CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 2

Service Tax Appeal No. 755 of 2012

(Arising out of Order-in-Appeal No. 5/2012 dated 03.01.2012 passed by the Commissioner of Central Excise (Appeals), Mangalore.)

M/s. Noble Cold Storage (P) Ltd.
Survey No.306/2, Sirivara Village,
Kappagal Post,
Moka Road,
Bellary – 583 103.

Appellant(s)

VERSUS

The Commissioner of Central Excise
71, Club Road,
Belgaum – 590 001.

Respondent(s)

WITH

Service Tax Appeal No. 756 of 2012

(Arising out of Order-in-Appeal No. 8/2012 dated 04.01.2012 passed by the Commissioner of Central Excise (Appeals), Mangalore.)

M/s. Noble Cold Storage (P) Ltd.
Survey No.306/2, Sirivara Village,
Kappagal Post,
Moka Road,
Bellary – 583 103.

Appellant(s)

VERSUS

The Commissioner of Central Excise
71, Club Road,
Belgaum – 590 001.

Respondent(s)

APPEARANCE:

Ms. Madhurya, Advocate for the Appellant

Mrs. Money Jain, Joint Commissioner (AR) for the Respondent

CORAM:

HON'BLE MR. P. A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

FINAL ORDER NO. 21390-21391 / 2025

DATE OF HEARING: 15.07.2025
DATE OF DECISION: 15.07.2025

PER: R. BHAGYA DEVI

These appeals are filed by the appellant M/s. Noble Cold Storage (P) Ltd. against Order-in-Appeal Nos. 5/2012 dated 03.01.2012 and No. 8/2012 dated 04.01.2012 passed by the Commissioner (Appeals), Mangalore.

2. Briefly the facts are that the appellant M/s. Noble Cold Storage (P) Ltd. is a partnership firm engaged in providing renting of Immovable Property Services. The appellant owns a cold storage and warehouse which were leased out to M/s. Monsanto India Ltd. to run their business w.e.f. 01.04.2005 on payment of rent. Since, service tax was not paid on the leased rental amounts, the impugned order considered the lease agreement under renting of immovable property instead of storage and warehousing services and confirmed the demand of service tax on the payments received by the appellant. Aggrieved by this, appellant is in appeal before us.

3. The Learned counsel submits that the demand is for the period June 2007 to September 2008 for two different premises. It is stated that both the lease agreements dated 15.07.2005 clearly show that the appellant had leased cold storage space and ambient warehouse space for storage of goods to M/s. Monsanto India Ltd. Referring to the agreements, it is submitted that the lease was for storage of agricultural produce

and the Income Tax Department in its assessment order dated 29.12.2009 had recorded that the appellant was running a cold storage facility for agricultural produce. It is also submitted that the subsidy received from NABARD also proves the fact that they are into storage of agricultural produce. Referring to Section 65(105)(zza) read with Section 65(102) of the Finance Act, 1994 wherein storage and warehousing of goods is defined, it is stated that the services provided for agricultural produce is excluded. Relies on the Board's instruction vide Order No. 2/1/2002-ST dated 24.04.2002 and relied on the following decisions:

- **Shriji Ice Factory vs. CCE, Jaipur: 2017 (52) STR 446 (Tri-Del.)**
- **Punjab State Warehousing Corpn. vs. CCE, Chandigarh 2018 (15) GSTL 282 (Tri. Chan.)**

4. The learned Authorised Representative (AR) for the Revenue submitted that appellant had indicated the lease rentals received by them under the head 'Direct Incomes' and mentioned it as lease rent for the month in their financial accounts. It is also submitted that renting of premises is not exempted and they cannot be classified under 'storage or warehouse keeper' since their services are not with regard to storage keeping but renting of premises.

5. Heard both sides. The only issue to be decided is whether the services rendered by the appellant fall under the category of 'Renting of Immovable Services' or under 'Storage and Warehousing Services'. The relevant Sections are reproduced below:

"Section 65(105)(zza) – to any person, by a storage or warehouse keeper in relation to storage and warehousing of goods;

Section 65(102) – "Storage and Warehousing' includes storage and warehousing services for goods including liquids and gases **but does not include any service provided for storage of agricultural produce or any service provided by a cold storage."**

6. The Lease agreement dated 15.07.2005 between the appellant and M/s. Monsanto India Ltd. at Para 4.8 of the lease agreement clearly states that 'Temperature and Humidity: A temperature of 4 C to 10C and humidity of not more than 50-55% will be maintained as per the Lessee requirement.' and the supplementary agreement also states that it is for lease of storage space in the said cold storage of the Lessor for storage of agricultural produce as required by the Lessee. The Income Tax return filed by the appellant clearly mentions that the appellant is running a cold storage facility for agricultural produce.

INCOME-TAX DEPARTMENT

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1.	Name of the Assessee	: M/s Noble Cold Storage Pvt. Ltd., Sirivar Village, BELLARY.
2.	PAN/GIR.No	: AACCM5050D.
3.	Status	: COMPANY.
4.	Assessment Year	: 2007-08.
5.	Ward/Circle/Range	: Circle-1, Bellary.
6.	Previous Year	: 2006-07.
7.	Resident/Ord.Resident/ Non. Resident	: Resident.
8.	Method of Accounting	: Mercantile.
9.	Nature of Business	: Cold Storage Facility.
10.	Date(s) of hearing	: 16-12-2009.
11.	Date of Order	: 29-12-2009.
12.	Assessment completed under sec.	: 143(3) of the Income Tax Act, 1961.

ASSESSMENT ORDER

The return of income of the assessee firm, M/s Noble Cold Storage Pvt. Ltd., for the assessment year 2007-08 was filed within the specified due date under sub sec. (1) of sec. 139 of the income-tax Act, 1961, ("the Act") on 15/11/2007 declaring a total income of Rs. 6,23,406/-.

2. The return was processed under sec. 143(1) of the Act and consequently the amount of Rs. 6,77,230/- alongwith interest under sec. 244A is refunded as per the intimation.

3. The case was selected for scrutiny and therefore, notices under secs. 143(2) dated 12-09-2008 were issued and served on 16-09-2008 followed by notice under sec. 142(1) dated: 09-10-2009, 26/10/2009 & 23/11/2009.

Contd 2/-

Deputy Commissioner of Income-tax, Circle-1, Bellary

43

\- 2 - Order under sec. 143(3) dt: 29-12-2009
in the case of M/s Noble Cold Storage Pvt. Ltd.,

4. The assessee is running a Cold storage facility for agricultural produce. It has also shown income from Godown meant for storage of agricultural produce. It has claimed deduction under sec. 80 IB at 30% in respect of the income of the cold storage unit. This is the seventh year of its operations and therefore, the deduction is claimed at 30% of the profits. The accounts are audited under sec. 44AB of the Act and auditor's report in form no: 3CD is also furnished along with the return of income. The accounts are maintained on mercantile basis.

5. Sri S.Panna Raj, C.A & authorised representatives of the assessee appeared and produced the books of accounts/details called for. After hearing the authorized representatives and considering their submissions *vis-a-vis* the material on record, the assessment is completed as under.

Total income as per the return		Rs. 6,23,410/-
Tax thereon		
Tax	Rs. 1,87,023	
Add: S.C @ 10%	Rs. 18,702	
Add: Education Cess @ 2%	Rs. 4,114	
TOTAL TAX PAYABLE..		Rs. 2,09,893/-
Taxes paid - TDS		Rs. Rs.8,87,068/-
Excess already refunded as per the intimation		Rs.6,77,230/-

The amount is refunded alongwith the interest as per the intimation.

BALANCE NOW PAYABLE/REFUNDABLE **Rs. NIL**

The demand notice under sec. 156 shall be issued accordingly.

(U.A. CHANDRAMOULI)
Deputy Commissioner of Income-tax,
Circle-1, Bellary.

Deputy Commissioner of Income-tax, Circle-1, Bellary.

7. In view of the above, since the premises is for storing of agricultural produce, the lease rentals received by the appellant are not liable for service tax. In similar set of facts in the case of **Punjab State Warehousing Corpn. Vs. CCE, Chandigarh** (supra), the Tribunal has held as follows:

> "On going through the documents produced before us, which are extracted hereinabove, the appellants are engaged in the activity of providing of space for storage and warehousing as well as keeping the records thereof and providing insurance and security service. As the appellant is providing various other services apart from the space for storage, therefore, the services appropriately

> fall under the category of Storage and Warehousing Services. Further, as these services are for agricultural produce, which is not in dispute, therefore, the appellant is not liable to pay service tax on Storage and Warehousing which has been exempted from service tax as per Section 65(105)(zza) of the Finance Act, 1994".

We, therefore set aside the impugned order and allow the appeal with consequential relief as per law, if any.

(Operative portion of the order was pronounced
in open court on conclusion of hearing)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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