Commissioner of Central Goods and Service Tax, Customs and Excise, Jabalpur Vs Bhaiya Lal Infrastructure Pvt Ltd.

Court: Customs, Excise And Service Tax Appellate, New Delhi

Date of Decision: Jan. 8, 2025

Acts Referred: Finance Act, 1994 â€" Section 65(23), 65B(44), 65(105)(zzp), 65(105)(zr), 66B, 66D, 73

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

Bench: Division Bench

Advocate: Jaya Kumari, A.K. Batra

Final Decision: Dismissed

Judgement

Dr. Rachna Gupta, J

1. The present appeal has been filed by the department against Order-in-Appeal No. 632-17-18 dated 29.01.2018. The facts in brief are as follows:

1.1 The respondent-assessee being a partnership firm is engaged in providing services to various projects of Ã¢â‚¬ËœM/s. Northern Coalfield Ltd.Ã¢â‚¬â„¢.

Based on an intelligence, the department observed that the respondent-assessee is providing services of cargo handling to the projects of Northern

Coalfield Ltd. by deploying the tipping trucks, for loading of coal into contractorÃ¢â‚¬â„¢s tipping trucks by contractorÃ¢â‚¬â„¢s pay loaders. Since these

activities covered under the definition of Ã¢â‚¬Ëœ Cargo Handling ServicesÃ¢â‚¬â„¢ defined under Section 65(23) of the Finance Act, 1994 that the respondent-

assessee was alleged liable to pay service tax on the taxable value received by them from those different projects. It was observed that the

respondent-assessee received a total some of Rs.17,96,07,795/- for the works performed by them since April 2008 to March 2013, out of which

Rs.16,14,98,657/- has been worked out to be the taxable value. On this value service tax of Rs.1,81,09,138/- is proposed to be recovered from the

respondent vide Show Cause Notice No. 99/2013 dated 22.10.2013 along with the proportionate interest and the appropriate penalties. The said

proposal was initially confirmed vide Order-in-Original No. 68/2016-17 dated 22.03.2017. The said order has been set aside by Commissioner

(Appeals). Being aggrieved of the said order, the department is before this Tribunal

2. We have heard Ms. Jaya Kumari, learned Authorized Representative for the department and Shri A.K. Batra, learned Chartered Accountant for

the respondent.

3. Learned Departmental Representative for the department has submitted that the disputed period includes the period from 01.07.2012 to 31.03.2013

i.e. the post negative list period where categorization of services has no relevance for taxability. It is submitted that dropping the demand even for this

period denying the impugned activity of the respondent to be that of Cargo Handling Services is apparently wrong finding. The order is liable to be set

aside on this ground itself. It is mentioned that the Commissioner (Appeals) has wrongly relied upon the decision of HonÃ¢â‚¬â„¢ble Supreme Court in the

case of Commissioner of Central Excise, Raipur Vs. Singh Transporters in Civil Appeal No. 7460/2017 wherein it has been held that the transportation

of coal from the pit-head to the railway siding within mining area is more appropriately classifiable under Section 65(105)(zzp) of the Act, i.e., under

the head Ã¢â‚¬Å“Transport of Goods by Road ServicesÃ¢â‚¬ and that the activity does not involve any service in relation to Ã¢â‚¬Å“mining of mineral, oil or

gasÃ¢â‚¬. Commissioner (Appeals) has also committed an error while holding that liability to pay service tax in the given circumstances, rests on the

recipient i.e. Northern Coalfield Ltd. The demand has wrongly been dropped noticing that M/s. Northern Coalfield Ltd. has already discharged the

services. With these submissions, the order challenge is prayed to be set aside and the appeal is prayed to be allowed.

4. While rebutting these submissions, learned Chartered Accountant for the respondent has reiterated the findings arrived at by Commissioner

(Appeals). It is submitted that original adjudicating authority rather had committed an error in concluding that the services provided by the respondent

are covered under the taxable category of Cargo Handling Services. The activity is rightly being held to be that of transportation of coal by road. The

loading and unloading of coal is mentioned to be incidental to such transportation. Learned Chartered Accountant has relied upon the following

decisions:

(i) Singh Transporters Vs. Commissioner of Central Excise, Raipur reported as 2012 (27) STR 488 (Tri-Delhi) dated 23.01.2012.

(ii) Singh Construction Vs. Commissioner of Customs, Central Excise & Service Tax, Jabalpur reported as 2023 (5) TMI 337-

CESTAT New Delhi dated 03.04.2023.

4.1 It is further submitted that a composite service even if consists of more than one service, it should be treated as s single service and tax should be

levied based on the principal service as is apparent from the Circular No. 186/5/2015 dated 05.10.2015. Keeping in view that the principal service is

that of transportation of coal by road, the service tax is to be paid by the service recipient under Reverse Charge Mechanism. The service recipient

i.e. M/s. Northern Coalfield Ltd. has already discharged the said liability. Hence, the demand of the same amount from the respondent is liable to be

set aside.

4.2 With respect to the demand for the post negative list period, it is mentioned that the show cause notice since has wrongly classified the services as

Cargo Handling Service and is also silent about charging Sections i.e. 66B and 65B (44) of the Finance Act, 1994 as are relevant for post negative list

period, the demand for this period is also liable to be set aside. Otherwise also, the most of the period of demand is beyond the period of limitation.

There is no suppression nor any mala fide intent on part of the respondent to evade the payment of tax. The demand for the extended period is

therefore liable to be set aside. With these submissions, the order under challenge is prayed to be upheld and appeal is prayed to be dismissed.

5. Having heard the rival contentions and perusing entire records, we observe and hold as follows:

5.1 The period in dispute is April 2008 to March 2013, thus the period w.e.f. July 2012 to March 2013 is the period post introduction of Section 66D

(negative list) in the Finance Act, 2012. Vide this amendment the concept of classification of services was done away. Hence, the findings are pre

and post negative list period wise are as follows:

6. Pre Negative List Period

6.1 The activity is alleged to be that of Cargo Handling Services. The service is defined under Section 65(23) of Finance Act, 1994 which reads as

follows:

cargo handling serviceÃ¢â‚¬â€‹ means loading, unloading, packing or unpacking of cargo and includes,Ã¢â‚¬

(a)cargo handling services provided for freight in special containers or for non containerised freight, services provided by a container

freight terminal or any other freight terminal, for all modes of transport, and cargo handling service incidental to freight, but does not

include, handling of export cargo or passenger baggage or mere transportation of goodsÃ¢â‚¬â€‹

From the above definition, it can be seen that loading, unloading, packing or unpacking of cargo falls within the Ã¢â‚¬Å“Cargo Handling ServiceÃ¢â‚¬â€‹.

6.2 It is also clear that the provisions of this Section read with Section 65 (105) (zr) of the Finance Act is limited to handling of Ã¢â‚¬ËœCargoÃ¢â‚¬â„¢ and not

of Ã¢â‚¬Ëœgoodsâ‚¬â„¢. The term cargo is not defined under Finance Act. Hence, the dictionary meaning is to be taken into consideration. As per dictionary

meanings only ""goods"" which are being ""carried"", ""conveyed"" or ""transported by any means of transportation and have become load of the

ship/truck/wagon, etc. ""cargo"" while in the instant case the coal loaded into the Railway Wagons were part and partial of the MCL stock of coal lying

in the Railway siding Inside the mines which had not yet started their journey, hence, handling thereof, if any, cannot be termed as cargo handling

activity. Further, in trade parlance the term ""Cargo"" has a definite connotation and mere handling of goods cannot be termed as cargo handling

activity. As per various dictionaries, ""Cargo"" means as follows:

(i) Freight or loading of a ship, shipload - Shorter Oxford English Dictionary.

(ii) The load or freight of a ship, air plane or vehicle, load - New Webster's Dictionary.

(iii) Cargo or a ship or plane, the goods that it is carrying - Collins English Dictionary.

(iv) Goods carried by a ship or aeroplane, any load to be carried - Chambers English Dictionary.

(v) The goods transported by a vessel, air plane or vehicle; freight - Black's Law Dictionary.

(vi) Ships"" Load - Webster's New Dictionary & Thesaurus.

(vii) Cargo is the goods or merchandise conveyed in a ship, aeroplane or vehicle - Mitra's Legal & Commercial Dictionary Edition.

The said dictionary meanings have used the expression ""load"", ""ship's load"", ""carried"", ""Carrying"", ""transported"" clearly shows that it is in past tense or

present perfect tense which dearly indicates that goods becomes ""Cargo"" only after it is loaded into the ship or aeroplane or vehicles even Railway

wagon and transported to another place. Before that it remains ""Goods"".

6.3 It is further observed that the Legislature has drawn clear distinction between the terms ""Goods"" and ""Cargo"". The intention of the Legislature can

be gathered from definition of different services under the Act itself. Wherever Legislature intended to tax services relating to Ã¢â‚¬Å“GoodsÃ¢â‚¬ it has

unequivocally stated so and wherever Legislature intended to tax services relating to ""Cargos"", it has used the term ""Cargo"" to limit the scope of levy.

For instance, under ""Transport of goods by road services"" as defined u/s 65(50b), the expression ""Goods"" is used while under 'Cargo Handling

Services' defined u/s 65(23), the expression ""Cargo"" is used which clearly indicates that legislature while bringing the services under the tax net has

clearly laid down its scope by deliberately using the expression ""Cargo"" and to define the scope of the levy. Undoubtedly, the use of the expression

Cargo"" by the Legislature is a deliberate act with a intention to restrict the scope of the levy only to ""Cargo Handling Services"" rendered only by

Cargo Handling Agents and not to extend it to goods/materials handling activities. The intention of the Legislature can also be gathered from the new

definition of Cargo Handling Services under Section 65(23) substituted by Finance Act, 2008 with effect from 16-5-2008. The issue is otherwise no

more res integra. it was decided by this Tribunal in the case of Singh Transporters Vs. Commissioner of Central Excise, Raipur reported as 2012 (27)

S.T.R. 488 (Tri.-Del.)

6.4 The Hon'ble High Court of Kolkata had upheld the decision of the Tribunal reported in 2009 (13) S.T.R. 138 (Tri. - Kolkata). Tribunal in that case

had observed as under:

15. Combined reading of provisions of section 65(105)(zr) and 65(23) of the Act throw light that cargo handling agencies are taxable

entities. Cargo handling service provided by such entities attract the levy of service tax. Section 65(23) has a wide amplitude and has

brought all like nature activities to its fold expressly and by inclusion of such like nature activities under the class 'cargo handling

servicesÃ¢â‚¬â„¢. However classification of service under this category is subject to two exceptions/exclusions: viz., :

(1) handling of export cargo or passenger baggage and (2) mere transportation of goods. These two activities are beyond the scope of such

class from taxation for rationale behind them. Accordingly, cargo handling services provided in respect of domestic cargo only are liable to

tax. Event of levy arises when service relating to or in relation to handling of cargo is provided by a cargo handling agency irrespective of

mode of transport used for movement of such cargo. Precisely, following activities which are contemplated to be taxed as cargo handling

service are:

(1) By express terms:

(A) Loading, unloading, packing or unpacking of cargo;

(2) By inclusive terms:

(B) Handling service relating to cargo:

(i) Provided for freight in special containers or for non-containerised freight;

(ii) Provided by a container freight terminal or, by any other freight terminal; and

(3) Cargo handling service provided which is incidental to freight.

16. What that appears to be necessity of law for taxation under the class cargo handling service is that the service provided should be

relating to or in relation to cargo handling by a cargo handling agency. The service provided should be integrally or inseparably

connected with handling of cargo or attributable thereto without being a mere activity of transportation of such cargo since transport

service independent of cargo handling is an exception under the scheme of levy by Section 65(23) of the Act. Thus it can be said that

loading, unloading, packing or unpacking of cargo and handling of cargo for freight in special containers or non-containerized freight

and service provided by container freight terminal or other freight terminal for all modes of transport are subject matter of taxation under

the class ""cargo handling service"". That apart, any activity incidental to freight of cargo is also liable to be taxed under such class. Mode

of transport is irrelevant for incidence of levy once the service provided meets the test of handling of cargo in the manner envisaged by law.

It is also not necessary that the cargo should only be meant for transport either by vessel in ships or aircrafts.

Thus we hold that the issue of transportation of goods is different from cargo handlings transportation of coals from the coal mines to the

tippers/trucks is no more res integra as it stands decided that the activity is not a Cargo Handling Service but is that of transportation of goods by road.

The service recipient is liable to pay service tax on this activity under Reverse Charge Mechanism. Apparently and admittedly M/s. Northern

Coalfield Ltd., the service recipient has already discharged the same. These observations are sufficient for us to hold that the demand for this partial

period has rightly been dropped by Commissioner (Appeals).

7. Post negative List period

7. No doubt, for this period, any activity which is not specifically mentioned in any of the clauses to Section 66D of the Finance Act 2012 is a taxable

service. Sub-clause (p) of Secion 66D also records services by way of transportation of goods. It reads as follows:

(p) services by way of transportation of goods Ã¢â‚¬

(i) by road except the service of Ã¢â‚¬

(A) a goods transportation agency; or

(B) a courier agency;

. There is no evidence on record that respondent-assesse is a Goods Transport Agency nor any consignment note is placed on record. Thus in terms

of Section 66B, there is no tax liability on the impugned activity even for the post negative period. The demand for this period is also rightly dropped by

Commissioner (Appeals).

8. Finally coming to the issue of invocation of extended period of limitation, we observe from the show cause notice that the demand has been

proposed based upon the respondentÃ¢â‚¬â„¢s own documents. It is also clear that the fact of discharge of the impugned service tax liability by the

service recipient/Northern Coalfield Ltd. under Reverse Charge Mechanism was also brought to be notice of the department. We do not find any act

of alleged suppression on part of the respondent-assessee. The department rather has failed to take into consideration the submissions of the

assessee-respondent at the time of issuing the show cause notice. In absence of any such evidence which may prove the mala fide intent with the

assessee to evade payment of tax, we hold that department was not entitled to invoke the proviso to Section 73 of Finance Act, 1994. Above all, as

discussed above, respondent is held not liable to pay tax for Ã¢â‚¬Å“Cargo Handling ServiceÃ¢â‚¬ as it is held to have rendering activity of transporting goods

(coal) within the mines of the M/s. Northern Coalfield Ltd. The show cause notice is therefore held to be barred by time. In light of the entire above

discussion, we do not find any infirmity in the order under challenge/Order-in-Appeal. The same is hereby upheld. Consequent thereto, the

departmentÃ¢â‚¬â„¢s appeal is hereby dismissed.

[Order pronounced in the open court on 08.01.2025]