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**(2024) 12 CESTAT CK 0025**

**Customs, Excise And Service Tax Appellate, New Delhi**

**Case No:** Service Tax Appeal No. 53405 of 2018

M/s. Shree Mohangarh Sharmik  
Theka Sahkari Samiti Ltd

APPELLANT

Vs

Principal Commissioner of  
Central GST & Central Excise

RESPONDENT

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**Date of Decision:** Dec. 19, 2024

**Acts Referred:**

- Finance Act, 1994 - Section 65(23), 65(94), 67(2), 76, 77

**Hon'ble Judges:** Dr. Rachna Gupta, Member (J); Hemambika R. Priya, Member (T)

**Bench:** Division Bench

**Advocate:** Om Prakash Agarwal, S.K. Ray

**Final Decision:** Allowed

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### **Judgement**

Dr. Rachna Gupta, J

1. The present appeal has been filed to assail the Order-in-Appeal No.332/18 dated 03.07.2018. The facts relevant for the present adjudication are

that the Anti-Evasion Branch of Central Excise Commissionerate, Jaipur-II gathered an intelligence that many service providers are providing services

to M/s. Rajasthan State Mines and Minerals Limited, Jaisalmer (hereinafter referred as M/s. RSMML), however, were not paying the service tax on

the value of services received by them. Based on the said information the documents were required from M/s. RSMML. Appellant provided following

documents vide letter dated 14.11.2008:

(i) Copies of the contract and agreement for transportation of limestone from Sanu Mines to Jaisalmer Railway Station.

(ii) Month-wise quantity of limestone transported.

(iii) It was stated that since service tax on transportation had already been paid by M/s RSMML, M/s Shri Mohangarh Sharmik Theka Shakari Samiti

Ltd., Jaisalmer had not paid any amount towards service tax.

(iv) Details of payment made to M/s Shri Mohangarh Sharmik Theka Shakari Samiti Ltd., Jaisalmer for transportation, loading, unloading and watch &

ward during the period 27.5.2005 to 12.4.2006.

(v) A copy of letter of intent dated 21.05.2005 was also provided by M/s. RSMML by their letter dated 28.11.2008.

2. From the perusal of all those documents, the Department observed that the appellants have raised the bills to M/s. RSMML wherein servicewise

amount is shown against each service rendered by them. It was found that the appellant received an amount of:

i) Rs.3,69,569/- Rs.1,28,04,167/- & Rs.1,21,55,063/-for mechanized loading of wagons

ii) Rs.6,49,104/- for diesel escalation and

iv) Rs.45,22,369/- in respect of loader loading and watch and ward services provided by them during the period 27.05.2005 to 12.04.2006.

3. Department formed the opinion that on the aforesaid total amount, the service tax amounting to Rs.18,05,003/- was payable under the categories of

“Cargo Handling Service” and “Security Agency Service”. However, appellant had not discharged the service tax liability nor was

registered for providing those services. Accordingly, a show cause notice No.225/2009 dated 13.05.2009 was served upon the appellant proposing the

recovery of service tax amounting to Rs.18,05,003/- alongwith proportionate interest and the appropriate penalties. The proposal was initially

confirmed vide Order-in-Original No.36/2012 dated 27.02.2012. Commissioner (Appeals) vide the impugned Order-in-Appeal dated 03.07.2018 has

held:

(i) The activity undertaken by appellant was covered under Cargo handling service and they were liable to pay service tax.

(ii) Services provided in relation to security by the appellant are not taxable in terms of definition of “Security Agency” under section 65(94) of

the Finance Act, as it stood prior to 18.04.2006 i.e. applicable to the period in dispute (27.05.2006 to 12.04.2006)

(iii) Cum-Tax benefit has been extended. The amount of demand vis-à-vis tax liability is therefore re-determined as Rs.12,19,348/-. Being aggrieved, the appellant is before this Tribunal.

4. We have heard Mr. O.P. Agarwal, Id. Counsel for the appellant and Mr.S.K. Ray, Authorised Representative for the Department.

5. Id. Counsel for the appellant has mentioned that the service tax on the transportation services which includes unloading of limestone at railway

sidings was deposited by M/s.RSMML as has been acknowledged in para 14 of the Show Cause Notice itself. Once the service tax stands paid by

the recipient under reverse charge mechanism, the service provider cannot be held liable to pay the same amount of service tax. With respect to

remaining services those are alleged taxable under "Cargo Handling" and "Security Agency Service". Id. Counsel has impressed upon

that the activity of loading, unloading and transportation of Lime Stone and coal rejects within the mining area is actually an activity incidental to mining

operation. The same has wrongly been alleged to be an activity of "Cargo Handling Service" and the "Mining Services" were made taxable

w.e.f. 01.06.2007 onwards. Hence, the appellant is not liable to pay any tax for the period in dispute. Following decisions have been relied upon:-

(i) Triveni Earthmovers Pvt. Ltd. vs. CCE 2009 (15) STR 393 (Trib.) upheld by SC at 2016 (45) STR J142 (SC).

(ii) Sainik Mining & Allied Services Ltd. vs. CCEST 2008 (9) STR 531 (Trib.)

(iii) S.B. Construction Co. v. Union of India " 2006 (4) STR 545 (Raj.). This decision was upheld by Hon<sup>ble</sup> Supreme Court at

2017 (52) STR J " 19 (SC). Reliance is also placed on DC or CE vs. Sushil & Co. " 2016 (42) STR 625 (SC).

6. Finally, submitting about alleged suppression of facts, it is mentioned that the appellant was under bonafide belief of having no liability to pay service

tax for the reasons explained above. Id. Counsel impressed upon that bonafide belief cannot be categorized as suppression of facts. Triveni Earth

Movers Pvt. Ltd. (supra) has been relied upon. The Show Cause Notice is therefore alleged to be barred by time. With these submissions the order

under challenge is prayed to be set aside and the appeal is prayed to be allowed.

7. While rebutting these submissions, Id. DR has reiterated the findings of the impugned order. Impressing upon no infirmity therein, the appeal is prayed to be allowed.

8. Having heard both the parties, we observe that the Original Adjudicating Authority had confirmed the entire amount of service tax demanded i.e.

for Rs.18,05,003/-. However, the impugned order/ Order in appeal had dropped the demand on "Security Service" thereby confirming the

demand for an amount of Rs.12,19,348/-under category of "Cargo Handling Service" as is apparent from para 16.1 of the Order-in-Appeal. The

penalties imposed under section 76 and 77 have also been set aside as is apparent from para 21 of the impugned order. Apparently and admittedly, the

Department is not in appeal against the said dropping of demand. Now the only point for adjudication is:

Whether demand with respect to the activity of loading of Lime Stone into tippers, dumpers at mines and from railway plots into railway

wagons using front end loaders, amounts to providing "Cargo Handling Service"?

9. We observe that issue about movement of lime stone/coal and rejects in the mining area is no more res-integra to the effect that the activity does

not involve "Cargo Handling Service" as it was held by this Tribunal, Kolkata Bench in the case of Sainik Mining and Allied Services Ltd. vs.

CCE reported as 2008 (9) STR 531. Hon<sup>ble</sup> Apex Court also in the case titled as Chowgule and Co. Pvt. Ltd. vs. Union of India reported as

1993 (67) ELT 34 SC has held that process of extraction of ores from mines washing, screening, crushing in the crushing plant and stacking at the

mining site all are covered under the Mines Act, 1952, hence, cannot be called as "Cargo Handling Service".

10. The Kolkata Bench itself in another case of Commissioner vs. B.K. Thakkar reported as 2008 (9) STR 542 has appreciated the meaning of

"Cargo Handling Service" defined under section 65 (23) of the Finance Act, 1994 to mean as follows:-

“(i) Loading, unloading, packing or unpacking of cargo, and includes -

- (ii) Cargo handling services provided for freight in special containers or for non-containerised freight,
- (iii) Services provided by a container freight terminal or any other freight terminal, and
- (iv) Cargo handling service incidental to freight.

5. The coverage under "cargo handling service"™ would extend ordinarily to what is commercially known as cargo carried as freight

in a ship, airplane, rail or truck. As such, in our view, the activities undertaken by the respondents are primarily in the nature of mining

activities comprising of excavation, transportation and feeding of iron ores to the crusher plant and even though these activities may

incidentally involve some loading and unloading, the same cannot be covered under the category of "cargo handling service"™ as what

is carried cannot be commercially called "cargo"™ in this case.â€

11. The CBEC Circular No.232/2/2006 dated 12.11.2007 clarified that "the services which are liable to tax under this category ("Cargo Handling

Service"™) are the services provided by cargo handling agencies who undertake the activity of packing, unpacking, loading and unloading of goods

meant to be transported by any means of transportation namely truck, rail, ship or aircraft. Well known examples of cargo handling service are

services provided in relation to cargo handling by the Container Corporation of India, Airport Authority of India, Inland Container Depot, Container

Freight Stations. This is only an illustrative list. There are several other firms that are engaged in the business of cargo handling services.â€

12. From the above discussion it becomes clear that the activity rendered by the appellant to M/s.RSMML cannot be called as "Cargo Handling

Service"™. Otherwise also the "Cargo Handling Services"™ were made taxable w.e.f. 01.06.2007. The period in dispute/ period of demand is

the period prior the said date (27.05.2005 to 12.04.2006).Hence, we hold that the demand has wrongly been confirmed by the Department.

13. Coming to the aspect of invocation of extended period of limitation, it is observed that the appellant has pleaded its bonafide about having no

knowledge for the services rendered by him to M/s. RSMML to be taxable in nature. It has been brought to the notice that there were several

circulars got issued by CBEC with respect to explaining scope of "Cargo Handling Services". One has been already discussed above and the another was of the year 2002. The series of the Circulars created doubts and confusions. It has been settled by this Tribunal in the case of Vishal Traders vs. Commissioner of Central Excise, Jaipur reported in 2010 (19) STR 509 that when the question of interpretation caused confusion, the intention to evade tax cannot be alleged. Penalty is also not impossible in such circumstances. Keeping in view the same and the fact that there is no specific allegation nor any proof about any positive act of the appellant which may amount to suppression /willful mis-statement that too, with an intent to evade payment of service tax, we hold that the department was not entitled to invoke the extended period of limitation. The entire period of impugned demand is beyond the normal period, seen from the date of impugned Show Cause Notice. Hence, the Show Cause Notice is held barred by time.

14. We also observed that Commissioner (Appeals) himself has taken note of the settled law about the issue of impugned activity to be covered or not under "Cargo Handling Services". In para 16.1 it has been categorically held that the services provided in relation to security by the appellant are not taxable in terms of the definition as it stood prior to 18.04.2006. Due acknowledgement has been given to the fact that Service Tax on transportation activity has been paid by M/s.RSMML. Appellant is also held eligible for cum-tax benefits in terms of provisions of section 67 (2) of Finance Act, 1994 as is mentioned in para 17 of the impugned order. The demand has been confirmed only by holding that the complete and proper details about the services and the taxable value were suppressed by the appellants. As already discussed above, same is found otherwise.

15. Based on the entire above discussion, we hereby set aside the order under challenge. Consequent there to the appeal stands allowed.

[Pronounced in the open Court on 19/12/2024]