

**Cce Vs. Adh Agencies**

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

**Decided On :** May-21-2007

**Reported in :** (2007)7STR660

**Judge :** R Abichandani, S T T.V.

**Appellant :** Cce

**Respondent :** Adh Agencies

**Judgement :**

1. This is an appeal filed by the Revenue challenging the order of Commissioner (Appeals) made on 15.09.2005. In the impugned order, the Commissioner (Appeals) has heavily relied upon this Tribunal's order in the case of Mahavir Ceramic v. CCE hold that the consignment agent is not liable to pay Service Tax.

According to him, the respondent was neither consignment agent nor clearing agent nor forwarding agent nor the services provided by a consignment agent had been made taxable. Commenting on the agreement entered into by the respondent with Bayer ABS Ltd. and ADH Agencies, the Commissioner held that, the respondent was a consignment stockist.

Accordingly, the demand for Service Tax was dropped along with penalty imposed by the Deputy Commissioner in the order-in-original dated 7.3.2005.

2. The learned DR for the appellant relied upon the decision of the Larger Bench of this Tribunal in Medpro Pharma Pvt. Ltd. v. CCE, Chennai reported in 2006 (3)

STR (355) (T-LB), according which even if some of the activities concerning clearing or forwarding could be spotted, a person becomes a clearing and forwarding agent under the law. On this plea, he also refers to yet another decision of the Division Bench in Super Poly Fabriks Ltd. v. CCE, Ludhiana reported in 2006 (4) STR 595, which vide para 27 reads as follows: In this context, a plain reading of Section 65 (105)(j), would reveal that 'Taxable Service' should mean any service provided to a client by a clearing and forwarding agent including a consignment agent (Emphasis Supplied) in relation to clearing and forwarding operations, in any manner. In the present case, the appellant is admittedly a consignment stockist, who is actively involved in 'Clearing & Forwarding Operation' by taking responsibilities for the movement of goods right from the factory/warehouse of the principal up to the stage of delivery to the buyers in one or many ways. There is, therefore, no doubt, that the appellant is fully covered within the tax framework, being a 'Clearing & Forwarding Agent' engaged in relation to 'Clearing & Forwarding Operations'.

3. None appeared for the respondent. Having heard the learned DR and perused the record, we find that Clauses 19 and 22 of the agreement entered into by the respondent with Bayer ABS Ltd. on 1<sup>st</sup> July, 1999, make it clear that the respondent is very much concerned with the safe delivery of goods, besides being answerable to compliance with tax obligations. The said clauses are reproduced below: 19. The Company shall not be liable for any short delivery or damages in the said product or any part thereof after delivery of the said product is taken by the distributor or for any delay on supply of the said products caused by any circumstances beyond its control. The distributor, however, accepts full responsibility for any damages which may be incurred in respect of consignments of the said products despatched by rail, road, air or water provided it is not due to the fault of the Company.

22. While effecting sales of the said products the distributor shall disclose that he/it is a distributor of the Company, though, however, he/it shall effect sales of the said products on his/its own bill forms. Accordingly, the distributor alone shall be responsible for discharging all the liabilities attracted under any sales tax laws in respect of the sales affected by them on behalf of the Company. If the Company is

made liable to pay any tax or penalty or any other dues in respect of the sales affected by the distributor according to this agreement, the distributor shall indemnify the Company against the same.

4. In yet another agreement made on 18.3.2002, between the respondent and SRF Polymers Ltd. one could further gauge that the respondent is made fully responsible for the consignments dispatched by rail, road, air or water besides being assigned with the task of sale promotions as well. The relevant clauses are reproduced below: 5. The Consignment Agent agrees to endeavor to promote the sale of the said products, and, for this purpose, they shall keep their aforesaid premises open to the public on all working days and at all normally and legally permissible business hours and in each case and at all times under responsible supervision. The Consignment Agent shall not be a party or privy to any act, deed or thing whereby the reputation or interest of the Company shall be affected.

9. The Company shall not be liable for any short delivery of or damages to the said products or any part thereof after delivery of the said products is taken by the Consignment Agent or for any delay for supply of the said products caused by any circumstances beyond the Company's control. The Consignment Agent, however, accept full responsibility of consignments of the said products despatched by rail, road, air or water.

5. A plain reading of these two agreements amply make it clear that the consignment agent is also responsible for the movement of goods dealt with by him in the manner as prescribed in various clauses of the said agreements which in our opinion, would fully qualify them to be a C&F agent. It has been explicitly stated in the said agreements that the Company i.e. Bayer ABS Ltd. and SRF Polymers Ltd. shall not be liable for any short delivery of/or damages to the said products after delivery of the said products is taken by the respondent consignment agent or for any delay for supply to others. We thus find a situation identical with Medpro Pharma decision in which the Larger Bench of this Tribunal had compared the C&F operation to an orchestra performing a Mahler's symphony. The loud thud of a drum cannot erase the soft whispers of a flute which also forms a part of orchestra. Even if the mellifluous tra-la-la of the flute is

dominated by the thundering drums, for all practical purposes, the former does not cease to be the part and parcel of the orchestra. In the same analogy, the activities performed under the agreements howsoever subtle and sketchy as they may appear, would certainly qualify to make them taxable activities of clearing and forwarding. As we rely on the Larger Bench decision, we are conscious of the saying of Thomas a Kempis who said: "Seek not to know who said this or that, but take note of what has been said." 6. In view of the above reasoning, the order-in-appeal is set aside as the order-in-original stands restored.

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