CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court – I

APPEAL No. ST/802/2010
(Arising out of Order-in-Original No. 28/2009-ST, dated 31.12.2009 passed by CCCE&ST, Guntur)

INVENTAA CHEMICALS LIMITED .. APPELLANT

Vs.

CCCE&ST, Guntur .. RESPONDENT

Appearance
None for the Appellant.

Shri A.V.L.N. Chary, Superintendent /AR for the Respondent.

Coram:
Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 23.10.2018
Date of Decision: 02.11.2018

FINAL ORDER No. A/31376/2018

[Order per: Mr. P.V. Subba Rao]

1. The appellant herein is the manufacturer of bulk drugs and Drug Intermediates and has obtained service tax registration under the category of "Transportation of Goods by Road" (GTA) Service and "Business Auxiliary Service" and had to pay service tax on freight inward and outward

and service tax on the commission paid under Reverse Charge Mechanism. Superintendent of Central Excise issued a show cause notice alleging that they have not paid the service tax on transportation charges paid for procurement of husk. The appellants contested the show cause notice stating that transportation of husk is paid for by the suppliers and not by them. Appellants also claimed the benefit of exemption notification No. 34/2004-ST, dated 03.12.2004 as the gross amount charged on each consignment of husk transported did not exceed Rs. 1500/- and therefore they were exempted from payment of service tax. They further contested that the goods were transported by individual truck/lorry owners who did not issue any consignment notes and therefore the demand may be dropped. After following due process of law, Ld. Commissioner confirmed the demand and imposed penalties under sections 76, 77 & 78, hence this appeal on the following grounds:

(a) The appellants used only services of private truck owners/lorry owners who did not issue any consignment notes and hence were not covered by the definition of Goods Transport Agency operators as has been held in the case of Kanakadurga Agro Oil Products Limited [2009(15)S.T.R 399 (Tri.-Bang.) and Lakshminarayana Mining Company [2009(16)STR 691)].

(b) The demand is time barred and extended period of limitation cannot be invoked. They have also pointed out some errors in calculation of the demand in the show cause notice.

2. Ld. DR reiterates the Order-in-Appeal and submits that the appellant is liable to pay service tax on GTA services for the following reasons:

(a) It has been held by Hon'ble High Court of Madras in the case of Suibramania Siva Coop. Sugar Mills Limited [2014(35)S.T.R 500 (Mad.)] that even the individual truck owners are covered under the definition of GTA operators and they need not be commercial concerns.

(b) They are not entitled to the benefit of exemption notification No. 34/2004 because the perusal of the records submitted by the assessee showed that the goods transported were only one consignment i.e. husk in various trucks and tractors and the cost of transport paid by various transporters vary from Rs. 1,000/- to Rs. 1,500/-. Therefore the exemption notification 34/2004 is not applicable to them because it does not fulfill either of the two conditions namely (i) the gross amount charged on consignments transported in a goods carriage does not exceed rupees one thousand five hundred or (ii) the gross amount charged on an individual consignment transported in a goods carriage does not exceed rupees seven hundred fifty.

(c) Non payment of service tax on the procurement of husk was not intimated to the department until the fact was unearthed by the department with a willful intention to evade payment of service tax is evident.

(d) As the tax has not been paid, applicable interest as well as penalties are imposable as per Sections 75, 76 & 77 & 78 of Finance Act, 1994.

3. We have considered the arguments on both sides. The decision of the Tribunal in the case of Kanakadurga Agro Oil Products Limited (supra) has been over turned by Hon'ble High Court of Madras in the case of Suibramania Siva Coop. Sugar Mills Limited (supra) inasmuch as the individual truck owners have also been held to be covered under the definition of "Goods Transport Agency" Services. However, in that particular case, the question of whether a consignment note is required to be issued or not, was not examined. A plain reading of the definition of "Goods Transport Agency" services as reproduced in para 12 of the judgment was as follows.

*"**12.** The definition of "**Goods Transport Agency**" under section 65(50b) of the Finance Act from 1-5-2005 and upto 30-4-2006, read as follows.*

> *Goods Transport Agency, means any commercial concern which provides service in relation to transport of goods by road and issues consignment note, by whatever name called.*

From 1-5-2006, the definition reads as follows:

> *Goods Transport Agency, means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called.*

Thus, the only amendment that was brought under Finance Act, 2006 with effect from 1-5-2006 was that as against the "commercial concern", the Finance Act substituted "any person who provides" and thus widened the scope of the definition as applicable to all persons irrespective of it being an individual or a commercial concern.

4. It is not in dispute in that particular case that no consignment notes were issued by the transport agencies. The only point of contention is whether any consignment notes were issued by individual transporters or otherwise. In this particular case, a specific assertion has been made before this Bench in the grounds of appeal that no consignment notes were issued. It is also not clear from the Order-in-Original whether the consignment note was issued in this case or otherwise. If no consignment note is issued, the present case automatically gets excluded from the definition of GTA services by virtue of definition itself and no service tax is to be paid, else service tax is payable. We, therefore, find that this is a fit case to be remanded back to the original authority to examine whether any

consignment notes by whatever name called, were issued by the truck operators and decide the demand accordingly. Matter is remitted to the original authority.

5. Appeal is allowed by way of remand.

(Pronounced in Open Court on 02.11.2018)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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