

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad**

REGIONAL BENCH-COURT NO. 3

Service Tax Appeal No. 11722 of 2019 – DB

(Arising out of OIA-KCH-EXCUS-000-APP-044-2019 dated 31.03.2019 passed by the Commissioner (Appeals) Central Excise, Customs and Service Tax-RAJKOT)

Commissioner of Central Excise-Kutch (Gandhidham).....Appellant

Central Excise & Service Tax Commissionerate,
Central Excise Bhavan Plot No. 82,
Sector 8, Gandhidham(Kutch), Gujarat

VERSUS

Transworld Terminals Private Limited

Bharat CFS, Zone-I, MPEZ, Mundra
Kutch, Gujarat

.....Respondent

APPEARANCE:

Shri NeilPrakash G Makwana, Superintendent (AR) appeared for the appellant
Shri Darshan Ranawat, Chartered Accountant appeared for the respondent

CORAM:

HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA

HON'BLE MEMBER (TECHNICAL), MR. SATENDRA VIKRAM SINGH

Final Order No. 10334/2025

DATE OF HEARING: 10.03.2025
DATE OF DECISION: 14.05.2025

SATENDRA VIKRAM SINGH

The revenue has filed the present appeal on 22.07.2019 against the order of the Commissioner (Appeals) bearing No. KCH-EXCUS-000-APP-044-2019 dated 31.03.2019. M/s. Transworld Terminals Private Limited, Bharat CFS, Zone-I, AP & SEZ, Mundra, Kutch, Gujarat are the respondent in the matter. The respondents were issued a show cause notice bearing No. V.ST/STR-Mundra/ ST Division/ Jt. Commr./ 29/ 2016-17 on 15.03.2017, mentioning that they were engaged in providing output services such are "CARGO Handling Services" and "Storage & Warehousing Services" of import and export Cargo. The services provided by them also included exempt services such as Handling of export of Agricultural produce related services and Maintenance and Repair Services to the extent of value of material/goods which were not taxable.

1.1 Based on the observations of the CERA, the department alleged that during the period from 2011-12 to 2015-16, the appellant have short reversed an amount of Rs. 1,71,80,619/- on account of exempt service which was recoverable from them under Section 66, 68 and 70 of the Finance Act, 1994 read with Rule 6 & 7 of the Service Tax Rules, 1994 and Rule 6 of the Cenvat Credit Rules, 2004. The show cause notice also proposed recovery of interest on the above amount alongwith penal action under Section 76, 77 & 78 of the Finance Act, 1994 and Rule 15 of the Cenvat Credit Rules, 2004.

1.2 The show cause notice was decided by the adjudicating authority vide order dt.30.05.2018 who confirmed the entire demand of Rs.1,71,80,619/- against M/s Transworld Terminals alongwith interest and imposed equal amount of penalty under Section 78 of the Finance Act, 1994, penalty of Rs. 10,000/- under Section 77 and again an equal amount of penalty of Rs. 1,71,80,619/- under Rule 15 of the Cenvat Credit Rules, 2004. Aggrieved with the order, the Respondent filed appeal before Commissioner (Appeals) who vide impugned order dated 31.03.2019, set aside the order of the lower authority and allowed appeal. He observed that the department has issued multiple SCNs for the same period for demanding service tax/reversal of Cenvat Credit under Rule 6 of the CCR, 2004 on freight and Cargo handling income. Thus, the department was not clear whether to consider income of the service provider towards rendering of export cargo handling and towards transportation of empty containers as exempt service or liable to service tax. He held that the activity of handling export cargo has been kept out of service net and it can not be considered "exempt service". Hence, no reversal is required under Rule 6(3) of the CCR, 2004. He also dropped the demand of Rs. 12,98,736/- for reversal of Cenvat Credit on the value of GTA Service and demand of Rs.9,33,291/- on reversal of credit on the value of the materials supplied. The penalties imposed by the lower authority were also set aside. Aggrieved with the above order, the department has filed the present appeal.

1.3 In the appeal dated 22.07.2019, the department has relied on, the definition of "exempted service" under erstwhile Rule 2(e) of the Cenvat Credit Rules, 2004 which reads as under :-

Rule 2(e) "exempted services" means taxable services which are exempt from the whole of the Service Tax leviable thereon, and **includes services on which no Service Tax is leviable under Section 66 of the Finance Act** and taxable services whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken."

Therefore, exempted service also includes any service on which service tax is not payable. As activity of handling of export cargo was kept out of service tax net, value of the said activities is liable to be included in the exempted service and accordingly, the demand for the period 01.04.2011 to 30.06.2012 was required to be confirmed under Rule 6(3) of the Cenvat Credit Rules, 2004. The department in a way has limited request to uphold the order-in-original dated 30th May, 2018 to the extent of demand pertaining to the period 01.04.2011 to 30.06.2012 with consequential relief.

2. During hearing, the Authorized Representative relied on the decision of Chennai Tribunal in the case of St. John CFS Park Pvt. Ltd. Vs. CCE, Tirunelveli [2016 (46) STR 231 (Tri.-Chennai)]. He also emphasized the provisions of Cenvat Credit Rules, 2004 and the definition of exempted service both prior and post July 1st, 2012 to justify reversal of credit for the period 01.04.2011 to 30.06.2012, under Rule 6(3) of the CCR, 2004.

3. Learned Advocate on behalf of the respondent mentioned that for the period upto October-2013, they had two registrations which later on, were merged and they started filing returns under single registration. A common show cause notice is issued for both the registrations and hence, such a practice is not correct. The appeal should be dismissed on this aspect itself.

He argued that the decision which department is relying on in St. John CFS Park Pvt. Ltd case (supra) was an Interim order. The final decision pronounced as reported in 2023 TIOL-407-CESTAT-Madras, is in the favour of the assessee. He argues that the case of the department is not on merits and therefore, appeal filed by them should be dismissed.

3.1 He also mentions that the disputed activity is not an exempt service by virtue of any exemption Notification or Circular. In fact, it is not defined to be a service for levy of service tax. Therefore, export cargo handling does not attract service tax because the definition provided under Section 65(23) does not consider this activity to be a service at all. He also cited the decision of CESTAT Hyderabad in the case of Ramboll Imisoft Pvt. Ltd Vs. Commissioner of Customs, Central Excise and Service Tax, Hyderabad-II- 2017(47)STR61 (Tri.-Hyd) wherein it was held that the provisions of Finance Act, 1994 are not applicable to the State of J&K and hence, services provided to the said State are not covered under the definition of taxable service and cannot be stated as an exempt service. Therefore, Rule 6(3)(i) of the Cenvat Credit Rules, 2004 is not applicable.

3.2 His another argument is that extended period is not invokable in this case, as they are being audited every year and no discrepancies have been found in their records. He enclosed copy of the Audit report dated 23.02.2013 (for the period April 2008- March 2012), report dated 20.02.2014 for the period Sept. 2011 to March 2013 (in respect of their second registration) and report dt.09.08.2014 for the period April 2013 to March 2014 showing "Nil" observation. On the basis of CERA Audit, the department cannot allege suppression of facts and intention to evade tax against them. He also cited the following decisions:-

- Nizam Sugar Factory vs. Collector of Central Excise, A.P. [2006 - TIOL-56-SC-CX]

- Bimal Auto Agency vs. Commissioner of CGST and C. Ex., Dibrugarh Commissionerate, [2023-TIOL-614-CESTAT-KOL]
- M/s. Bedmutha Industries vs. CCE & ST Nashik [2019-TIOL-445-CESTAT-MUM]
- Innovative Incentive and Events Pvt Ltd vs. CCE [2024-TIOL-1035-CESTAT-CHD]
- Vandana Global Ltd vs. Commr. CGST & C.Ex. [2022 (56) G.S.T.L. 310 (Tri.-Del)]

4. We have seen the records of the case and heard rival submissions.

4.1 Before taking up the case on merits, the issue of limitation as argued by the Learned Advocate on behalf of the Respondent need to be discussed first. We find that the respondent has been audited for the period from April, 2008 to 2012 on 17.04.2013, again from September, 2011 to March 2013 (in respect of second registration) on 10.03.2014 and then for the period from April, 2013 to March, 2014 on 10.09.2014 by the departmental audit officers. Each time, their report mentions "Nil" which shows that the departmental officers did not find any irregularity in the records of the respondents including payment of taxes and reversal of credit as per CCR 2004, if any. The department proceeded to issue the show cause notice on 15th March, 2017 on the basis of observations of CERA. At this juncture, the department cannot take a plea that the facts of filing service tax returns with the department or audit of the records of the respondent were not in their knowledge. They cannot allege after a period six years that the assessee has suppressed vital informations from the department.

4.2 We further find that the final decision in the case relied upon by Revenue was delivered in 2023 as reported at 2023-TIOL-407-CESTAT-Madras, was in favour of the assessee. The Tribunal concluded that once some services are excluded, then there is no scope to consider the same as exempted service

for the purpose of Rule 6 of the Cenvat Credit Rules, 2004. The relevant para of the said order is reproduced below:-

"16. We are thus of the clear view that the words "does not include" in the definition of cargo handling service takes the service very much out of the purview of taxability, thereby touching upon the jurisdiction of the taxing authority and hence, the same, at no stretch of imagination, could be held or equated with an exempted service. Hence, the services rendered by the appellant in this case, insofar as the same related to the handling of export cargo, is excluded from taxability and thus, the same cannot be brought as 'exempted under Rule 2(e) ibid. Once it is held as 'excluded', there is also no scope to consider the same as an 'exempted' service just for the purposes of Rule 6 of the CENVAT Credit Rules, 2004."

4.3 We find that neither the show cause notice nor the order of the adjudicating authority clearly elaborates as to which of the documents were suppressed by the Respondent, which could not have been seen by the departmental officers during conduct of regular audit by their own officers. We find that the department has not been able to justify invocation of extended period in this case and therefore, without going into merits of the case, the appeal filed by the department is dismissed.

5. Appeal dismissed.

(Pronounced in the open court on 14.05.2025)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)