

(2012) 09 AHC CK 0044

In the Allahabad High Court

Case No : Central Excise Appeal Defective No. 64 of 2012

Commissioner Central Excise

APPELLANT

Vs

M/s. Manoj Kumar and Arvind Kumar

RESPONDENT

Date of Decision : 27-09-2012

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35G

Finance Act, 1994 — Section 65(105)(ZR), 65(23), 73, 75, 77

Citation : (2012) 11 ADJ 618

Hon'ble Judges : Sunil Ambwani, J; Aditya Nath Mittal, J

Bench : Division Bench

Advocate : Ramesh Chandra Shukla, for the Appellant;

Final Decision : Dismissed

Judgement

1. We heard Shri Ramesh Chandra Shukla, learned counsel for the Central Excise Department. This Central Excise Appeal u/s 35G of the Central Excise Act, 1944 has been filed by the Commissioner, Central Excise, Commissionerate, Meerut-I with delay of two days against the judgment of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) dated 6.3.2012 by which the appeal No. 665 of 2008 filed by CCE, Meerut-I was dismissed upholding the order of the Commissioner (Appeals), Customs and Central Excise, Meerut-I dated 9.7.2008.

2. The delay has been sufficiently explained. The delay condonation application is allowed. Since we do not propose to interfere on merits, we have condoned the delay and heard the arguments.

3. On an enquiry made by the jurisdictional Range Superintendent from M/s DSM Sugar Mills Ltd., Mansurpur, it was gathered that a total amount of Rs. 1,69,07,683/- was paid by them to M/s Manoj Kumar Arvind Kumar, the appellants during the period 16.8.2002 to 31.3.2007 in respect of loading, unloading and shifting of sugar bags from the floor of the mill house to the godown and from one godown to another godown. A show-cause notice dated

19.10.2007 was served upon the appellant to recover service tax amounting to Rs. 16,26,926/- with educational cess of Rs. 25,694/- u/s 73 of the Finance Act, 1994 with interest u/s 75 and the penalties.

4. The Adjudicating Authority decided the show-cause notice confirming the demand of service tax and education cess alongwith interest, besides imposing penalty of Rs. 1000/- u/s 77 and Rs. 100/- per day for every day of failure of payment of service tax upto 10.4.2006, and 2% per month for outstanding amount of service tax from 19.4.2006, till the date of actual payment.

5. The appeal filed by the party respondent was allowed by the Commissioner (Appeals), Central Excise, Meerut-1 on 21.7.2008 on the ground that u/s 65(105) (ZR) of the Finance Act 1994, the term "taxable service" has been defined as any service provided or to be provided to any person by Cargo Handling Agency in relation to "Cargo Handling Service". The appellant is not Cargo Handling Agency. Instead he is getting the work done of shifting of sugar bags from one place to another in the premise of sugar mill with the help of fellow labourers. As per the agreement/contract entered with the sugar mill, the appellant has been engaged for shifting sugar bags from one place to another in the factory, stacking of bags, shifting of bags with belt conveyor/stacker, shifting of bags in godowns, loading/unloading of sugar bags/empty gunny bags, placement of brown/damaged or wet sugar from godown to melter. The Appellate Authority found that in the definition of "Cargo Handling Service" u/s 65(23) of the Act, the transportation of goods is specifically excluded, thus the service provided by the appellant does not fall within the ambit of taxable service i.e. "Cargo Handling Service".

6. The Appellate Authority relied upon the judgment of Rajasthan High Court in S.B. Construction Company Vs. Union of India (UOI), , in which shifting of coal from railway wagon to thermal plant by conveyor system was not found to fall within the ambit of Cargo Handling Service.

7. The appellate authority has also relied upon the judgment of (2007) 10 STJ 123 in which supplying labour for helping in mechanised loading of cement was not found to come under "Cargo Handling Service" u/s 65 (23) of the Finance Act, 1994. The CESTAT, Delhi had also similarly held in (2008) 14 STJ 127 that loading/movement of goods is incidental to transportation, hence the activity cannot be included within the purview of "Cargo Handling Service".

8. The Customs, Excise and Service Tax Appellate Tribunal by a short order relying on Commissioner of C. Ex., Ranchi Vs. Modi Construction Company, found that the movement of goods within the factory for loading and unloading as well as shifting is not handling of cargo to fall within the meaning of "Cargo Handling Service", which is exigible to service tax. Since the decision of the Tribunal holding that activity carried out within the factory for loading and unloading of the goods does not amount to cargo handling, the revenue's appeal was dismissed.

9. It is submitted by Shri R.C. Shukla that the activity carried out by the respondent appellant is included within the meaning of "Cargo Handling Service", u/s 65(23) of the Act. He has relied on definition of the "Cargo Handling Service" and the items included in the service namely unloading, packing and unpacking of cargo. He submits that the activity carried out by the respondent would fall within the meaning of "Cargo Handling Service" as taxable activity. The respondent is a partnership firm, which is engaged in the business of handling cargo. Even if the goods are shifted within the factory, the activity would not fall outside the purview of definition of "Cargo Handling Service". He relies on the judgment of Orissa High Court in Coal Carriers Vs. Commr. of C. Ex., Cus. and S.T., Bhubaneswar, in which coal handling agents transporting coal by putting the loads on cars or vessels would be liable to service tax as "Cargo Handling Services".

10. Section 65(23) of the Act defines "cargo handling service" as follows:

"cargo handling service" means loading, unloading, packing or unpacking of cargo and includes 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, but does not include handling of export cargo or passenger baggage or mere transportation of goods.

11. In Black's Law Dictionary the term "cargo" means "load i.e. freight by a vessel, train, truck, aeroplane or other carrier".

12. The word "cargo" is defined in other dictionaries as follows:

Venkataramaiah's Law Lexicon 2nd Edition Reprint 2007

"Cargo-the loading of a ship or vessel of whatever it consists; the loading or freight of a ship; the goods merchandise, or whatever is conveyed in a ship or other merchant vessel."

Concise Oxford Dictionary

"Cargo-the goods carried commercially on a ship or aircraft or truck."

Webster's Dictionary

"Cargo-Goods and merchandise taken on abroad, vessel, aircraft etc."

Webster's New Collegiate Dictionary

"Cargo-goods or merchandise conveyed in ship airplane or vehicle"

Cargo-Entire load for ship which carries the load-interpreted by English Court in the case of National Dock Labour Board v. John Blarad & Co. Ltd., (1971) 2 All ER 779, 789 (HL).

13. In common parlance "cargo" means load, which is to be carried by ship,

aeroplane, rail or truck. The handling of transportation of goods, by itself unless it is an organised activity, which is connected with carrying cargo (load) by ship, aeroplane, rail or truck is involved would not fall within the definition of cargo handling service. The definition specifically excludes handling of export cargo or passenger baggage or mere transportation of goods.

14. In the present case the transportation of goods namely the sugar bags is within the factory. The respondent firm was engaged for loading, unloading, packing, unpacking, stacking, re-stacking and shifting of bags from floor of mills, from godowns and from one godown to another. The firm with its partners and other labourers handled bags of sugar under a contract, within the factory premises. The sugar bags were not to be loaded or unloaded for any movement outside the factory on public roads, on any ships, airplane or trucks for onward movement to any destination. The activities will fall within the meaning of transportation of goods, and would certainly not be included in the definition of "Cargo Handling Service", which is the service exigible to service tax.

15. For the aforesaid reasons, we do not find any good ground to interfere with the judgment of the Tribunal. The Central Excise Appeal is dismissed.