECISION : 4 May 2023

Per : K. ANPAZHAKAN :

The Department is before us against the impugned order dated 18/03/2010 passed by Commissioner, wherein he has dropped the proceedings initiated in the show cause notice dated 23.03.2010.

2. The Ld. Authorized Representative for the Department reiterated the grounds of appeal and stated that the Adjudicating authority failed to verify whether the unit of the Respondent located at Visakhapatnam

and Kolkata are one or the same are different. He also stated that the Adjudicating authority failed to verify whether the services rendered by the Respondent in their Visakhapatnam unit were similar to the services said to be rendered by them at Kolkata.

3. The Ld.Advocate for the Respondent stated that their Head office is located in Kolkata and they have their branch office located at Visakhapatnam to perform their work at site. He submitted a copy of the letter dated 10.02.2006 addressed to the Superintendent, Service Tax, Visakhapatnam, wherein they categorically stated that their branch office undertakes the work of strapping of wire rod coils at Visakhapatnam . The contents of the letter is reproduced below:-

Please refer to your letter No.V/30/4/2003-ST(PF) dated 30.01.2006 addressed to our Visakhapatnam Site office which was forwarded to us.

The contention expressed in your letter under reference is not correct. We are not engaged in providing service of "Maintenance or Repair" through our site office at Visakhapatnam.

We, however, undertake contract job of strapping of Wire Rod coils of Visakhapatnam Steel Plant (VSP). This job involves two activities- supply of materials and employment of labour. Materials required for the job is manufactured by us in West Bengal which are sent to VSP premises after payment of Excise duty. Strapping job is executed by us on behalf of VSP employing our own labhour as labour contractor under licence from the Licensing Officer and Dy.Commissioner of Labour, Visakhaatnam. Therefore, we are labour contractor of VSP for strapping their Wire rod coils in their premises. After completion of the work, we receive agreed amount from VSP.

This activity of the Company is not covered u/s 65(68) of the Finance Act, 1994 i.e. Manpower Recruitment Agency either. The DGST Mumbai has clarified vide Question and Answers (2000-2001) No.7.5 that Labour Contractors, who supply their own labour on contract, would not be covered under the definition of Manpower Recruitment Agency.

In view of the above, the above activity undertaken in VSP by the Company does not attract service tax.

4. A perusal of the letter cited above clearly shows that the Respondent has indicated that the works at Rashtriya Ispat Nagam, Visakhapatnam has been undertaken by their branch office at Visakhapatnam. Accordingly, the Respondent contended that the service tax in respect

the services rendered by their Visakhapatnam branch office has been dealt separately at Visakhapatnam. Hence the demand made at Kolkata Head office is not sustainable. We find that the Adjudicating Authority has also made the same observations and dropped the proceedings. In support of their contention that the issue has been dealt in the Jurisdiction of Visakhapatnam by the service tax authorities separately, he submitted the following documents:

- (i) Adjudication Order No.12/2009 (PVR) dated. 07.05.2009
- (ii) Order-in-Appeal No.26/2012 (V-I) ST dated 08.06.2012,
- (iii) Tribunal's Final Order No.A-30836-30837/2018 dated 26/07/2018

5. From the above Orders submitted by the Respondent, it is observed that Visakhapatnam Service Tax Commissionerate has initiated separate action against the Respondent at their Visakhapatnam unit for non payment of appropriate service tax there . The said litigation has attained finality vide the above said Final Order of the Tribunal. We find that the copy of the Adjudication Order No 12/2009 (PVR) dated 07/05/2009 has also been communicated to their Head Office in Kolkata. Form the above, we observe that Departmental action has already been initiated to demand Service Tax against the Respondent at Visakhapatnam separately for the services rendered by their branch unit at Visakhapatnam. In the impugned order the Commissioner has rightly observed that action has already been initiated in Visakhapatnam and no further action is warranted in their Kolkata Unit. Accordingly, the Commissioner has rightly dropped the proceedings initiated against the Respondent in the impugned order.

6. In view of the above discussion, we hold that no further action is warranted in their Head Office at Kolkata and uphold the impugned order by the Commissioner .

In view of the above we reject the appeal filed by the Department.

(Dictated and pronounced in the open Court.)

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

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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