

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi**

COURT NO. I

DATE OF HEARING : 02/01/2019.
DATE OF DECISION : 02/01/2019.

Service Tax Appeal No. 52971 of 2016

[Arising out of the Order-in-Appeal No. BHO-EXCUS-001-APP-145-16-17 dated 13/07/2016 passed by The Commissioner (Appeals), Customs, Central Excise and Service Tax, Bhopal.]

M/s All Cargo Global Logistics Ltd. Appellant

Versus

CCE & ST, Bhopal Respondent

Appearance

Shri A.K. Batra, C.A. and Ms. Shohini, Advocate – for the appellant.

Shri R.K. Majhi, Authorized Representative (DR) – for the Respondent.

**CORAM : Hon'ble Shri Justice Dilip Gupta, President
Hon'ble Shri C.L. Mahar, Member (Technical)**

Final Order No. 50051/2019 Dated : 02/01/2019

Per. C.L. Mahar :-

The brief facts of the matter are that the appellant are registered with the Service Tax Department under the taxable category of cargo handling services, storage in warehousing services and goods transport agency service. On the basis of an audit conducted by the department on 21 August, 2012, the

Department entertained a view that the appellant have not discharged the service tax liability on the amount received by them from the service recipient in lieu of providing transportation of goods by road service, cargo handling, weighment charges and trailer detention charges. In view of above, a show cause notice dated 16/01/2014 was issued, wherein service tax amounting to Rs. 2,99,972/- has been demanded from the appellant for the period 01/04/2008 to 31/03/2011 under the category of transport of goods by road service. The show cause notice was adjudicated by order dated 20 October, 2014 wherein the above-mentioned amount of the service tax was confirmed and an equal amount of the penalty was imposed under Section 78 of the Finance Act. The interest as provided under Section 75 of the Finance Act, 1994 was also proposed for recovery as per the impugned order-in-original. Against the impugned order-in-original, the appellant filed an appeal which was decided by the learned Commissioner (Appeals)'s by order dated 13 July, 2016 whereunder the findings of order-in-original have been endorsed by the learned Commissioner (Appeals). The appellants are before us against the impugned order-in-appeal dated 13 July, 2016.

2. It has been contended by the learned Advocate appearing on behalf of the appellant that the entire demand has been proposed by the Department under the category of goods transport agency service holding that the charges, such as, weighment charges, cargo handling charges, empty container

transportation charges etc. are ancillary to the main service namely goods transport agency service and as per the Circular No. 104/07/2008 dated 6 August, 2008, the value of the ancillary services has to be added to the main service which is a goods transport agency service in this case. The Department also extended the benefit of Notification No. 32/2004-ST dated 3 December 2004 whereby abatement of the 75% from the gross amount charged has been granted to them and the demand has been raised on the balance value of 25%. It has been the contention of the learned Advocate that once the Department accepts that the amount has been received by the appellant as a service provider of the goods transport service agency then in that case the service tax liability arises only upon the consignor/consignee whosoever paid the freight charges as per the provision of Section 68 of the Finance Act, 1994 and Rule 2 (d) (5) of Service Tax Rules, 1994. On the basis of above arguments, the learned Advocate has impressed upon that in case the service tax liability on the charges recovered by the appellant on the ancillary services for the transport of goods is to be made chargeable, the same has to be recovered from the service recipient who has paid the freight charges as per the provision of Section 68 readwith Service Tax Rules 2 (1) (d) (5) of the Service Tax Rules, 1994. Thus, in view of above arguments, it has been prayed that confirmation of service tax on appellant is beyond the provision of the service tax law and same needs to be set aside.

3. We have also heard the Departmental Representative who has reiterated the findings as given in the order-in-appeal.

4. We find that it is a matter of record that the services as provided by the appellant, such as, empty transportation of containers, trader detention charges, cargo handling charges, weighment charges etc. are ancillary to the main activity of the transportation of the goods service. As per the provisions of Section 68 readwith Rule 2 (d) (1) (5), the service recipient, namely the person who paid the freight needs to pay the service tax. It is also a matter of record that the charges of ancillary services are given in the same invoices under which the transportation of the goods have been charged by the appellant to the recipient of goods transported namely consignee/consignor who are paying the freight for transportation of their goods. Since, it is a settled principle that the ancillary services are to be classified with the main service which is goods transport by road service in this case and as the bills have also been raised on the consignor or consignee who are paying the freight for the goods transportation then as per the provision of Section 68 readwith Rule 2 (1) (d) (5), the person who is paying the freight has to pay the service tax on the goods transport agency service inclusive of all the charges of ancillary services provide above.

5. In view of above, we are of the view that the show cause notice itself has wrongly been issued to the appellant as the liability to pay the service tax on the goods transport agency

service charges inclusive of ancillary services should have been raised on the person who has paid the freight.

6. In view of above, we hold that the demand of service tax is not sustainable on the appellant and, therefore, the impugned order-in-appeal is set aside. The appeal is, accordingly, allowed.

(Operative part of the order pronounced in the open court.)

(Justice Dilip Gupta)
President

(C.L. Mahar)
Member (Technical)

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