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

COURT –II

Date of hearing/decision: 12.06.2018

Appeal No. ST/638/2011-DB

[Arising out of Order-in-Appeal No. 01/COMMR/ST/IND/2011 dated 19/01/2011 passed by the Commissioner of Central Excise-INDORE]

B.P.T. POLYMERS PVT. LTD — Appellant

Vs.

C.C.E. INDORE — Respondent

Appearance
Shri Abhishek Jajoo, Advocate for the appellant
Shri Sanjay Jain, AR for the Respondent

Coram:
Hon'ble Mr. V. Padmanabhan, Member (Technical)
Hon'ble Ms. Rachna Gupta, Member (Judicial)

Final Order No. 52223/2018

Per: V. Padmanabhan:

1. The present appeal challenges the Order-in-Original No. 01/2011 dated 19/01/2011. The appellant had been appointed as Handling and Transporting Agent by M/s Oswal Chemical and Fertilizers Ltd., Shahjahanpur for providing certain services. The appellant also entered into two formal agreements with M/s Oswal. After scrutinizing the agreement between the two parties, the Revenue formed an opinion that the activities carried out by the appellant for M/s Oswal are liable to payment of Service Tax under the category of Clearing and Forwarding Agent Service defined under Section 65 (25). The show cause notice was adjudicated by the Original Adjudicating Authority vide its order dated 29/12/2008 in which demand of Service Tax was dropped against the appellant. However, the Jurisdictional Commissioner passed an Order-in-Review dated 19/01/2011 in which the demand for Service Tax amounting to Rs. 14,63,849/- was upheld

along with interest and penalties. Aggrieved by the decision present appeal has been filed.

2. In this connection we heard Shri Abhishek Jajoo, Ld. Counsel for the Appellant and Shri Sanjay Jain, Ld. DR for the Revenue.

3. The Ld. Advocate submitted that the activities carried out as per the agreements with M/s Oswal do not merit to be classified under 'Clearing and Forwarding Service'. He relied on the order passed by the Original Authority in which a view has been taken that the appellant has only carried out the activity of renting the godown to M/s Oswal. The Original Adjudicating Authority dropped the demand for Service Tax since the activities are not covered within the definition and the clarification issued by CBEC vide Circular dated 10/07/1997 in which the activities expected to be undertaken by C&F Agent have been outlined. Hence, he prayed that the impugned order may be set aside.

4. The Ld. DR justified the impugned order. He brought to our notice that the Adjudicating Authority has carefully considered the Rake Handling Agency Agreement as well as Material Handling Agreement – both of which have been executed by the appellant with M/s Oswal Chemical and Fertilizers. He further relied on the findings of the Adjudicating Authority and explained that the appellant was arranging for transportation of material from the storage places i.e. godown and also loading of material from the godown to such which transported the material to the place of the customers of the M/s Oswal Chemicals and hence covered with C & F Service.

5. We have heard both sides and carefully considered the appeal record.

6. The appellant has entered into two agreements with M/s Oswal. After going through the contents of both agreements it appears that the responsibilities of the appellant included receipt of goods dispatched by M/s Oswal at the Railway siding, unloading the material from the railway wagon, and transport the same to the storage facility. The godown was in fact rented by the appellant to M/s Oswal. The responsibility of the appellant further included stacking of the goods in the godown and also loading the material on to the truck which will transport the material to the ultimate customers of M/s Oswal.

7. The activities which are generally covered within the definition of C & F Agent has been circulated by the CBEC vide the Circular dated 10/07/1997 which was issued at the time of levy of Service Tax on C & F Agent Service. The C & F Agent is expected normally to undertake the following activities:-

   a. Receiving goods from the factories or premises of the principal or his agents.
   b. Warehousing these goods.
   c. Receiving dispatch orders from the principal
   d. Arranging dispatch of goods as per the directions of the principal by engaging transport on his own or through the authorized transporters of the principal.
   e. Maintaining records of the receipt and dispatch of goods and the stock available at the warehouse.
   f. Preparing invoices on behalf the principal.

8. The most significant aspect of the activities expected to be performed by the C & F Agent is the receipt of the goods dispatched by

the principal from their factory, warehousing the same and arranging to dispatch the goods as per the directions of the principal, along with invoicing the same to the ultimate customers. It is seen that C & F Agent is expected to undertake all these activities as an agent of the principal.

9. After perusal of both the agreements entered by the appellant with M/s Oswal and the activities expected to be carried out by them, we note that the appellant has not acted as an agent of M/s Oswal. Though they have been entrusted with the responsibility of receiving the goods at railway siding and storing the same in the godown as also loading of the same onto the truck, it cannot be said that the appellant has acted as agent of the principal – least of all as a C & F Agent of the principal.

10. In the facts and circumstances of the present case, we are of the view that the appellant cannot be said to have acted as C & F Agent of M/s Oswal, as appearing from the agreements on record.

11. In the result, we find no justification to sustain the levy of Service Tax under the above category. Impugned order is set aside and the appeal allowed.

(Dictated and pronounced in the open Court)

(Rachna Gupta)
Member (Judicial)

(V. Padmanabhan)
Member (Technical)

Rekha