CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No.21559 of 2015

(Arising out of Order-in-Appeal No.COC-EXCUS-000-APP-027-2015-16 dated 13.05.2015 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals-I), Cochin.)

M/s. Achuthan Pillai and Co.
XXIV/1578, Plot No.23,
Indira Gandhi Road,
Willington Island,
Cochin-682 023, Kerala. **Appellant(s)**

VERSUS

Commissioner of Central Tax and Central Excise, Cochin
C.R. Buildings, I.S. Press Road,
Cochin - 682 018.
Kerala **Respondent(s)**

APPEARANCE:

None appeared for the Appellant.

Mr. Vinod Kumar Garhwal, Superintendent (AR) for the Respondent.

CORAM: HON'BLE MR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 21948 / 2025

DATE OF HEARING: 02.12.2025
DATE OF DECISION: 02.12.2025

PER : D.M. MISRA

This is an appeal filed against Order-in-Appeal No.COC-EXCUS-000-APP-027-2015-16 dated 13.05.2015 passed by the Commissioner (A), Cochin.

2. None present for the appellant. Heard learned Authorised Representative (AR) for the Revenue.

3. Learned advocate on record for the appellant through email dated 01.12.2025 submitted that they made an attempt to contact the appellant, however, since one of the partner had expired and their legal heirs are not interest to provide instruction, hence he requested that the matter may be decided on the basis of available records.

4. Briefly stated the facts of the case are that the appellant had entered into an agreement with Appollo Tyres for renting their premises and also for providing services of loading and unloading of the materials received in the godown. Alleging that the services provided by the appellant are in the nature of 'Storage and Warehousing Service', show-cause notice was issued to the appellant for recovery of service tax of Rs.4,18,675/- along with interest and penalty for the period from April 2003 to September 2007. On adjudication, the demand was confirmed with penalty of equal amount. Aggrieved by the said order, they filed an appeal before the learned Commissioner (A), who in turn rejected their appeal. Hence the present appeal.

5. In their grounds of appeal, the appellant has referred to the various Board circulars wherein loading and unloading, packing, weighment, transportation, etc., are since incidental to the job of providing the premises on rent, therefore, they do not fall under the scope of 'Storage and Warehousing Service'. Further, it is submitted that loading and unloading charges are separately billed and collected from the client on reimbursement basis and they act as a pure agent, therefore, the reimbursement expenses cannot be added to the value of rent.

6. Learned Authorised Representative (AR) for the Revenue reiterated the findings of the learned Commissioner (A).

7. We find that the learned Commissioner (A) referring to the Board Circular No.1/11/2002-TRU dated 01.08.2012 while upholding the Order-in-Original reasoned that since the appellant had provided the godown / premises for storage and warehousing and also undertook the activity of loading and unloading, stacking, etc., the activities squarely fall under the category of 'Storage and Warehousing Service'. He has observed as:

> "9. (i) I have gone through the appeal memorandum and the submissions made at the time of hearing. The issue to be decided whether the service provided by the appellant comes under the category of 'storage and warehousing service'. Appellant had raised debit notes to M/s. Apollo Tyres Ltd. for storing and warehousing of goods. The Board vide Circular No. B.11/1/2002-TRU dated 01.08.2002 clarified regarding the scope of warehousing service. The relevant portion of the circular reproduced below:
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> > *"Storage and warehousing service for all kind of goods are provided by public warehouses, private warehouses by agencies such as the Central Wire Housing Corporation, Air Port Authorities Railways, Inland Container Depots, Container Freight Stations, storage godown and tankers operated by private individuals etc. The storage and warehousing service provider normally make arrangement for space to keep the goods, loading, unloading and stacking of goods in the storage area, keeps inventory of goods makes security arrangements and provide Insurance cover etc.*
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> > *It has been stated that in some case a storage owner only rents the storage premises. He does not provide any service such as loading/unloading, stacking security etc. A point has been raised as to whether service tax would be leviable in such cases. It is clarified that mere renting of space can not be said to be in the nature of service provided for storage or warehousing of goods. Essential test is whether the storage keeper provides for security of goods, stacking, loading/unloading of goods in the storage area."*
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> 9. (ii) In the present case appellant is providing the godown for storing and warehousing of goods for Apollo Tyres and also doing the activity of

loading/unloading, stacking etc. Therefore, the service provided by them cannot be treated as mere renting of space, but they are doing other activities and hence the service can be categorised under "storage and warehousing service". The appellant argued that the services such as loading and unloading were rendered by the laborers and they are acting as pure agent only. In order that the appellant to be treated as a pure agent, the conditions of sub-Rule (2) of Rule 5 of Service Tax (Determination of Value) Rules, 2006 have to be satisfied. The appellant could not produce satisfactory evidence to prove that they have acted as a pure agent of M/s. Apollo Tyres. Therefore the conditions of the said sub-Rule (2) has not been satisfied and the contention that they have acted as a pure agent is not acceptable. Accordingly, the impugned order confirming the demand with appropriate interest is upheld. Since the appellant had not disclosed the details of receipts in their statutory returns and not paid any service tax, they are liable for penalty under Section 78 of the Finance Act 1994. However, as the penalty is imposed under Section 78, penalty under section 76 is liable to be set side based on the settled rulings of the Hon'ble Tribunal in The Financers [2007 (8) STR (Tri-Del.)] among others. The legality of imposing both penalties has also been decided in the Departmental appeals in the Hon'ble High Court of Karnataka [2012-TIOL-418-HC-KAR-ST] in the case of CST, Karnataka vs. Motor World and others. Accordingly, penalty under Section 76 is set aside.

8. In view of the above, we do not find any error in the findings of the learned Commissioner (A). Consequently, the impugned order is upheld and the appeal is rejected.

(Dictated and pronounced in Open Court.)

(D. M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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