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 No. 704 of 2012

(Arising out of order- in- appeal No. 19/(ALJ)/ST/JPR-I/2012 dated 21.02.2012 passed by the Commissioner of Central Excise (Appeals) Jaipur).

M/s Vikas Enterprises Appellant

Vs.

CCE, Jaipur Respondent

Appearance:

Ms. Jatin Mahajan, Advocate for the appellant
Sh. J. P. Singh, AR for the Revenue

Coram:

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

Final Order No. 50788 /2017

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

The present appeal is filed against the order-in-appeal No. 19/(ALJ)/ST/JPR-I/2012 dated 21.02.2012 passed by the Commissioner of Central Excise (Appeals) Jaipur. The period of dispute is from 01.04.2000 to 09.09.2004.

2. The brief facts of the case are that the appellant was appointed as handling agent of M/s Binani Cement Limited, Ahmedabad. The job of the appellant is only loading and unloading of the goods. The Commissioner (Appeals) in his order in para 2.3 has mentioned that the appellant is providing

handling service i.e. unloading of trucks/ trailers, stacking them in godown and loading of trucks against delivery challans, maintaining all the records/ registers, formats and submission of daily/ periodical reports in respect of dumps of M/s Binani Cement Limited. The lower authorities have treated the above mentioned service as C&F agent. So they levied service tax on the services provided by the appellant. Being aggrieved, the appellant has filed the present appeal.

3. With this background, we heard Shri Jatin Mahajan, ld. Counsel for the appellant and Shri J. P. Singh, ld. AR for the Revenue.

4. From the record, it appears that the appellant has obtained service tax registration w.e.f. 06.10.2004 and have paid the service tax w.e.f. 10.09.2004. But prior to it, the appellant was providing merely the handling services as mentioned above. During the course of arguments, ld. Counsel for the appellant submits that the godown and other facilities were provided by M/s Binani Cement Limited.

5. From the record it appears that the issue is covered in favour of the appellant as per the ratio laid-down in the case of ***Narottam & Company vs. CCE, Jaipur – 2014 (33) STR 472 (Tri. Del.***) where it was observed that the appellant only providing the labour for loading of cement at the rail heads, loading into the trucks for transportation to the storage godown of M/s Binani Cement and thereafter unloading at the godown and its stacking and thereafter arranging the dispatch of the cement as per the directions of M/s Binani Cement, that they also maintained a record of the receipt and dispatch,

that the activity of the appellant is only of forwarding and not clearing and forwarding and, hence, the same is not taxable.

6. On this issue, the Tribunal has followed the Larger Bench decision in the case of ***Medpro Pharma Pvt. Ltd. vs. CCE, Chennai – 2006 (3) STR 355 (Tri. LB)*** where it was observed that:

> "7. *The dispatch of the goods from the factory to the godown is arranged by the principal M/s Binani Cement and not only this, even the godown has been rented by M/s Binani Cement only where they have deployed their own staff. Thus, the activity of the appellant is only of forwarding and not clearing and forwarding and hence in view of judgment of Hon'ble Punjab & Haryana High Court in the case of CCE, Panchkula v. Kulcip Medicines (P) Ltd., (supra), the appellant's activity would not be covered by the C&F agent's service taxable under Section 65(105)(j) read with Section 65(25) of the Finance Act, 1994. We also find that the judgment of Hon'ble Punjab & Haryana High Court in the case of CCE, Panchkula v. Kulcip Medicines (P) Ltd. (supra), has been upheld by the Apex Court vide judgment reported in 2012 (25) STR J127 (SC). In view of this, the impugned order is not sustainable. The same is set aside. The appeal is allowed*".

7. In view of above, we find no merit in the impugned order, the same is hereby set-aside.

8. In the result, the appeal filed by the appellant is allowed.

(Dictated and pronounced in the open Court).

(Ashok K. Arya)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

Pant