**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI**
**PRINCIPAL BENCH, COURT NO. IV**

**Service Tax Appeal No. 50851 of 2015**

[Arising out of the Order-in-Original No. Jai-Excus-001-Com-64-14-15 dated 26.11.2014 passed by Commissioner (Appeals) Central Excise, Jaipur ]

**M/s. Krishak Bharti Co-operative Ltd.** **Appellants**

**Vs.**

**CCE & CST, New Delhi** **Respondent**

**Appearance:**
**Shri A K Batra, CA for the Appellants**
**Shri Sanjay Jain, AR for the Respondent**

**<u>CORAM</u>**:
**Hon'ble Mr. C L Mahar, Member (Technical)**
**Hon'ble Ms. Rachna Gupta, Member (Judicial)**

Date of Hearing/ Decision: 08.08. 2018

**FINAL ORDER No.52871 /2018**

**Per: C L Mahar:**

The brief facts of the matter are that the appellant-assessee is engaged in the manufacture of various kinds of fertilizers. They are also registered with the Service Tax department under the category of 'Goods Transport Agency' service. As recipient of GTA service, the appellant-assessee is discharging their service tax liability as per the provisions of the Service Tax law. It has been the contention of the department that the appellant-assessee has not included the value of loading /unloading, and stacking charges in the service value of

GTA service. The department has primarily relied upon the CBEC circular No. 104/2007-2008 ST dated 6.8.2008. The short payment of Service Tax amounting to Rs.57,21,856/- for the period June, 2008 to March, 2012 have been demanded under section 73(1) of the Finance Act, 1994. The provisions of penalty and interest has also been invoked. The matter came to be adjudicated vide impugned adjudication order dated 19.12.2014 wherein the charges as invoked in the above mentioned show cause notice has been confirmed by the learned Commissioner.

2. The appellants are before us contending the levy of service tax on the charges of loading /unloading, staking / de-stacking of fertilizers consignment transported by their various contractors. It is the matter of record that the assessee has duly discharged their service tax liability on the transportation charges paid by them to various transport contractors under reverse charge mechanism basis as provided under the Finance Act, 1994. It has been the contention of the department that the charges of loading /unloading staking / de-stacking fertilizers consignment transported by various transport contractors should also have been included in the value of services while discharging the service tax liability. It has been the contention of the department that as per the circular No. 104/07/2008 ST dated 6.8.2008 provides that -

> “. ***Issue 3 :*** Whether time sensitive transportation of goods by road in a goods carriage by a GTA shall be classified under courier service and not GTA service?
>
> ***Clarification :*** On this issue, it is clarified that so long as, (a) the entire transportation of goods is by road; and (b) the person transporting the goods issues a consignment note, it would be classified as ‘GTA Service’.”

2. Thus, on the above clarification arguing that the value of impugned services like loading /unloading, staking / de-stacking etc. should have been included in the value of services, discharging the service tax liability on reverse charge basis by the appellant assessee.

3. It has been the contention of the learned advocate that the appellant-assessee have correctly discharged his service tax liability wherever the value of loading /unloading, staking / de-stacking is consolidated and included in transportation charges. The appellant-assessee has discharged their Service tax liability on the entire value of the contract after availing the prescribed abatement. Further only where the charges of loading / unloading staking / de-stacking of the warehouse is separately provided in various contracts, same has not been included and as per the contract the service provider has to discharge the Service Tax liability of handling loading/unloading charges which are recovered by the contracts from the appellant assessee. Learned advocate has taken us through various sample invoices to prove his contention as contained in this regard. A copy of such invoices is reproduced herewith:

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ANNEX 'B'

| Operation | For Covered rake | For Open rake |
|---|---|---|
| Clearing of material at railhead, liaison with Railways, unloading from rakes, stacking at railway platform, de-stacking at railway platform and loading into trucks. The quoted rates for handling i.e.rake handling,unloading at warehouse and loading at warehouse should be **inclusive of service tax and it will be the responsibility of the bidders to pay-/bear the service tax.** | 50— | 57— |
| Transportation to Local warehouse /Storage points and societies upto 15 KM from rakepoint/warehouse<br>Bidders should quote their transportation rates **exclusive** of service tax since it will be the responsibility of the KRIBHCO to pay service tax on transportation. | 110— | 110— |
| Unloading from trucks and staking in warehouse.(**Inclusive** of service tax) | 28— | 28— |
| Destacking at warehouse and loading into trucks at warehouse (**Inclusive** of service tax) | 28— | 28— |
| Standrisation of cut and torn bags (for actual number of bags standarised) | 100— | 100— |
| **Distance slab (Kms.)** | | |
| 16 - 25 | 5.50 | |
| 26 - 50 | 5.00 | |
| 51 - 75 | 3.50 | |
| 76 - 100 | 2.89 | |
| 101 - 125 | 2.35 | |
| 126 - 150 | 2.14 | |
| 151 - 175 | 1.85 | |
| 176 - 200 | 1.77 | |
| 201 - 250 | 1.55 | |
| 251 - 300 | 1.40 | |
| 301 - 350 | 1.25 | |

The bidder accepts unconditionally all the terms and conditions of tender documents.

The bidder should quote their rates for rake handling ,unloading at warehouse and loading at warehouse including of service tax and the bidders should quote their transportation rates exclusive of service tax.

**For SHREE TRANSPORT CORPORATION**

S.N. [illegible]

Signature & Seal of Tenderer / Authorised Signatory

1.1.2011

Dr. S. P. SINGH
Chief State Manager (Mktg.)
Krishak Bharati Cooperative Ltd.
JAIPUR (RAJ.)

Year-11-12

V K Swaminathan

वी.के. स्वामीनाथन
V.K. SWAMINATHAN
Chief General Manager

| Operation | Rate/(Rs./MT) For Covered rake | For Open rake |
|---|---|---|
| Handling of material at railhead, liaison with railways, unloading from rakes, stacking at railway platform, de-stacking at railway platform and loading into trucks. The quoted rates for handling i.e. rake handling, unloading at warehouse and loading at warehouse should be inclusive of service tax and it will be the responsibility of the bidders to pay /bear the service tax. | 59=85 | 64=85 |
| Transportation to Local warehouse /Storage points and societies upto 15 KM from rakepoint/warehouse. Bidders should quote their transportation rates exclusive of service tax since it will be the responsibility of the KRIBHCO to pay service tax on transportation. | 128=85 | |
| Unloading from trucks and staking in warehouse.(inclusive of service tax ) | 36=85 | |
| Destacking at warehouse and loading into trucks at warehouse (inclusive of service tax ) | 35=85 | |
| Standrisation of cut and torn bags (for actual number of bags standarised ) | 129=85 | |

| Distance slab (Kms.) | Rate/Km./PMT (Rs.) |
|---|---|
| 16 - 25 | 9=45 |
| 26 - 50 | 8=65 |
| 51 - 75 | 5=95 |
| 76 - 100 | 4=65 |
| 101 - 125 | 3=65 |
| 126 - 150 | 3=05 |
| 151 - 175 | 2=75 |
| 176 - 200 | 2=55 |
| 201 - 250 | 2=55 |
| 251 - 300 | 2=30 |
| 301 - 350 | 2=20 |

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A. Sharma, 22/12/09

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22/12

The bidder accepts unconditionally all the terms and conditions of tender documents. The bidder should quote their rates for rake handling ,unloading at warehouse and loading at warehouse including of service tax and the bidders should quote their transportation rates exclusive of service tax.

Signature & Seal of Tenderer

Dr. S. P. SINGH
Chief State Manager (Mktg.)
Krishak bharati Cooperative Ltd.
JAIPUR (RAJ.)

Ram Naresh
Prop.

Yr. 2009-10

V K Swaminathan
वी.के. स्वामीनाथन
V.K. SWAMINATHAN
मुख्य महा प्रबंधक (वित्त एवं लेखा)
Chief General Manager (F & A)
कृषक भारती ...
Krishak Bharati ...
A-10, Sector ...

***4.*** A glance on above mentioned invoice makes it apparently clear that the appellant assessee while giving contract to transportation of fertilizers have categorically provided that the transportation charges are to be quoted exclusively of service tax because the appellant assessee knew that they themselves have to discharge the service tax liability on transportation charges under reverse charge mechanism basis. While so far as the other charges like rack handling loading /unloading of fertilizers cargo and stacking and un-staking of cargo at the warehouses etc are concerned, these charges are inclusive of service tax and the bidder i.e. the transport contract was supposed to discharge the service tax liability on such charges themselves. It has also been contended by the learned advocate that CBEC vide their clarification on various service tax matters, issued from F No. B 11/1/2002 TRU dated 1.8.2002 has provided that if lump sum amount is charged for both transportation and cargo handling, the service tax will be payable on the entire amount, On the other hand, if the bill indicates the amounts charged separately for cargo handling and transportation on actual basis (verifiable by documentary evidence) in that case, the service tax should be leviable separately under the relevant service tax category i.e. cargo handling charges and road transport agency charges. The relevant portion of the above mentioned clarification is reproduced herein below:-

"***3.3 Cargo handling service provided in relation to storage of agricultural produce (scope of the term "agricultural produce" is given under the storage and warehousing service) or for goods meant to be stored in cold storage have been exempted from the levy of service tax. (see Notification No.10/2002-ST).***

***4. A point has been raised as to what would be the value of service tax in a case where transport and cargo handling service is provided in a composite manner. The measure of tax is the gross amount charged by the cargo handling agency from the customer. Therefore, if lumpsum amount is charged for both transportation and cargo handling, the tax will be payable on the entire amount. <u>On the other hand, if the bill indicates the amount charged for cargo handling and transportation separately on actual basis (verifiable by documentary evidence), then the tax would be leviable only on the cargo handling charges.</u>***"

5. Learned advocate has also contended that the demand is barred by limitation as there are no element of suppression of facts or mis - declaration on their part with an intent to evade service tax, it is argued that the accounts of the appellant-assessee are being audited by the Department on regularly yearly basis and all the facts have been before them and therefore the extended period of time provisions of Section 57 (1) for demanding service tax is not invokable in their case as in their case the elements required for invoking extended time provision are not available. Accordingly,

the penalty under section 78 of Service Tax Act, 1994 is also not invokable.

6. We have heard Shri Sanjay Jain, learned DR who has reiterated the findings of the order in original.

7. We have heard both the sides and we are of the view that provisions of Circular No. 104/07/2008-ST dated 6.8.08 are relevant only in cases where the consolidated value of transportation charges is being recovered from the service recipient by the service provider. And the clarification is primarily with regard to whether abatement will be entitled on the full value of such charges i.e. transportation charges plus cargo handling, loading, / unloading, stacking /destacking charges etc. are also included. In this particular case, the contracts for transportation of fertilizers cargo filed by the appellant assessee, with regard to various transport contractor are very categorically having two parts, first, which is primarily for transportation of fertilizers; and second is for loading / unloading and stacking/ de-stacking of fertilizers and separate charges for each activity are indicated . The appellant-assessee has very categorically and in very transparent way has provided that the service tax on transportation charges will be paid by them and in case of cargo handling i.e. to say loading / unloading stacking/ de stacking of fertilizers will be paid by the service provider himself. We find that

since the value of both the services have categorically been provided separately, the appellant assessee has discharged his service tax liability under reverse charge mechanism of transportation charges as is the requirement of Service tax law, we do not find any legally tenable ground to demand service tax on the cargo handling charges on which service tax as per the provisions of service tax law is to be discharged by the service provider i.e. various transport contractors.

8. The CBEC has also in their clarification dated 1.8.2002 (supra) has provided that in cases where payments including the bill amount charged is separate for cargo handling and other transportation charges, the Service Tax to be paid on actual basis i.e. cargo handling charges are to be taken separately for deciding the Service tax liability. Since in the present case, the value has been indicated separately and there is no charge of the department that the service provider of the cargo handling service like loading /unloading stacking /destacking of fertilizer consignment has not discharged their service tax liability. It is seen that the department has not even tried to prove that there is short payment of service tax. We also find that since there is no charge of non-payment of service tax by the contractors of cargo handling services like loading / unloading etc. in that case they must have paid service tax on the full value of service and if same is added to the transportation charges, the appellant-assessee will be entitled for prescribed abatement and as a result the

Department would get less amount of service tax. Thus, we find no merit in confirming short payment service tax in this case.

9. We also agree that since the appellant assessee is being audited regularly by the Department and all the details have been in the knowledge of the department and the charge of suppression of facts or mis declaration etc. have not been established by the department. , Therefore the demand of duty under section 73 (1) under extended time proviso is not sustainable on the ground of limitation in this case. Therefore, we find that demand is also barred by limitation.

10. In view of the above, we do not find any merit in the impugned order in original and thus same is set aside. Accordingly, appeal is allowed.

(operative part of the order pronounced in the open Court)

**( Rachna Gupta )**
**Member ( Judicial )**

**( C L Mahar )**
**Member (Technical)**

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