(2015) 06 CESTAT CK 0011

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Appeal No. 819 Of 2009

M/s. Chaddha Paper Mills Ltd. APPELLANT

Vs

C.C E , Meerut-II RESPONDENT

Date of Decision : 19-06-2015

Acts Referred:
Finance Act, 1994 — Section 65(19), 76

Citation : (2015) 06 CESTAT CK 0011

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

Bench : Division Bench

Advocate : Kapil Vaish, Suchitra Sharma

Final Decision : Allowed

Judgement

1. Appeal has been filed against Order-in-Appeal dated 29 05.2009, which upheld the Order-in-Original dated 19.11.2008 in terms of which service

tax demand of Rs.36,55,731/- under Business Auxiliary Service was confirmed along with interest and penalty under Section 76 of the Finance Act,

1994 was also imposed.

2. The facts of the case are that the appellant had entered into a contract with M/s. Singh Traders, Rampur, UP. As per the contract, the appellant

was to ensure that the movements of lorries/tankers of M/s. Ahuja Goods Carriers (P) Ltd. is smooth and speedy and it should also arrange/collect

information of molasses in respect of quantity of molases lifted from various sugar mills and their stock status on regular basis and it provide this

information to M/s. Jubilant Organosys Ltd. For the aforesaid services, the appellant received Rs.9/- per quintal of molasses lifted as supervision and

organizing information charges. The appellant also entered into an agreement with M/s. Punjab Chemical Agency, New Delhi (supplier and dealer of chemicals) in terms of which the appellant was authorised to book orders on behalf of the agent for the product (caustic soda Lye) of M/s. Gujarat

Alkalies & Chemicals Ltd. Vadodra and product (methanol) of M/s. Gujarat Narmada Valley Fertilizer Co. Ltd., Bharuch. As per the agreement, on

the orders booked by the appellant, ""the agent shall supply material to the party and raise invoices directly on the petty"". For procurement of

such orders, the appellant received commission at the rate of Rs.400/- PMT on caustic soda lye and Rs.1,000/- PMT on methanol. The primary

adjudicating authority held that the services rendered by the appellant fell under Business Auxiliary Service [Section 65(19) of the Finance Act, 1994]

and therefore confirmed the impugned demand along with interest and penalty.

3. Appellant has contended that as far as the alleged service rendered to M/s. Punjab Chemical Agency, it was only acting as a comrrussron agent

and such commission was exempted under Notification No.13/2003-ST, dated 20.06.2003. As regards the contract with M/s. Singh Traders, its job

was only supervision of loading and despatches of molasses and to ensure smooth and speedy movement of lorries/tankers and to collect information

regarding the molasses in respect of quantity lifted from various sugar mills and their stock status on regular basis. This activity did not fall under any

of the limbs of BAS as defined under Section 65(19) ibid during the relevant period and therefore no service tax was leviable thereon.

4. Ld. Departmental Representative, on the other hand, reiterated the reasonings of the adjudication order She added that the contracts with Punjab

Chemical Agency and M/s. Singh Traders for the relevant period were submitted only at the time of adjudication and therefore could have been

fabricated as these were not produced during investigation.

5. We have considered the contentions of both sides and have also perused the agreement entered into by the appellant with M/s. Singh Traders and

M/s. Punjab Chemical Agency. It is evident from the contract, which the appellant entered with M/s. Singh Traders that the service rendered under

that contract was essentially as quoted from the contract and reproduced below (the word ""you"" refer to the appellant):-

2. That you will ensure timely loading of quality of molasses from sugar mills from where purchases are finalized from time to time M/s.

Jubilant Organosys Ltd., Gajraula.

3. That you will ensure that lorry tanker movement from sugar mill is smooth and speedy as well as they are not detained unnecessarily at

the sugar mills.

4. That you will strictly adhere to the programme of loading/lifting given by the company time to time and will coordinate with the

transporters authorised for deployment of Jorry tankers for the lifting of molasses.

5. That you will ensure that no quantity of molasses purchase ordered is remained unlifted for any reason whatsoever unless you are given

specific directives by us/Jubilant Organosys Ltd. in this respect. However, non-deployment of lorry tankers by the transporter will not be

treated as a lapse/default on your part.

6. That you will arrange/collect information of molasses lifted from various sugar mill and their stock status on regular basis and

communicate to the company/us.

7. That you will also collect information and details of purchase contract made by various sugar mill time to time.

8. That you will be paid @ Rs.9/- (Rupees nine only) per quintal of molasses quantity lifted towards supervision and organizing information.

You shall submit your bill on monthly basis for the total quantity of molasses lifted during the month. The payment will be made on the basis

of quantities of sugar mills as per excise gate passes in favour of Jubilant Organosys Ltd. duly verified by their commercial department.

A perusal of the activities undertaken by the appellant as per the aforesaid contract thus clearly reveals that it was neither a promotion or marketing or

sale of goods belonging to the client, i.e., M/s. Singh Traders nor it was promotion or marketing of the service provided by the client. Indeed, the

activity was not captured under any of the limbs of the definition of BAS given under Section 65(19) ibid during the relevant period. The appellate

authority has clearly observed that the contract dated 02.04.2003 (from which the extract has been reproduced above) was only produced before the

adjudicating authority and not at the time of investigation and therefore it appears to be fabricated and cannot be relied upon at this stage. If that be so

and the said contract is not relied upon, then the Commissioner (Appeals) or the Original Adjudicating Authority did not have any documentation or evidence to ascertain as to what service was rendered by the appellant to M/s. Singh Traders and therefore the question of classification thereof

would be preposterous. Thus, if the agreement is not considered, then there is no evidence of the nature of service rendered by the appellant and if it

is considered the nature of service rendered by the appellant does not fall under BAS. So any which way, the impugned demand component pertaining

to the activity done by the appellant for M/s. Singh Traders is not sustainable

6. As regards the service rendered to M/s. Punjab Chemical Agency, we have perused the contract. Essentially the nature of service which the

appellant provided is reproduced below from the contract:-

2. That you shall be authorised to book order on our behalf for the product, Caustic Soday Lye of Gujarat Alkalies & Chemicals Ltd,

Vadodara and Methanol of Gujarat Narmada Valley Fertilizers Co. Ltd., Narmadanagar, Bharuch.

3. That the booked orders may be forwarded to us either over telephone or in person. On scrutinizing your order we shall supply your

order we shall supply materials to the party and raise Invoice directly on party. We reserve the right of supplying materials against your

order considering various aspects.

4. That you shall stand guarantee for the sales for which the orders have been routed through you.

5. You shall be entitled for commission @ Rs.400/- per MT on Caustic Soda Lye & @ Rs.1000/- per MT on Methanol against the deliveries

made for which you will book orders & forward the same

6. You may book the orders in the state of UP., Punjab, Haryana and Rajasthan. However, the customer is free to place their orders

directly to us. In that case, you shall not be entitled for commission on those sales

Here again, the appellate authority has observed that the contract for the year 2003-04 was submitted only on 27.08.2008. As reasoned earlier, in the

absence of contract, there will be no basis for the primary adjudicating authority or the Commissioner (Appeals) to even ascertain as to what was the

nature of service rendered in which case as reasoned in the preceding para (para - 5) the demand pertaining to the service rendered to M/s. Punjab

Chemical Agency would not be sustainable. On the other hand, the said contract leaves no doubt that the appellant was essentially working as a

commission agent and as per Notification No.13/2003-ST, dated 20.06.2003, BAS provided by a commission agent was exempted from the levy of

service tax. As per the said Notification, ""commission agent means, the person who caused sale or purchase of goods on behalf of another

person for a consideration which is based on the quantum of such sale or purchase"". Thus, the service rendered to M/s. Punjab Chemical

Agency was clearly exempted under the said Notification.

6. In the light of the aforesaid analysis, we do not find the impugned demand sustainable and therefore the impugned order is quashed and the appeal

allowed.

