CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.
PRINCIPAL BENCH - COURT NO.III

Service Tax Appeal No. 51331 of 2018

[Arising out of Order-in-Original No.ALW-EXCUS-000-COM-41-17-18 dated 05.02.2018 passed by the Commissioner, Central Goods and Service Tax Commissionerate, Alwar]

M/s. Kajaria Ceramics Limited, **Appellant**
19, K.M. Stone,
Bhiwadi-Alwar Road,
Village-Gailpur, Post-Tapukara,
Distt-Alwar (Rajasthan).

VERSUS

Commissioner of Central Goods & Service Tax Commissionerate, **Respondent**
Central GST,
A-Block Surya Nagar, Alwar.
Rajasthan.

With

ST/51328/2018, **ST/51349/2018.**

APPEARANCE:

Shri Bimal Jain, Advocate for the appellant.
Shri S.K. Meena, Authorised Representative for the respondent.

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER NO.58560-58562/2024

DATE OF HEARING:03.09.2024
DATE OF DECISION: 10.09.2024

BINU TAMTA:

1. Separate appeals have been filed by M/s. Kajaria Ceramics Limited[1] and the two Directors, challenging the order-in-original no.ALW-EXCUS-000-COM-41-17-18 dated 05.02.2018, whereby

[1] The Appellant

the demand of service tax along with interest and penalty was affirmed.

2. The appellant is manufacturing ceramic tiles and is having central excise registration as well as service tax registration. Considering the fragile nature of the tiles being prone to breakage/quality defect and also to maintain the "Kajaria" brand value, the appellant company charges handling charges @0.6% to 1% from their dealers/customers, which is part of sales consideration and appropriate VAT/CST is paid thereon. According to the appellant, the handling charges were charged in the invoice raised to dealers/buyers in connection with the sale of tiles and thus, forms part of the sale value for the purpose of leviability of VAT/CST. The handling charges are not in the nature of services and they are not providing any kind of service to the dealers or buyers against such handling charges rather it is in the nature of business of the appellant company to compensate the breakage or quality defect claim so as to sustain the market.

3. On the basis of intelligence received by the Department, investigation was carried out and it was alleged that the company has indulged in charging insurance premium @0.6% to 1% in the name of handling charges from the dealers/customers, but did not pay service tax on the same. Further, the allegation was that the amount was collected as insurance premium under the

guise of handling charges without having authorisation from Insurance Regulatory and Development Authority of India for providing insurers' services. Hence, show cause notice dated 02.10.2017 was issued demanding service tax amounting to Rs.2,76,24,088/- for the period 20.12.2013 to December, 2015 along with interest and penalty. The said demand under the show cause notice was confirmed by the impugned order. Hence, the present appeal has been filed by the appellant before this Tribunal.

4. We have heard Shri Bimal Jain, learned counsel for the appellant and Shri S.K. Meena, learned Authorised Representative for the respondent.

5. The submission of the learned counsel for the appellant is that the present controversy has been decided by the Ahmedabad Bench of this Tribunal in the case of **Gujarat Borosil Ltd. Vs. Commissioner of Central Excise and Service Tax, Surat-II** [2], where the issue involved was whether the amount equal to 7% of the value of the goods, collected as insurance charges under the head "cost of transportation" from the dealers/buyers is includible in the assessable value and chargeable to duty. The Tribunal had categorically noted that the issue of charging duty on the said

[2] 2018(364) ELT 281 (Tri.-Ahmd.)

insurance charges by adding to the assessable value is settled by this Tribunal as similar proceedings initiated has been decided vide Final Order No.A/40/2010-WZB/AHD dated 01.12.2009 [3] and Revenue's appeal against the said judgement before the Apex Court was dismissed by Order dated 19.07.2010. The Tribunal arrived at the conclusion that the amount equal to 7% of the value of the goods collected as insurance charges under the head "cost of transportation" from the dealers/buyers is not the excess amount of insurance charges collected and retained by the appellant but the amount has been collected as compensation for breakages during the course of transit by issuing credit notes. Thus, the payment made by the assessee to its customers for breakages and losses neither tantamounts to insurance nor cost of transportation and is includible in the assessable value. The relevant para of the order is quoted below:-

> **"26.** We do not find much difference in the facts of the present case with that considered by the Hon'ble Supreme Court in *Surya Roshni Ltd.'s* case (supra). Analysing the sample invoices, placed before this Bench by the Ld. Senior Advocate, after conclusion of hearing, for the relevant period 1999 to 2005, reveal that the appellant has shown an amount as 'cost of transportation' separately, in their respective invoices. There is no mention about 7% of the charge as per Agreement, but on scrutiny of the said transportation cost, it is observed that part amount of the freight charge was paid in advance by the appellants and balance amount was required to be paid by the buyer on reaching destination; remaining amount shown in the cost

[3] 2010(253) ELT 610 (Tri.-Ahmd.)

of transportation, which they claim as 7% of the total value of the goods inclusive of cost of packing charge, freight charge etc.. Thus, in our view it is immaterial whether the deduction is claimed by including the said 7% charge in the total price, or the same is shown separately, without including it in the assessable value but on merit to be added to the assessable value. The question for consideration is, whether the amount collected, for compensating the customers towards breakage of glass, during the course of transit, to be added to the assessable value, or otherwise. The Hon'ble Supreme Court, in *Surya Roshni Ltd.'s* case (supra) while considering the deductibility of the insurance amount, collected other than the premium paid to the insurance company towards loss/breakage of glass during transit observed that it is only the premium amount to be excluded and not the amount collected for compensating the customers in the event the goods are damaged/lost during transit."

6. On the issue of invocation of the extended period of limitation, the Tribunal observed that once the facts are within the knowledge of the Department, being always in dispute, hence the allegation that they have suppressed the facts from the knowledge of the Department is not acceptable in view of the principle of law laid down by the Apex Court in **Pushpam Pharmaceuticals Company Vs. Collector** [4] and **P and B Pharmaceuticals Pvt. Ltd. Vs. Collector** [5]. Similarly, the imposition of penalty was held to be un-warranted and un-justified as the issue related to the interpretation of Valuation

[4] 1995(78) ELT 401 (SC)
[5] 2003(153) ELT 14 (SC)

Provisions and the duty was confirmed only for the normal period.

7. We find that the issue raised in the present appeal is squarely covered by the decision in **Gujarat Borosil Ltd. (supra)**, which has been affirmed by the Apex Court vide Order dated 05.02.2018, whereby the appeals filed by the assessee were dismissed as reported in **2019(368) ELT A-337 (SC).** Therefore, the amount deposited by way of handling charges in the present case are not leviable to service tax as the same are includible in the assessable value for the purpose of determining the VAT or CST.

8. Consequently, the question of invocation of extended period of limitation and imposition of penalty, etc. is also not sustainable.

9. The impugned order, therefore, deserves to be set aside and all the appeals are accordingly allowed.

[Order pronounced on 10th September, 2024]

(Binu Tamta)
Member (Judicial)

(Hemambika R.Priya)
Member (Technical)

Ckp.