



उद्योग वाणिज्य (व्यापार) का कानूनसंगत कानून 2019 का संशोधन अधिनियम
 (THE PRINCIPAL COMPANYSHIP (OFFICIAL SEALS) ACT, 2019)



दिनांक: 27.02.2019

वेब पता: www.kanchiappellate.com

कानून संख्या: KA/11/19

आदेश संख्या: 2019 का 11

पंजीकृत नाम (Registered Name):

पंजीकृत नाम (Registered Name)	आदेश संख्या (Case No.)	दिनांक (Date)
VINEKUDM2019	2019 का 11	27.02.2019

पंजीकृत नाम (Registered Name):

KCH-EXCLUS-008-APP-032-2019

आदेश संख्या (Date of Order): 27.02.2019
 दिनांक (Date of Appeal): 27.02.2019

क्यास संख्या (Case No.): 2019 का 11
 Respondent: Sri Kumar Sankaran, Periyar Road, Chennai (Appellant) vs. Appellant

आदेश संख्या (Date of Order): 27.02.2019
 दिनांक (Date of Appeal): 27.02.2019
 क्यास संख्या (Case No.): 2019 का 11

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:: ORDER IN APPEAL ::

M/s. Siddhi Vinayak Logistics, Plot No. 317, Shop No. 05 Ward 12 B, Gandhinagar Kutch (hereinafter referred to as 'appellant') have filed present appeal against Order-in-Original No. 017 SUPDT/2017-18 dated 21.12.2017 (hereinafter referred to as 'Impugned order') passed by the Superintendent, AW-II-Central GST, Gandhidham (Urban), Gandhidham (hereinafter referred to as 'lower adjudicating authority').

2. The brief facts of the case are that the appellant was providing services in respect of handling and storage of empty containers to various container liners from their Empty Park and income accrued from the activities was being shown in the books as income pertaining to Empty Park. The Audit found that the appellant was bifurcating the charges in two parts, namely, Transportation Charges and Handling Charges per empty container but not paying service tax on such charges and Audit was of the view that services were composite services of 'Cargo Handling Services' and appellant was required to pay service tax on both these charges. Show Cause Notice dated 20.9.2017 was issued demanding Service tax of Rs.2,33,560/- under Section 73 of Finance Act 1994 (hereinafter referred to as 'the Act') interest under Section 76 of the Act and proposing penalty under Section 75 and Section 77 of the Act. The Show Cause Notice was adjudicated vide the impugned order, which confirmed Service Tax demand of Rs.2,33,560/- under Section 73(1) of the Act along with interest under Section 75 of the Act and imposed penalty of 10% of confirmed demand of Rs.2,33,560/- under Section 75 and also penalty of Rs.5,000/- under Section 77 of the Act.

3. Being aggrieved with the impugned order except for imposition of Penalty under Section 77 of the Act, the Appellant has preferred present appeal on the following grounds:-

(i) The impugned order is contrary to CBEC Circular No. R11/12/00-TRU dated 1.8.2002, which clarified that the empty containers cannot be treated as cargo and hence activities of string washing/repairing and handling of empty containers for the shipping line will not fall under the purview of cargo handling services.

(ii) There is no allegation in the SCM that appellant had not issued consignment note and that Appellant cannot be treated as GTA; that impugned order is beyond the scope of SCM in holding that appellant cannot be treated as GTA service provider; that CBEC vide Circular No. 104/7/2005-ST dated 25.2.2006 clarified that loading/unloading and temporary warehousing are ancillary/intermediate services provided in relation to transportation of goods and all these ancillary/intermediate services are required to be treated as a single service based on the main or principal service, i.e. transportation; that the appellant has transported the empty containers from port to a

destination outside port and charges freight for it that the services provided by appellant was transportation only, and even if empty containers treated as cargo the impugned order is contrary to the aforesaid CBEC circular.

(i) Appellant was guided by CBEC Circular dated 18/3/02 and dated 8.6.2006 and hence, was under bona fide belief that service of transporting empty containers is covered by CIA service; that this is a case involving interpretation of provisions and hence, no penalty under Section 76 is imposed upon them; that since the demand of service tax is not sustainable, appellant is not liable to pay interest under Section 75 of the Act and penalty is not imposable under Section 76 of the Act.

4. Personal hearing in the matter was fixed on different dates, namely, on 28.10.2018, on 5.11.2018 and on 18.12.2018, however, Appellant did not appear on any of the above dates and failed to avail opportunities of personal hearing granted to them and also did not respond/reply to any of the dates/opportunities granted. Therefore, I proceed to decide the appeal on the basis of available facts in the case and on the grounds of appeal, as per Appeal Memorandum.

4.1 The Commissionerate also did not respond on any of the three PH notices and no one appeared from Division/Commissionerate.

Findings:-

5. I have carefully gone through the facts of the case, the impugned order and the Appeal Memorandum of the Appellant. I find that appellant has deposited an amount equivalent to 75% of the Service Tax confirmed vide impugned order. Hence, I find that the appellant has complied with the provisions of Section 35F(i) of the Central Excise Act, 1944, as made applicable in Service Tax matters vide Section 63 of the Finance Act, 1987. Therefore, proceed to decide the appeal. The issues to be decided in the present appeal are:

- (i) whether demand of service tax confirmed by the lower adjudicating authority classifying the services of transportation of empty containers under the category of 'Cargo Handling Services' is correct or otherwise.
- (ii) whether service tax imposed on the Appellant under Section 75 and under Section 76 of the Act are correct or not.

6. I find that the nature of the services performed by the appellant is not disputed. The appellant has provided the services of transporting the empty containers from the port to their empty containers yard and has also provided handling services like if cargo lift off and stowing them in their empty containers yard. For these services they have issued bills to the container lines, which is bifurcated in two parts

viz transportation charges and handling charges. However for transportation charges they have not collected Service Tax, on the ground that it is a GTA service well below the exemption limit. However, for the handling charges they have charged and collected & also sale service tax by classifying the same under "Cargo Handling Services". The contention of the department is that since the appellant is not CFS, Board's circular dated 21.08.2002 is not applicable to them.

6.1 I find the definition of Cargo Handling Service provided under Section 66(23) of the Finance Act, 1994, stood during relevant time as under:

(23) ‘cargo handling services’ means loading, unloading, packing or unpacking of cargo and includes:

- (a) cargo handling services provided for freight in special containers or for non-containerized freight, services provided by a container freight terminal or any other freight terminal, for all modes of transport, and cargo handling services incidental to freight and
- (b) services of packing together with transportation of cargo or goods, with or without one or more of other services like loading, unloading, unpecking, but does not include handling of export cargo or passenger baggage or mere translocation of goods;

(Emphasis supplied)

6.2 Thus, it is evident that to classify any service under Cargo Handling Service, the presence of cargo is a must. This has become a distinct case also been faced by the lower adjudicating authority and he has answered that the empty containers cannot be considered as cargo in view of Para 14 of Annexure – II to Board's Circular No. B11/2002-116 dated 21.08.2002. However, he has held that the above circular is applicable only to the Container Freight Station and not to the empty containers as they are not Container Freight Station. I find that Para 5 of Annexure – II to the Board's circular dated 21.08.2002, reads as under:

3. The services which are liable to tax under this category are the services provided by cargo handling agencies who undertake the activity of packing, unpecking, 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 services 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.

6.3. Upon reading the above, I find that it clarifies that any firm who are engaged in providing the activity of packing, unpecking, loading and unloading of goods meant to be transported by any means of transportation namely truck, rail, ship or aircraft would be covered under Cargo Handling Service. Since, the levy has not been used for the first time therefore examples of service providers like Container Corporation of India, Airport Authority of India, Inland Container Depot, Container Freight Stations have been given. Thus, I find instructions of the Lower Adjudicating Authority that

since the appellant is not Container Freight Station, the contents of the Circular are not applicable is erroneous since Para 3 and Para 14 are independent.

6.4. In view of above, in light of the considered view the transportation of empty containers from container park to port and vice versa can be called Cargo Handling Service and no service tax is payable on such transportation charges under Cargo Handling Service as held in Order in appeal No. KC-EXCUS-001 APP 193 TD-184-2014-19 dated 5.3.2013 issued in appellant's own case.

7. I also find that the lower adjudicating authority has held that the appellant has not issued consignment notes. In effect, the service cannot be considered as GTA service. I find that the service defines Goods Transport Agency, as under.

"Goods transport agency" means any person which provides service in relation to transport of goods by road and issues consignment note, by whatsoever name called,

7.1. There to classify a person as GTA service provider first part is that he should be providing services in relation to the transport of goods. I find that this first part of goods transport agency is not disputed. The second part is that consignment note should have been issued and it is not disputed that consignment notes have not been issued in this case. Regarding issuance of consignment notes, the appellant was reminded that there was no requirement to issue consignment notes as per expansion to Rule 43 of Service Tax Rules, 1994.

7.2. I find that Rule 4B of Service Tax Rules, 1994 reads as under

"A goods transport agency which provides service in relation to transport of goods by road in a goods carriage shall issue a consignment note in the manner as under"

Provided that where any taxable service is rendered in relation to goods by road in a goods carriage in which consignment note is issued under section 93 of the Act, the goods transport agency shall not be required to issue the consignment note.

Explanation - For the purposes of this rule, the term used in rule 4A, "consignment note" means a document issued by a goods transport agency against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is partly numbered, and contains the name of the consignee and consignee representative names of the goods carriage in which the goods are transported, details of the goods transported, details of the person or firm or individual person liable for paying service tax, whether consignor or consignee or the goods transport agency."

(Emphasis supplied)

7.3. I find that notification No. 24/2004 Service Tax dated 02.12.2004, as amended and subsequent Notification No. 11/11-2/ Service Tax dated 20.05.2012 granted exemption from payment of service tax on Goods Transport Agency if the amount payable by it is less than Rs. 1,000. I find that in this case the amount payable by appellant is more than Rs. 1,000.

whereas the appellant has provided that amount charged has never been more than Rs. 1500/- in any case. Thus it is held that since the Mobilisation exempted payment of Service Tax, the appellant providing services of Goods Transport Agency was not required to pay Service Tax on the transportation charges of empty containers, which were below exemption limit of Rs. 1,500/-.

8. In view of above, I set aside the impugned order and allow the appeal filed by the appellant.

८. उपरोक्त तथ्यों के आधार पर यह अंशकतः अपील को खारिज करने का आदेश दिया जाता है।

9. The appeal filed by the Appellant is disposed of as above.

(कुमार सतोष)

अधीन आयुक्त (अपील)

By Road Post 40:

To:

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नारायण विद्युत वितानक अंशकतः
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Copies to:

- 1) The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone
As needed for his kind information.
- 2) The Commissioner, CGST & Central Excise, Kutch Commissionerate,
Gandhidham for necessary action please.
- 3) The Assistant Commissioner, Central GST Division, Gandhidham (Urban)
Gandhidham.
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