

Mr. Dalveer Singh Vs. Ccex

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-16-2007

Reported in : (2008)9STR491

Judge : A Wadhwa

Appellant : Mr. Dalveer Singh

Respondent : Ccex

Judgement :

1. Vide impugned orders, the authorities below have confirmed Service Tax of Rs. 4,27,332/- against the appellant by treating them as Cargo Handling Service Provider, alongwith confirmation of interest. In addition, personal penalty of identical amount stands imposed under Section 76 and under Section 78 of the Finance Act, 1994 alongwith imposition of penalty of Rs. 1000/- under Section 77.

2. The appellant had entered into two different contracts with M/s Chambal Fertilizers & Chemicals Ltd. (CFCL), Kota. As per contract No.JPR/HAND/2004-05 dated 8.4.2004, the appellant was to supply the following services to M/s CFCL: While unloading the material from railway wagons, (Unloading of Fertilizers from wagons, stacking on platform and loading into the trucks from platform), stacking the same at the Company's warehouse and destacking and loading into truck the contractor shall protect the fertilizers from damage or loss by rains, pilferage or by any other such cases or reason. The contractor shall use tarpaulins to protect fertilizers in all respect while delivering the same to the company's warehouse.

The contractor shall make all arrangements to transport the fertilizers from Railway station/Warehouse which is/are situated to the city "Bharatipur". The material will be transported from railway goods shed/warehouse, to the warehouse, to the company's warehouses or to the dealer locations by the quickest means to transport, preferably by trucks.

3. The authorities below by treating the appellant as provider of cargo handling and warehouse services, has confirmed the demand on the entire receipt by them from M/s CFCL, whereas the appellant's contention is that the tax is required to be paid only in respect of the amount, which they have received as Cargo Handling Service provider. Inasmuch as the services for transportation were not liable to tax for the period involved in the present appeal and were made taxable w.e.f.

11.1.2005, they are not liable to pay tax on the transportation charges received by them. It has also been contended that the said services were provided by Shri Dalbir Singh in his individual capacity though in the name of Rajasthan Transport Co. and in terms of Board Circular F.No. B-11/1/02-TRU dated 1.8.2002, he is not liable to pay duty.

Further, the demand has also been assailed on the point of limitation.

4. After hearing both sides, I find that the issue to be decided in the present is as to whether the activity undertaken by the appellant i.e.

transportation of material from railway station to the company's/ customer's warehouse is covered under Cargo handling Services or not.

Cargo Handling Services stands defined under Sub-section (23) of Section 65 of the Finance Act, 1994, as under: 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 or any other 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.

5. The authority below has held that all the activity mentioned in the definition of cargo handling service have been undertaken by the appellant in terms of the contract for transportation, inasmuch as they include unloading from train railway wagons, staking on railway platform, loading/unloading in contractor's trucks and loading trucks at company's warehouse and would constitute cargo handling services.

However, I find that the above loading, unloading in the truck is a part and parcel of the transportation of goods services. Reading of the definition of cargo handling service suggest loading unloading and packing or unpacking of cargo including freight special containers. The emphasis is on handling of cargo and such service may be incidental of freights, whereas transportation of the goods would incidentally include loading and unloading the same would not get covered by the definition of cargo handling services. To the same effect is the Board's Circular dated 1.8.2002 clarifying that mere transportation of goods is excluded from the purview of cargo handling service. The terms of the contract made on 8.4.2004 are only to the effect that the contractor was to make arrangement to transport the fertilizers from railway station. The said terms are different from the terms of second contract, which is for handling the goods. As such, I agree with the appellant that mere transportation of the goods would not make them as cargo handling service provider.

6. Apart from the above, I find that the demand is barred by limitation inasmuch as show cause notice for the period 16.8.2002 to 31.10.2004 was issued on 12.9.2005. The service tax having been introduced for the first time was in a lot of confusion and doubt. Merely because the appellant did not apply for registration and did not pay tax is no ground to come to a finding that the same was done with a malafide intention. Keeping in view the confusion prevailing in the field as regards the liability of service tax, the appellant is to be extended benefit of doubt and it is to be held that there was no intention to suppress or mis-declare the facts with intent to evade payment of duty.

As such, I hold that the demand is barred by limitation also. In view of the foregoing, I set aside the impugned order and allow the appeal with consequential

relief to the appellants.

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