16

TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. ST/13 /2007-14 /2007 - CU[DB] Date 21/05/2010

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S SHARMA ROADLINES

KHADIA BAZAR, YOGI CHAURAHA, SHAKTI
NAGAR, SONEBHADRA.

M/S SHARMA ROADLINES Appellant

Vs

C.S.T. ALLAHABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/28-29/ **2010 CU[DB]** dated 26.04.10 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent

   C.S.T. ALLAHABAD

   38, M.G. MARG, ALLAHABAD.
2. Adv. / Consult

   MR.S.K.DHINGRA,ADV

   128, LAWYER CHAMBER,SUPREME COURT OF INDIA, N DELHI.
3. S.D.R
4. J.C.D.R.
5. Bar association. CESTAT. New Delhi
6. Director Publications. Customs. Excise. I.P. Estate. New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
10. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
11. Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
12. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
13. Office Copy
14. Guard file

Assistant Registrar
(Customs Appeal Branch)

M/S SHARMA ASSOCIATES
KHADIA BAZAR, YOGI CHAURAHA, SHAKTI NAGAR,
SONEBHADRA, U P .

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
DIVISION BENCH

Service Tax Appeal No.ST/13/2007
Service Tax Appeal No.ST/14/2007

(Arising out of Order-in-Appeal No.19 & 20 ST/ALLD/05 dated 09.11.2006 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Allahabad)

Date of Hearing: 26.04.2010
Date of Decision: 26.04.2010

1.M/s.Sharma Associates — Appellant
2.M/s.Sharma Roadlines

Vs.

CCE, Allahabd — Respondent

Present for the Appellant: Shri S.K.Dhingra, Advocate
Present for the Respondent: Shri Sumit Kumar, DR

Coram:

Hon'ble Dr.Chittaranjan Satapathy, Technical Member
Hon'ble Mr. D. N. Panda, Judicial Member

Final **ORDER NO.** ST/28-29/10

PER: D.N.PANDA

Both the appellants came in appeal against the impugned order dated 09.11.2006 passed by the learned Commissioner (Appeals). Learned First Appellate Authority upheld the order-in-original dated 21.7.2006. It was held that the appellants provided C & F Agent Services failing to pay service tax suppressing the value of service resulting in evasion of service tax of Rs.9,12,790/- by M/s. Sharma Associates for the period from June, 2003 to December, 2004 and service tax of Rs.7,18,671/- on services provided by M/s.Sharma Roadlines for the period from October, 2000 to June, 2003. They also operated without taking service tax registration. Penalties of different amounts on both the appellants were also imposed under Sections 75, 76, 77 and 78 of Finance Act, 1994.

2. Learned Commissioner (Appeals) dealt the issue in page 5 to 9 of OIA. He found that the appellants were service providers to the service recipient M/s.E.I.L. being engaged in the clearing and forwarding of the goods namely fly ash inasmuch as they off took the fly ash from various thermal power plants on behalf of M/s.E.I.L. They packed the fly ash in gunny bags after proper storage and undertook the delivery of the goods at various premises of M/s.E.I.L. The appellants claimed that they were transporters of the goods and they had not provided C & F Agent Services which was held to be unsustainable on the facts and circumstances of the case. Learned Commissioner (Appeals) relied upon Circular No.F.No.B-43/7/97-TRU dated 11.07.1997 dated 11.07.1997 to come to the conclusion that the appellants provided C & F Agent Services. Looking to the clarification issued by CBEC through its letter F.No.159/1/2003-CX.4 dated 10.12.2003 he came to the conclusion that entire activities of dispatch of fly ash to various premises of principal resulted in calling for levy of service tax on the aforesaid class of service.

3. Learned Counsel appearing for the appellants submitted that the appellants only provided transport service and service tax on transport agency was withdrawn for the period 2.6.1998 to 31.12.2004 and upon reintroduction of service tax on such agency with effect from 1.2.2005, the appellant got himself registered on 1.2.2005. The learned Adjudicating Authority did not examine terms of contract but mechanically came to the conclusion that there was C & F Agent Services provided by the appellants.

4. Revenue fully supported the finding of the authority below and submitted that the authority below have thread bare examined the transaction made by the appellants and came to the conclusion that the appellants provided C & F Agent Services for which the course of law was applied. Therefore Revenue's prayer is for upholding the first appellate order.

5. Heard both sides and perused the records.

6. When the appellants raised their grievance that learned authority below did not examine the terms and conditions of the work order that causes anxiety to examine the order of learned authority below. Learned Adjudicating Authority appears to have looked into manner of functioning by the appellants. The authority has also examined the oral evidence gathered in the course of investigation. The appellant's contention that C & F Agents were working only in customs connected area but not in other area was discarded.

7. We have found that the appellants were brought to the fold of law at the entry stage of implementation of Finance Act, 1994 when the activity of C & F Agent was in debate before various forums. It would be preferable to send the matter back to the learned Adjudicating Authority to go through various judgments on the subject and facts of case and re-examine the terms of contract with the letters of law. Both sides do not disagree with such proposal for fair opportunity of hearing to rule out whether the appellant provided merely transport service but not C & F Agency Services.

8. In view of our above observation, we remand the matter back to the learned Adjudicating Authority to re-examine the issue and after granting fair opportunity of hearing to the appellants pass a reasoned and speaking order. He shall record the nature of services provided by the appellants and terms and conditions of work order and law on the subject, pleading of both sides and reasons of his decision.

9. In the result, both appeals are remanded setting aside the appellate order.

(Reasons of decision and decision pronounced in the open court on the date of hearing).

(Dr. CHITTARANJAN SATAPATHY)
TECHNIAL MEMBER

(D.N.PANDA)
JUDICIAL MEMBER

mk