(2015) 07 CESTAT CK 0019

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Appeal No. 448, 534 Of 2009

C.C.E., Indore APPELLANT

Vs

M/s. Ruchi Soya Industries Ltd. RESPONDENT

Date of Decision : 17-07-2015

Acts Referred:

Finance Act, 1994 — Section 65(105)(zn), 65(82)
Major Port Trusts Act, 1963 — Section 2(q)
Indian Ports Act, 1908 — Section 3(4)

Citation : (2015) 07 CESTAT CK 0019

Hon'ble Judges : G. Raghuram, J;R. K. Singh, Technical Member

Bench : Division Bench

Advocate : BB Sharma, R.C. Choure

Final Decision : Dismissed

Judgement

1. Revenue has filed these appeals against respective Orders-in- Appeal which allowed refund of service tax paid under the category of port services

in terms of Notification No.41/2007-ST, dated 06.10.2007.

2. The respondent is a manufacturer and exporter of soya refined oil. It filed refund claims in terms of Notification No.41/2007-ST. The primary

adjudicating authority sanctioned part of the refunds claimed. Out of the amounts of refunds rejected by the primary adjudicating authority,

Commissioner (Appeals) allowed refund of service tax remitted under port service classified under Section 65(105)(zn) on the ground that port

services under 65(105)(zn) of the Finance Act, 1994 are mentioned in the Schedule to the said Notification. The commissioner (Appeals) noted that

although in the case of Velji P Sons vs CCE [2007(8)STR 236(Tri-Ahm)], it has been held that activities of handling, stevedoring, loading, unloading and tug hire and labour arrangement (hereinafter referred to as the said activities) do not fall under the category of port service, as the service tax had

actually been paid under port service 65(105)(zn) ibid, the refund of the said amount had to be permitted.

3. Revenue filed these appeals on the ground that the said activities do not fall under Port Services as held by CESTAT in the case of Velji P Sons

(supra), the Commissioner (Appeals) was not legally correct in permitting the refund merely because those activities were wrongly classified by the

service provider under Section 65(105)(zn) ibid while paying service tax.

4. No one appeared on behalf of the respondent.

5. We have considered the contention of Revenue. We find that in the schedule to Notification No. 41/2007-st, port services classified under Section

65(105)(zn) ibid are mentioned. It implies that if the service provider has actually paid service tax under Section 65(105)(zn) ibid, the said notification

exempts the same by way of refund if it is received by an exporter and used for export of goods. It is not open to the service recipient to question the

classification of the service received by it as the issue of classification is only between the service provider and the jurisdictional service tax authorities

and so as per the said Notification the condition is sufficiently fulfilled for granting the refund of such service tax. It is seen that the only reason for

Revenue to file appeal was that in the case of velji P Sons (supra) CESTAT held the activities of handling, stevedoring, loading, unloading, etc.

provided in the port area as not falling under Port services. However, the said judgement no longer represents good law in the light of the CESTAT

Larger Bench decision in the case of Western Agencies Pvt. Ltd. Vs. CCE, Chennai [2011(22)STR305(Tri-LB)] which held as under:-

12. In the light of the aforesaid discussions, the questions referred to Larger Bench may be answered as under:

(a) Provisions other than clause (q) of Section (2) of the Major Port Trusts Act, 1963 or any provisions other than clause (4) of Section (3)

of the Indian Ports Act, 1908 are not applicable to interpretation of ""port service"" defined under Section 65(82) of the Finance Act, 1994 in

absence of statutory intention thereof

(b) Stevedoring in a major or minor port is a ""port service"" within the meaning of this expression defined under Section 65(82) of the

Finance Act, 1994 following judgment of Hon'ble High Court of Karnataka in Konkan Marine case - 2009 (13) S.T.R.7 (Kar).

(c) Activities/operations like intercarting (transportation of cargo after its unloading from a vessel, to a place of storage within the port

area), storage of cargo in plots allotted by the Port, blending of different grades of coal in the port area and other kinds of cargo handling

in the port area (other than export of cargo) can be held to be services ancillary to stevedoring and classifiable as ""port services"" under

Section 65(82).

6. In the light of the foregoing, we find that in the light of the CESTAT Larger Bench decision quoted above, we do not find any infirmity in the

impugned orders. Revenues appeals are, therefore, dismissed

