

**J and J Enterprises Vs. Cce**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Mar-17-2005

**Reported in :** (2005)(186)ELT189TriDel

**Judge :** N T C.N.B.

**Appellant :** J and J Enterprises

**Respondent :** Cce

**Judgement :**

1. The appeal is directed against. the finding that the appellant is rendering "cargo handling services" to M/s lafarge India Pvt. Limited In regard to cement manufactured by M/s lafarge india at its cement plant at Gopal Nagar and that service tax is required to be paid on the amounts received for rendering the said cargo handling services.

Present appeal describes the service rendered as under:- "The appellants provide labour for managing various points in the mechanized process of packing and loading of cement bags. lafarge India has Installed machines for packing of cement in HDPE bags and for automatically loading of these bags into trucks and wagons through a conveyer system. The labourers provided by the appellants simply stand at different places in the mechanized packing process.

One person feeds cement bags onto the machine which captures these bags and pours cement into bags and the bags get sealed automatically. After this, the bags

fall onto the conveyer system which takes these bags to the exit point that goes right into the truck or wagon. At the exit point, the labourers simply give a helping push to the bag whenever necessary, so that it falls in place and the bags are properly stacked. We are enclosing copies of the photographs to show various stages of this process. these would shows that Lafarge India conducts it own pecking and loading process in which labourers supplied by the appellants play a very secondary role." 2. During the hearing of the case, appellant has shown, on the computer, the actual packing and loading activity as well as the role-played by the labourers supplied by the appellant. What is being emphasized is that the packing and loading is incontinuation of the manufacturing of cement by the cement plant and that all these activities are done mechanically by machinery and conveyer owned by the cement manufacturer, and that packing and loading processes are fully automated and the manpower supplied by the appellant is only supplementing the mechanized packing and loading. During the hearing of the case, learned Counsel, particularly stressed that in this situation of mechanized handling of cement, the appellant does not own the machinery of packing and loading, nor have they hired out the machines from their owner so as to be undertaking the activity of "cargo handling".

3. the contention of the appellant is that it is only a manpower supplier and not a cargo handler. It is being pointed out that this position is clear from the contracts in question inasmuch as it is stated in the contracts that packing and loading is through wagon and truck loading machines and that the appellant is "providing support for packing and loading" and that "the rate PMT as stipulated is based on payment of workers as per cement wage board rate effect from 01.04.2003" (Order No. PL/ACP/PU/PP/WO/265/03/11210 Dated 21.08.2003) 4. According to the learned counsel, the appellant's activity does not take in the essential ingredients of cargo handling like loading, unloading, packing or unpacking. Instead, its labourers, are only rendering supervision/assistance in the mechanized operations and in these facts and circumstances, the appellant does not fulfill the criterion of being a cargo handling service renderer.

5. Learned Counsel has also pointed out that according to the clarificatory instructions F.No.B11/1/2002-TRU Dated 1.8.2002, the appellant's service cannot

come within the scheme of cargo handling service. He has referred in particular to paragraph 3 and 15 of those instructions which are reproduced below:- "3. The services which are liable to tax under this category are the services provided by cargo handling agencies who undertake the activity of packing, unpacking, loading and unloading of goods meant to be transported by any means of transportation namely truck, rail, ship or aircraft. Well known examples of cargo handling service are services provided in relation to cargo handling by the Container Corporation of India, Airport Authority of India, Inland Container Depot, Container Freight Stations. This is only an illustrative list. There are several other firm that are engaged in the business of cargo handling services.

15. another doubt raised in relation to cargo handling services is that whether individuals undertaking the activity of loading or unloading of cargo would be leviable to service tax. For example, if someone hires labour/labourer for loading or unloading of goods in their individual capacity, whether he would be liable to service tax as a cargo handling agency. It is clarified that such activities will not come under the purview of service tax as a cargo handling agency".

6. Learned JDR has pointed out that the impugned order has gone in detail into the coverage of the service tax and as to how the appellant's role satisfies the definition of cargo handling service under the statute. He has also pointed out that the contract provides for loading and unloading services. He particularly emphasized that the definition of cargo handling service specifically mentioned loading and unloading.

7. The definition of cargo handling services under the statute may be read:- "Cargo handling service" means loading, unloading, packing or unpacking of cargo and includes cargo handling services provided for freight in special containers or for non-containerised freight, services provided by a container freight terminal, for all modes of transport and cargo handling service incidental to freight, but does not include handling of export cargo or passenger baggage or mere transportation of goods".

Thus, the statute has defined cargo-handling service as to mean "loading unloading, packing or unpacking of cargo". The definition also states that certain

other services remains included. In the present case, the appellant is not rendering any of the services "included" in terms of definition. Therefore, the question is whether the appellant is "loading, unloading, packing or unpacking of cargo" in terms of the main clause of the definition. The issue has to be determined in the contract of the packing, unpacking, loading or unloading of cement bags. It is clear from the description of the processes and its pictorial representation that the processes of packing, loading are automatic and mechanized. The role of manpower is to supplement and oversee and guide the activity. Upon the fixing of a HDPE bag on the the mouth of the packing machine, the machine picks the bag, fills it and drops the cement packed bag on the conveyer. The conveyer carries the bag upto and into the railway wagon or truck and stacks the bags.

The role of the manpower is to fix the HDPE bag on the mouth of packing machine, oversee of the flow of the bags on the conveyer and to correct if any error takes place and guide the boom in regard to stacking. In this highly mechanized cargo handling, the appellant is neither the owner of the machines nor has it rented out the machine. It is a complete outside to the main cargo handling activity. It is also not responsible for the handling activity. It supplied the manpower, which render a supportive and ancillary role. The appellant's employees, neither as a group, nor as individual, packs or loads cement. Packing or loading cement is not the job contracted out to the appellant. This position is made clear by the labour contract. The facts and circumstances make it clear that the appellant is not rendering cargo-handling service. In the given factual situation, cargo handling cannot take place in the absence of packing machine and conveyer. The appellant has no control on them. The appellant is right in his contention that it is only supplying manpower and supplying manpower cannot be equated with providing the service in question. If such a view is taken, who ever supplies the manpower for an activity would become the provider of the activity itself. If manpower is supplied for construction, the manpower supplied would become the builder. This view is against the specific definitions of various services in the statute.

8. In view of what is stated above, the appeal is allowed after setting aside the impugned order.

