CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench

Court - I

Appeal No. ST/701/2009

(Arising out of Order-in-Appeal No.50/2009 (V-I) ST dated 27.04.2009 passed by CCCE & ST (Appeals), Visakhapatnam)

K. Ramabrahmam & Sons Pvt Ltd ..... Appellant(s)

Vs.

CCCE & ST, Visakhapatnam - I ..... Respondent(s)

Appearance

Shri V. Ravindranath, Advocate for the Appellant.

Shri N. Bhanu Kiran, Asst. Commissioner/AR for the Respondent.

Coram:

HON'BLE Mr. M.V.Ravindran, MEMBER (JUDICIAL)

HON'BLE Mr. P. Venkata Subba Rao, MEMBER (TECHNICAL)

Date of Hearing: 01.01.2019

Date of Decision: 01.01.2019

FINAL ORDER No. A/30034/2019

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

1. This appeal is directed against Order-in-Appeal No. 50/2009 (V-I) ST dated 27.04.2009.

2. The appellant herein is engaged in the provision of cargo handling service to M/s Nagarjuna Fertilizers and Chemicals Ltd (NFCL) at the port. He received imported urea and transported it to the warehouses of the clients. Due to shortage of space and rakes at port sidings, their clients, NFCL, wanted the baggage cargo to be taken to a different siding namely Marripalem siding and requested the appellant to indicate the additional transportation cost towards such change in the siding. The appellant has been paying service tax under cargo handling service for their normal work which is not in dispute. What is in dispute is the additional amount which they have collected for loading urea rakes at Marripalem siding.

3. It is the case of the department that this additional amount is an additional consideration received for the service and hence should form part of

the total consideration received. Accordingly, they should pay service tax on this amount as well. It is the case of the appellant that the additional amount which they have billed their clients is only towards transportation and cannot be as a cargo handling service and therefore such amounts cannot be taxed. A show cause notice was issued on 06.03.2008 demanding the differential duty along with interest. It was also proposed to impose penalties under Sec.76, 77 & 78. After following due process, the lower authority confirmed the demand along with interest and also imposed a penalty under Sec.78 of the Finance Act, 1994. Aggrieved, the appellant appealed to the first appellate authority who upheld the Order-in-Original and rejected the appeal. Hence, this appeal.

4. Learned counsel for the appellant submits that additional demand which they have billed their clients was only towards transportation and hence cannot be charged as service charges for cargo handling services. Therefore, the demand along with interest and penalties need to be set aside.

5. Learned departmental representative draws the attention of the bench to Pg.49 to Pg.53 of the paper book which have the correspondence between appellant and their client towards this additional amount as well as the corresponding bills. He argues that the entire services provided by the appellant is only cargo handling service which is admitted by the appellant and such handling also required some transportation and this cannot be vivisected as a separate transportation service. In case of the new siding also the job is exactly identical with some additional effort and hence an additional amount was charged by the appellants from their clients. This by itself does not make that an additional amount a separate charge towards transportation. Therefore, the appeal needs to be rejected.

6. We have considered the arguments on both sides and perused the records. Appellant's initial letter dated 15.10.2006 to their client and the response of the client dated 20.10.2006 both refer to additional transportation

costs. Thereafter, this issue was finalised in a meeting on 01.11.2006 signed and agreed to by both parties. The type of meeting in this document is titled "Negotiation – Transportation rate and loading of urea rakes at VNCW siding". The discussion in the meeting is recorded as "Finalization of rate of transportation and loading urea rakes at VNCW siding on behalf of NFCL" and the conclusion shows offered rate as Rs.42PMT and finalised rate as Rs.39PMT. The subsequent bills dated 14.11.2006, 23.11.2006 available in the paper book also show that the additional amount has been charged towards "Additional expenditure for transportation and other expenses incurred for loading rakes at Marripalem siding". We find from the above that although the initial correspondence between the appellant and their client was only towards additional transportation costs but final agreement signed between the parties in the meeting as well as the subsequent invoices covered this amount towards transportation as well as other expenses incurred in loading of rakes at the new siding. We, therefore, are unable to agree with the appellant that the additional expenditure is only towards transportation and hence not liable to be charged to service tax. The appellants have not paid service tax on this amount and we do not find any force in their argument that they were under the bona fide belief that this amount was paid separately only towards transportation and hence not taxable because the agreement signed by the appellant and the invoices raised by them clearly indicate otherwise. Therefore, the demand of service tax along with interest and penalties imposed in the impugned order are not sustainable and impugned order requires no interference.

7. The appeal is rejected and impugned order is upheld.

(Operative part of this order was pronounced in the open court on conclusion of hearing)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

Veda