FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 12/10/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/71242/2017-CU[DB] dated 04/10/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the **Finance Act, 1994 relating to Service Tax Act, 1994.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1 ST/MISC/50432/2017	ST/885/2012	**Bazpur Cooperative Sugar Factory Ltd** Bazpur, Distt- U S Nagar.
		Name and Address of Respondent
2		C.C.E. & S.T.-Meerut-ii OPPOSITE SHAHEED SMARAK,DELHI ROAD...BHANSALI GROUND, MEERUT, UTTAR PRADESH-

Copy To

3 Bar Association, CESTAT, Allahabad

4 Director Publications, Customs, Excise, I.P. Estate, Delhi

5 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

6 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

7 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

8 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

9 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

10 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

11 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

12 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

13 C.D.R. 14 Office Copy 15 Second Folder Copy 16 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD
COURT No. I
MISC Application No: ST/MISC/50432/2017
APPEAL No: ST/885/2012-CU[DB]

(Arising out of Order-in-Appeal No. 70-ST/MRT-II/2012 dated 22/03/2012 passed by Commissioner (Appeals), Customs & Central Excise, Meerut-II)

M/s Bazpur Cooperative Sugar Factory Ltd. **Appellant**

Vs.

Commissioner of Central Excise & Service Tax, Meerut-II **Respondent**

Appearance:

Shri Absent on call for Appellant
Shri Mohd. Altaf (Asstt. Commr.) AR for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 04/10/2017
Date of Decision : 04/10/2017

FINAL ORDER NO.- 71242/2017

Per: Anil Choudhary

The Appellant is engaged in the manufacture of VP sugar and molasses. For their manufacturing activity, they collected sugarcane from farmers at various collection centres. They engaged individual farmers for transportation of sugarcane from collection centres to the factory and paid charges for such transportation. The Appellant was not paying any service tax on such services received by him for transportation of goods as per the provisions of Rule 2(d)(v) of Service Tax Rules, 1994. Revenue made out a case that as the recipient of services for transportation of sugarcane from collection centres to the factory, the Appellant was liable to pay service tax on the amounts paid to the transporters. Based on such reasoning, Show Cause Notices were issued for the periods April, 2008 to December, 2008 and January, 2008 to March, 2008 demanding service tax along with interest and penalties. On adjudication, an amount of Rs.98,591/- has been confirmed for the period April, 2008 to December, 2008 along with interest and penalties and an amount of Rs. 2,90,003/- was confirmed for the period January, 2008 to March, 2008 along with interest and penalties. Aggrieved by the adjudication orders, the Appellant had filed appeal with the Commissioner (Appeals) who waived penalties imposed under Section 78 but confirmed penalty under Section 77 and no relief has been given in the matter of Service Tax to be paid. Aggrieved by the orders of the Commissioner (Appeals), the Appellants have filed the present appeal along with application for waiver of pre-deposit of dues arising from the impugned orders for admission of appeal.

2. The Appellant submitted in appeal memo that the truck owners who were transporting the sugarcane from the collection centres to the factory cannot be considered as "Goods Transport Agency" within the meaning of the definition given to the expression in 65(50) of Finance Act, 1994. According to him, only persons booking cargo and issuing consignment notes can be considered as Goods

Transport Agency. The definition of Goods Transporters Agency is re-produced below:-

Section 65(50b) "goods transport agency" means any person who provides service in relation to transport of goods by road and issues consignment note by whatever name called Section 65(105)(zzp) to a customer, by a goods transport agency, in relation to transport of goods by road in a goods carriage.

3. He submits that since the sugarcane which was collected at the collection centres was already property of the Appellant. There was no need for any consignment note for despatching the same using the services of truck owners who were mostly individual firms. Therefore he submits that there is no merits in the case made out by Revenue and the appeal should be heard without any pre-deposit.

4. Opposing the prayer, Learned A.R. submits that any person who transports the goods is required to issue consignment note as per the provisions of Rule 4B of Service Tax Rules, 1994. The fact that the transporters in this case did not comply with the said Service Tax Rules cannot be a reason to absolve the receivers of such service from tax liability. He further points out that the plea regarding transportation by individual farmers is not correct because there is no proof that the trucks were owned by farmers. The argument that farmers are using their trucks for this activity and not for goods transport activity in general cannot be true

because nobody can invest in trucks and keep the truck idle except during sugar season. So if at all farmers are owning the trucks it is because they are undertaking goods transport operation as another profession. Therefore, the truck owners who transported sugarcane have to be at par with any other truck owners and the issue decided accordingly.

5. We have considered the submissions of Learned AR for Revenue and on perusal of record we find that the definition of "Goods Transport Agency" under Section 65(50b) of Finance Act, 1994 and provision of Rule 4A of Service Tax Rules are logically inconsistent. The entry in the Act defines "Goods Transport Agency" as one which issues consignment notes and thereafter Rule 4B says that "Goods Transport Agency" have to issue consignment note. So which criteria have to be satisfied first is not clear. That is to say if a goods transport operator does not issue consignment note he does not come within the meaning of "Goods Transport Service" and then the requirement under Rule 4B also is not enforceable. Under the facts and circumstances, we find that the provisions of Service Tax are not attracted in the transaction involved, as the appellant have only acted as a facilitator for the farmer for quick and speedy transport of sugarcane to the factory to ensure more effective recovery of sugar. We further take notice of the Ruling of Hon'ble Supreme Court in the case of Indian National Ship Owners

Association reported at 2011 (21) S.T.R. 3 (SC), wherein it has been held that prior to 18/04/2006 there can be no levy of tax on reverse charge basis, from which date Section ~~67(A)~~ 66A Ar was brought on the statute.

6. Accordingly, we allow the appeal and set aside the impugned order.

(Dictated & Pronounced in Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

Lks

प्रमाणित प्रति/Certified True Copy
27/10/17
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर अपील अधिकरण (C.E.S.T.A.T.)
38, एम.जी.मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001