CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 07.02.2017

Service Tax Appeal Nos. 982 - 983 of 2011

(Arising out of order- in- appeal No. 133 – 134(CB) ST/JPR-II/2011 dated 24.02.2011 passed by the Commissioner (Appeals) Customs & Central Excise, Jaipur-I).

M/s Shriji Ice Factory Appellant

Vs.

CCE, Jaipur-II Respondent

Appearance:

Ms. Rinky Arora, Advocate for the appellant
Dr. Neha Garg, AR for the Revenue

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Final Order Nos. 50749 – 50750/2017

Per: **Justice (Dr.) Satish Chandra**:

The present appeals are filed against the order-in-appeal No. 133 – 134(CB) ST/JPR-II/2011 dated 24.02.2011, passed by the Commissioner (Appeals) Customs & Central Excise, Jaipur.

2. The brief facts of the case are that the appellants are engaged in providing cold storage services for chilling plant to M/s Udaipur Dugdh Utpadak Sehkari Sangh Limited, Udaipur. The lower authorities opined that the appellant is providing the services as per Section 65(104c), so the lower authorities demanded the service tax under the heading "Business Support Services". Being aggrieved, the present appeal is filed by the appellant.

3. With this background, we heard Ms. Rinky Arora, ld. Advocate for the appellant and Dr. Neha Garg, ld. AR for the Revenue.

4. After hearing both the parties and on perusal of record, it appears that the milk comes under the category of “agricultural produce”. The appellant is not processing/treating/ trading the milk. It is just chilling the milk which was later supplies to the consumer. Section 65(102) of the Finance Act, 1994 provides as under:

> “(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*;”

5. From the above, it is evident that the storage of agricultural produce is exempted from the service tax. In the instant case, the appellant is providing chilling of milk and certainly, not processing/ trading of milk. When it is so, then we find no reason to sustain the impugned order for the reason that the case of the appellant is covered by the aforesaid provision. In view of the above, we find no justification in the impugned order, the same is hereby set-aside.

6. In the result, both the appeals filed by the appellant are allowed.

(Dictated and pronounced in the open Court).

(Ashok K. Arya)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

Pant