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: 31/01/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. ST/A/70100-70101/2017-CU[DB] dated 05/01/2017

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/54227/2014	**Gurbachan Singh** R-6/72, Raj Nagar, GHAZIABAD UP
2	ST/55160/2014	**Gurbachan Singh** -6/72, Raj Nagar, GHAZIABAD UTTAR PRADESH
		Name and Address of Respondent
3		C.C.E. & S.T.-Ghaziabad 202...WING A C.G.O. COMPLEX-II,KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH-201002
4		C.C.E. & S.T.-Ghaziabad 202...WING A C.G.O. COMPLEX-II,KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH-201002

Other Appellants and Respondents as per Annexure
Copy To
5Advocate(s) / Consultant(s):

Sudarshan Singh
S.442, Ist Block, Shriya
Apartment 218, Myor road,
Ashok Nagar,Allahabad

6 Bar Association, CESTAT, Allahabad

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

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

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

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

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

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

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

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

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

16 C.D.R. 17 Office Copy ~~18~~ Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No. ST/54227 & 55160/2014-CU[DB]

(Arising out of Order-in-Appeal No. GZB-EXCUS-000-24 to 26-2014-15 dated 24/07/2014 passed by Commissioner of Central Excise & Customs (Appeals), Ghaziabad)

M/s Gurbachan Singh **Appellant**

Vs.

Commissioner of Central Excise & Service Tax, Ghaziabad

Respondent

Appearance:

Shri Nishant Mishra, Advocate, &
Shri Sudarshan Singh, Advocate. for Appellant
Shri D. K. Deb, Assistant Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing & Date of Decision 05/01/2017

FINAL ORDER NO. 70100 - 70101/2017

Per: Anil G. Shakkarwar

The present two appeals are filed by the appellants, M/s Gurbachan Singh, against Order-in-Appeal No. GZB-EXCUS-000-24 to 26-2014-15 dated 24/07/2014 passed by Commissioner of Central Excise & Customs (Appeals), Ghaziabad and are having same issue for different period. Therefore, they are taken together for decision.

2. Brief facts of the case are that the appellants are providing Manpower Recruitment Agency Service to their sole

client, M/s Godfrey Philips India Ltd., C/O International Tobacco Company Ltd. On the scrutiny of record of the appellants it was revealed that appellants were providing services related to godown premises of GPI in relation to handling of Tobacco & Non-tobacco materials and transportation of the same from godown to factory, supply of trained forklift operators at factory and godown, carrying out bright scrap (tobacco leaf) activity including opening of bales, crushing and transferring the bright scrap into bags, weighment and closing of filled bags, etc. The said activities were carried out in the godown premises owned by International Tobacco Company Ltd. They were not unloading, stacking and handling of the material. They were also issuing raw-material as per the requisition received from International Tobacco Company Ltd. On scrutiny of profit and loss account of appellant Revenue came to know that the appellant was receiving the amount under the head GPI Labour Work & Transportation Receipt. It appeared to Revenue that appellant was paying Service tax only on the amount received under the head GPI Labour Work and was not paying Service Tax on the amount received under Transportation Receipt. On being pointed out by Revenue appellant submitted to Revenue that they were paying Service tax on the Manpower Recruitment Agency Service provided to M/s Godfrey Philips India Ltd., C/O International Tobacco Company Ltd. & the Service tax on Transportation Receipt was being paid by International Tobacco Company Ltd who were the receivers of the Transportation Service. It appeared to Revenue that the services rendered by appellant were classifiable under 'Cargo Handling Service'. Therefore, the appellants were issued with a Show Cause Notice bearing No. 10/ST/ADC/GZB/2012-13 dated 26/09/2012 wherein it was stated in Para 4 that it was concluded by the Audit that all the Services undertaken by appellant were more appropriately covered under "Cargo Handling Service". On such presumption the appellant were called upon to show cause as to why Service tax amounting to Rs.16,89,552/- should not be demanded from them under proviso to Sub-section (1) of Section 73 of Finance Act, 1994. In addition, there was a proposal for interest and penalty. The said demand of Service tax was on the assessable value of Rs.1,54,18,304/- for the years 2007-08 to 2011-12. The assessable value Rs.1,54,18,304/- was transportation receipt for the years 2007-08 to 2011-12. The said Show Cause Notice bearing No. 10/ST/ADC/GZB/2012-13 dated 26/09/2012, was adjudicated through Order-in-Original No. 10/ADC/ST/GZB/2013-14 dated 15/11/2013. The appellant submitted before the Original Authority that services provided by them were rightly and separately classifiable under Manpower Recruitment Agency Service & Goods Transport Agency Service and that services provided by them were unloading, stacking and handling of the material, supply of trained forklift operators at factory and were covered by them for payment of Service Tax under Manpower Recruitment Agency Service and Service Tax for the same was paid and there was no dispute of the same and that the transportation of raw materials from godown to factory was covered by goods transport agency service and that they had also reported to the department that the due service tax on transportation of goods was paid of service receivers, International Tobacco Company Ltd. The appellant, further, contested the proposed classification of service by resorting to provisions of Section 65A of Finance Act, 1994 and argued that the taxable service is to be classified firstly, under that sub-clause which provides the most specific description against the sub-clause which provides a mere general description and by that provision of law the services rendered by them were appropriately classifiable separately under Manpower Recruitment Agency Service & Goods Transportation Agency Service. They, further, relied on instruction issued by CBEC through letter F. No. B11/1/2002 -TRU dated 01/08/2002 wherein it was clarified that the activities such as hiring of labours for loading & unloading of goods in their individual capacity would not come under the purview of Service tax as a "Cargo Handling Service Agency." The Original Authority did not appreciate the arguments and confirmed the demand and imposed equal penalty. The appellants were issued with another Show Cause Notice for subsequent period which was decided through Order-in-Original No. 22/ST/2013-14 dated 09/01/2014 wherein a demand of Service tax amounting to Rs.1,46,371/- was confirmed and equal penalty was imposed. The appellant preferred appeal before Commissioner (Appeals) against both the above said Orders-in-Original. Both the said appeals were decided through common Order-in-Appeal No. GZB-EXCUS-000-24 to 26-2014-15 dated 24/07/2007 which is impugned order for these two appeals. The appellant submitted argument before Commissioner (Appeals) the same arguments as before Original Authority which were not appreciated by ld. Commissioner (Appeals) and both the appeals were rejected. Aggrieved by the said Order-in-Appeal No. GZB-EXCUS-000-24 to 26-2014-15 dated 24/07/2007 appellant is before this Tribunal.

3. The grounds of the appeal include the submission by the appellant that the rates which were agreed upon by the appellant and service receiver were having a common communication but for the separate activities such as Manpower Recruitment Activities & Transportation of Goods Activities have been charged separately. They further submitted that the appellant separately charged for the activity of transportation therefore they cannot be held to be liable for levy of Service tax under Cargo Handling Service. They have, further, relied on clarification issued by CBEC vide F. No. B11/1/2002 -TRU dated 01/08/2002 wherein it is clarified that if the bill indicates the amount charged for

cargo handling and transportation separately on actual basis (verifiable by documentary evidence), then the tax would be leviable only on the cargo handling charges.

4. Heard the ld. Counsel for the appellant who has relied on definition of Cargo Handling Service has been defined under Sub-clause (23) of Section 65 of the Chapter V of the Finance Act, 1994 (32 of 1994) and the same reads as under:-

> "Cargo Handling Service means loading, unloading, packing or unpacking of cargo and includes,-
>
> a) cargo handling services provided for freight in special containers or for non-containerized 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
>
> b) Service of packaging together with transportation of cargo or goods, with or without one or more of other services like loading, unloading, unpacking
>
> but does not include, handling of export cargo or passenger baggage or mere transportation of goods."

Further the existence of the word "agency" in the definition would imply that the person handling the cargo (goods) should not be the owner of the cargo but should handle the same in a representative capacity as an agent.

He has submitted as per Clause (b) of said definition if the transportation together with packaging of the material is undertaken then only it will be classifiable under Cargo Handling Service and further submitted that they were not involved in any packaging together with transportation of cargo nor their services were in respect of any container freight terminal ~~or~~ nor any other freight terminal and that they ~~are~~ were merely providing service of loading & unloading for which the required Service tax was already paid therefore even the definition of cargo handling service will not allow clubbing of receipt on account of transportation charges into the assessable value of Manpower Recruitment Agency Service in their case. He has further argued that appropriate Service tax is already paid by the service receiver on transportation charges and if he once again has to pay service tax as confirmed in the present case there will be double taxation ~~as~~ on the same assessable value.

5. Heard the ld. D. R. who has relied on the impugned Order-in-Appeal.

6. We find that the Show Cause Notice indicates that it was concluded by Audit that the services undertaken by the appellant were cargo handling service, whereas it was the job of the Adjudicating Authority to come to conclusion on the basis of materials putforth before him to decided whether the

services provided by the appellant were Cargo Handling Service or not. Further, the classification accepted by the appellant has been contested in the said Show Cause Notice but the said Show Cause Notice did not give the opportunity to the appellant to putforth his argument on proposed classification of services provided by him. Revenue has prejudged the issue and unilaterally decided the classification which is against the principle of natural justice. Further, the Show Cause Notice has admitted to demand the Service tax on that component of the assessable value on which Service tax was already paid by service recipient. Therefore, we find that the said Show Cause Notice is unsustainable. In view of that finding we drop the proceedings and set aside both impugned Order-in-Original & Order-in-Appeal. For the said reasons, we allow both the appeals. The appellants shall be entitled for consequential relief, as per law.

(Dictated and pronounced in Court)

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

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

Ansari

प्रमाणित प्रति / Certified True Copy
8.2.17
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
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