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:: ORDER IN APPEAL ::

M/s. Siddhi Virayak Legistics, Flot No. 317. Shop No. 05. Ward 12 B, Candhionam Kuton (hereinafter referred to ss "appellant") have filled present appeal egainsr. Order-În-Örginal: No. 017. SUPDT/2017-18. sated 21.12.2017. (hereinafter referred to as "Impugned order") passat, by the Superintenbent, AK-9-Central GST. Gandhidham (Joban), Gandhidham (hereinafter veferred to as "lower adjudicating authority").

2 The brief facts of the case are that the appettain was providing services in espect of handling and slorage of empty containers to various container linera from their Empty Park and morne accrued from the solloilies 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 envolv container but not paying service tax on such charges and sugit was of the view that services were composite services of 'Cargo Fausting Services'. and appellant was required to pay solving tax on both these charges. Show Cause Notice dated 20.3.2017 was issued domanding Service tax of Rs/2/33,5664 under Section 72 of Finance Act 1994 (homination referred to as "the Act") interest uncled Section 70 of the Actience proposing penalty under Section 75 and Section 77 of the Act. The Show Gause Notice was adjudicated vice the impligned order, which confirmed Service Tax semand of Rs.2.35,560/- under Section 73(*) of the Actistory with interest under Sort on 75 of the Act and imposed penalty of 10% of earliened. demand of Rs.2,32 350/- Under Section 75 and also certaily of Rs.5.000/ protein Section 77 of the Act.

 Being aggrieved war like impugned order except for imposition of Penalty under Section 77 of the Act, the Appeliant has preferred present spoed on the following grounds: -

(i) The impligned order is convery to CBEC Circular No. B11/02/02-TRU deted 1.8.2002, which clarified that the en-sty containers cannot be treated as cargo and hence activities of string/ washing/ repairing and handling of empty memaners for the shipping the which that under the pulsiew of cargo handling services

(i) There is no allegation in the SCN that appelian had not 'ssued cossignment note and that Appelian, cannot be treated as CTA; that in sugnad order is depend the scope of SCN in holding that appellant cannot be realed as GTA service crowder; that CBEC vide Circular No. 104/7/2005. ST dated 8.5.2008 cleanfee that loading unicading additemporary, warehousing ers anothary/ intermediate corvices provided in telesion to transpondition of goods and all these and lary intermediate eew cealers required to be treated as a single service based on the main of pithodal service, i.e. transportation ; that the appellant has transported the empty contaisless from out to a

Page 3 of 7.

destination outside poin and onemed freight for in that the services provided by appoint were manaportation only, that even V eraphy container is treated as bargo the moughed order a contrary to the aforesaid CBEC orbitian.

e e le suiter des la service

(ii) Appellent was galded by CREC Circulars bated 1.8.2002 and dated SUC2008 and bance, was under done field belief that service of transcorting empty containers is covered by CTA service; that this is a case involving interpretation of provisions and hence, no penalty under Section 78 is exposable upon them; that since the command of service tax is not sustained e, appellant is not tiable to day interest under Section 78 of the Acilians consists not imposable upon Section 76 of the Act.

4 Forsetal hosting in the matter was fixed on offerent dates, namely, on 28.19.2018 on 5.11 2019 and on 18.12 2018, however, Appelant did not appear on sity of the spove dates and falled to evail uppermunities of personal hearing granted to their respond/ reply till any of the dates/opperfunk esignanted. Therefore, I nonneed to decide in 6 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 bot resound on any of the three PH notices, and no pre-appeared from Division/Commissionerate.

Ејрдинден-

5. I have backfully gone through the racts of the case, the impugned order and the Appeal Wemprandum of the Appellant Hind that appellant has deposited an amount equivalent to 7.5% of the Service Tax continued vice intengend order. Hence, I find the appellant has complied with the provisions of Section 35F() of the Central Excise Act, 1944, as heads applicable in Service Tax tratters vide Section 60 of the Preside Act, 1984. If erefore, involved to becide the appeal. The issues to be decided to the present appeal are

(i) whether demand of service liak confirmed by the lower adjudicating automity classifying the services of transportation of empty containers under the category of "Cergo Hendling Services its parent or otherwise."

(ii) whether some fiest imposed on the Appellant under Section 78 and under Section 77 of the Astrane correction not.

6. If find the, the nature of the services performed by the appetant is not displaced. The appetant has provided the services of consporting the empty constances and has also provided handling services dealed in and storing them. In their empty containers and has also provides handling services dealed in the storing them. In their empty containers are part. For these story does not care includes the container inest which is bifurcated in we carts

vizi transportation of argos and frankling chargos. However, for transportation onargos, they have not deplet argod. Service Fax, on the ground that it is a GTA service well celow the exemption limit. However, for the handling charges drey have obarged and collocated & also calls service tex by classifying the same under "Cargo Caroling Services". The contraction of the department is that since the appellant is not CFS, Bosto's crouis, dated 71.08.2007 is not applicable to them.

6.1 Find that dofin from of Cergo Hending Piervice provided under Section 66(23) of the Finance Art. 1894, stood during relevant firse, as under

- (23) Seign Satelling service' means loading, towarding, packing or improving of earny and includes.
 - (e) Large vandling worders provided for height in special contribute or for noncontainensed freight, worders provided by a container freight forminal on any other freight torminal, for all modes of freighter, and onign bandling canvas molecular to height and
 - (b) sumbra of passing togeover with transportation of energy or goods, with the websord one on more of other services like trading throughing traperturing but uses not included bundling of export angle or passanger baggage or mark transportation of goods;

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(Emphase supplied)

6.2 Thus, it is evident that to dessify any service under Cargo Randling Schape, the presence of cargo is a number if no the the same proximitial as also been faced by the lower adjudiciting purporty and he has answered that the empty containers cannot be considered as cargo is view of Para 14 of Annatoura – II to Beard's Grou at No: B11/1/2002-THU dated 01.08/2002. However, the face help matched the considered to only to the Contemport – eight Station and not to the experimentation of Mantatom – II to Beard's active circular is replication only to the Contemport – eight Station and not to the experimentation of Mantatom – II to Beard's the experimentation of the Contemport – eight Station and not to the experimentation of Mantatom – II to Beard's the experimentation of the Contemport – eight Station and not to the experimentation of Mantatom – II to Beard's the experimentation of the Beard's Contemport – II to Beard's eight Station.

3 The services which are fable to tax under this delegary and the someon (movined by cargo handling againses which undertake the solivity of packing, impacking, kouding and anlanding of goods month to be nanaported by envineerals of transportation travely buck, rell, ship or averal? Well known examples of eargo handling by the Container Corporation of trave, Auport Authority or travel, thiand Container Corporation of travel, Auport Authority or travel, infand. 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, third that it clarifies divities likes who are engaged in providing the activity of packing, unpeaking, idealing and Enloading of goldal means to be transported by any means of transportation namely brock real ship or since it would be covered under Cargo heading Service. Since, the levy was introduced for the first time therefore toyamples of service providers like; Container Corporation of these levels. Arport Authority of a deal initial Container, Copple, Container English Stations have been given. Thes, I first like, who are engaged to be the Level given. Thes, I first like, who are the lower Actionating Authority that

Page 5, 677

since fire apparent is not Container Hoaq!// Pfearun, the contents of the Circular are not applicable is efforebuls since Foru 3 and Para 14 are independent.

0.4. Its view of acove, if en lot the considered view that consportation of cmpty contenses from container park to consider vice vorce canhibe called Cargo Hansing Service and no service tax is payable on such consportation charges under Cargo Handling Bervice as hold in Ordo -in-Applicat So, KCH-EXCUS-000 APP 193 TO, 164-2017-19 dates 5.3 2012 cases in appellance compase

7. I also find that the level adjub eating successive cannot be enalded as GLA not issued consignment notes. The efficient has service cannot be considered as GLA eervice it find that is a sociate optimus Goods Transport Agency, as under.

"gonds transport agency" means any paraoninin'n intrvidos sarvice in robulor, in fransport of goods by maa and leases consignment noto, by smateventerne nation,

This to dessity a person as CTA service provider first part is that he around, to provide approximation related to the transport of goods. (If the that this first part of goods transport agency is not elspined. The second part is that consignment notes have not from boot resuled and it is also undisperse that consignment notes have not from solved in this case. Regardley is according to consignment notes, the appellant has concording that there was no received. It is used consignment notes as beild partented to receive the second to the second part of solved appellant notes and the was no received. It is used consignment notes as beild partented to the second to the second part of solved appellant notes and the was no received or it is used consignment notes as beild partented to the second to the second part of solved appellant notes.

7.2 In and that Rule 4B of Service Tax Rules, 1994, reads as under

(2.1) guade hampers against extinic province service in relation to transport of goods by react in a goods continue what issue a convergence coment inspectives of service.

Provided that where sny taxable betwee Groelenc<u>y to trensport of goods by</u> room is a goods compare in theiry promoted under socion 33 of the Agi, the goods hansood allence may not be recorded to brace the consignment role.

Exclaration - Rulling population of this with cost the second provise to role why "consignment note" means a mountaint resuled by a goods transport equilary against the receipt of goods for the number of transport of goods by road in a goods random, which is such ty numbered, and soulains the means of the consignal one consignate representes bounder of the goods result of the consignal one consignate representes bounder of the goods restrage for which as goods and mountains do the goods restrage for which as goods are investigated during of the goods manaparticle details of the mean of using start consignation person liable for psyling service test whether consignate on the goods transport attract."

(Fraphanas supplied)

7.2 i find ther wetformer its CAVERS Service Van Saled 02.12.2004, as amonged and submanage Advisional Activities 2. Service Tax deced 20.05.2012 granted anothering of provide and service 20.05 (20.2). Service Tax deced 20.05 2012 granted anothering of provide any diversities and submatching of the service and the Sales Interspot Agency of the service activities of the service service service activities (20.2). I find that in the service service service activities (20.2) is for the service service

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whereas the appeilant case to protect that amount charged they rever been more then Rs. 15004 in any deset "Itus is the that since the Modificetion exempted. payment of Service Tax, the appellant providing services of Cooks Transport Agency. wea not required to pay Service Tax on the Consportation charges of amply. outstainers, which were below exemption unit of Rs (4,5004)

8. In view of above, likeligedde the impagnet larder and allow fan aponal filiad twi the appalant.

अपीलकडी सुचारा कड़े की यहे अमील का प्रिन्टारत उन्हें का तरीके से 18 था आभा है ; ₽...

The appeal filled by the Appenant is disposed off as showe 9.

(कुआर सतीन) अभ्यान उपथुकत (जणीलज्ञ)

<u>By Read (F</u>ost 41)

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M/s. Skidhi Vineyak Lugistics, Plot No. 1947, Received an 20	गराने सिंद्धि वितासक अंग्री सिंहन्म
-317 -Sabe No. 33. Waid 12-5.	प्लॉट में ३१४, शॉप में ४,
Gendhidt am (Kurch)	ाताले १२ जो. • विभिन्नसः (कारद्य)

<u>Cupy lu:</u>

The Clifet Commissioner, COST & Centre, Excise, Ahmediacabil 1) Zene At neclabed for his kind imprimation.

- The Commissioner, CGS7 & Central Excise Kutch Commissioneress. 25 Gandhidham for rescessary action please.
- The Assistant Commesioner, Central GST Division, Generaldhern (Trean) 31 A. Gaadt dham.

Guard File