

**IN THE CUSTOMS, EXCISE & SERVICE TAX  
APPELLATE TRIBUNAL  
SOUTH ZONAL BENCH, CHENNAI**

**ST/Misc./41112/2017 and ST/611/2011**

(Arising out of Order-in-Original No. 22/2011 dated 26.8.2011  
passed by the Commissioner of Service Tax, Chennai)

M/s. Tamilnadu Warehousing Corporation                      Appellant

Vs.

Commissioner of GST & Central Excise    Respondent  
Chennai South

Appearance

Shri P.C. Anand, Chartered Accountant for the Appellant  
Shri B. Balamurugan, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)  
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **17.12.2018**

Final Order No. **43122 / 2018**

**Per Bench**

The appellants are engaged in providing storage and warehousing services, cleaning services, business auxiliary services and GTA services. During the audit of accounts, it was noticed that the ST-3 returns filed by the appellant did not tally with the income tax returns in their financial records and they had not discharged service tax correctly. Raising the above allegations, show cause notice was issued to the appellant for demand of service tax along with interest and for imposing

penalties. After adjudication, the original authority confirmed the demand of Rs.84,25,916/- along with interest and imposed equal penalty under section 78 of the Finance Act, 1994 and also ordered for recovery of CENVAT credit of Rs.2,23,007/-. Aggrieved, appellants are now before the Tribunal.

2. On behalf of the appellant, Id. consultant Shri P.C. Anand appeared and argued the matter. He submitted that the appellant is engaged in storing facility for agricultural produce. In addition to this, they provide storage facility of petroleum products of IOCL etc. For such activities, they had incurred services for fumigation of the warehouse. They had also rendered goods transport agency service. However, though the department has issued a show cause notice proposing to recover the service tax, the show cause notice does not mention the category of service under which the demand is made. The services of storing and warehousing of agricultural produce are exempted vide Notification No. 12/2002- So also the services of fumigation are exempted with regard to storing of agricultural produce. The appellant had provided such services not only for the agricultural produce but also for petroleum products. But the original authority has not taken into consideration the fumigation receipts, dess receipts etc. and has also not given weight to the contention of the appellant that they are using the warehouse for storing of agricultural products such as paddy, wheat etc. The impugned order has confirmed the demand

without mentioning the classification of service. The appellant has not been able to understand the category of service on which the demand has been made and with much effort has defended the proceedings. In respect of difference in the ST-3 returns and the income tax returns, he submitted that during the relevant period, which is prior to 2011, the ST-3 returns were on receipt basis whereas the income tax returns were filed on accrual basis. These have been explained to the officers who did not accede to the explanation given by the appellant. Since the category of services are not clear from the show cause notice or the impugned order, which has confirmed the demand, the appellant prayed that the impugned order may be set aside. He submitted that the appellant had no intention of evading payment of service tax by suppression of facts and therefore the demand raised invoking the extended period cannot sustain.

3. The Id. AR Shri B. Balamurugan supported the findings in the impugned order.

4. Heard both sides.

5. On going through the show cause notice, we find that the department has not mentioned the category / classification of the service under which the demand is made. Various allegations have been raised in the show cause notice. However, the classification of the service upon which the specific demand of service tax has been made is not forthcoming. Even after receiving the reply of the appellant, the adjudicating authority

has not been able to confirm the demand under a particular category. The allegation in the show cause notice as well as confirmation in the impugned order does not indicate as to what are the services under which the demand can sustain. The appellants have rendered storing and warehousing services for agricultural produce as well as petroleum products. They have rendered transportation of services for petroleum products. The department has not considered the exemption eligible for agricultural produce and has raised the demand without mentioning the category of service. It is not understood whether the demand is on storage or warehousing services or under GTA service. There is a fundamental flaw in the show cause notice as well as in the impugned order. For this reason, we hold that the demand cannot sustain and requires to be set aside. The impugned order is set aside and the appeal is allowed with consequential relief, if any.

6. The miscellaneous application filed by Revenue for change of cause title is allowed.

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

**(Madhu Mohan Damodhar)**  
Member (Technical)

**(Sulekha Beevi C.S.)**  
Member (Judicial)

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