

(2014) 01 CESTAT CK 0008

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 303 Of 2008, 1033 Of 2011

M/s Ferro Scrap Nigam Limited

APPELLANT

Vs

CCE, Raipur And vice-versa

RESPONDENT

Date of Decision : 09-01-2014

Acts Referred:

Citation : (2014) 01 CESTAT CK 0008

Hon'ble Judges : Archana Wadhwa, J;Rakesh Kumar, Technical Member

Bench : Division Bench

Advocate : B.L. Narasimhan, Nupur Maheshwari, Ranjana Jha

Final Decision : Allowed

Judgement

1. Both the appeals, one filed by the assessee and other filed by the Revenue are being disposed of by a common order as the issue involved is identical. The appellants, under a contract with M/s Bhilai Steel Plants are providing certain services to them, which according to the Revenue are Cargo Handling Services and the assessee is required to discharge service tax on the same.

2. It is seen that vide an earlier order dated 14th February, 2008, the Adjudicating Authority confirmed the demand of Rs.72,51,113/-. However, the second show cause notice issued for the subsequent period for recovery of service tax to the tune Rs.7.21 crores approximately stands dropped by the Commissioner by relying upon the Tribunal judgment in the case of Modi Construction Co. vs. CCE, Ranchi reported in 2008 (13) S.T.R. 34 (Tri. - Kolkata). Revenue is in appeal against the said order.

3. We first take up the Revenue's appeal in as much as the fate of the assessee's appeal is dependent upon the outcome of the Revenue's appeal.

4. The various activities undertaken by the appellant stands reproduced in the said order of the Commissioner, which for better appreciation are being reproduced by us :-

"B.1 That it has entered into agreements with BSP to undertake, inter alia, the job of processing and recovery of iron and steel scrap from the mixture of slag and scrap supplied to it by the latter. After processing the scraps, Noticee returns it to BSP, who in turn uses the scrap in or in relation to manufacture of any goods specified in the First Schedule to the Central Excise Tariff, that major part of the demand relates to activities undertaken by them under SI. No. 1 (1), I(b), (2) & (7) of Schedule -1 of the agreement are covered under business auxiliary service and are exempted under Notification No. 8/2005 dated 01/3/2005. Activities undertaken by them under SI. No. 1 (a), 1 (b), (2) & (7) of Schedule-1 of the agreement as follows:-

1. a. Recovery, processing& loading of OH Gr. Scrap to charging box size at New OH Muck Dump
- b. Processing of BF Fines (-80 mm Steel Scrap) & loading on wagons and/or trucks.
2. Unloading of Ingots etc. and processing and reloading into wagons for dispatch from NSBY area.
7. Unloading/processing/Loading and transportation by road of wear scrap at New OH Muck Dump, NSBY or any other specified area.

B.2 That all the aforesaid activities involve the work of processing. Activities undertaken by the Noticee under SI. No. 1(a), 1(b) of Schedule - 1 has been elaborated in Annexure-1 of the agreement. Para 1.1.1 of the Annexure-1 says that Noticee shall process for recovery of metallics and scrap from all the currently produced slag from BSP's steel making shop, foundry shops and slag yard, as well as from all other metal containing debris and general refuse. Further para 1.2.1 says that scrap recovered by the Noticee should be reasonably free from adhering slags and should contain approximately 80% Fe. In case Fe content in such scrap is found to be less than 75% then Noticee would not be entitled to any consideration.

B.6 Similarly, Activities undertaken by the Noticee under SI. No.2 of Schedle-1 has been elaborated in Annexure-2 of the agreement. It says that piped oxygen for lancing shall be provided free of cost by BSP. Noticee submit that generally they separate scrap from slag by the process of balling. In the process of balling, Noticee with the help of magnet crane lifts an iron ball weighing 8-10 tons up to a height of 20 feet and drops it on the scrap mixed with slag. Through this process, scrap is separated from slag. At times these mixture of slag & scrap becomes so big and gets attached so tightly that it cannot be separated by balling. In such a case, Noticee separate these scrap from slag by applying process of lancing. Lancing is done with the help of a High Frequency Induction Welded Low Carbon Mild Steel Tube. Oxygen at high pressure is injected through these tubes which help in cutting the skulls. Thereafter, scrap is recovered by applying process of balling on these relatively small pieces of slag.

B.3 Activities undertaken by the Noticee under SI. No. 7 of Schedule-I has been elaborated in Annexure-7 of the agreement. Para 2 of Annexure-7 says that processing shall include removal and clearing of refractories, insulation material, muck and scale by balling through magnetic crane and gas cutting thereafter. Scrap to be cut to size of 1000 x 400 mm.

B.4 That the scrap so recovered by them are returned to BSP and they maintain proper record of scrap recovered and sent to steel melting shop and this is done in following way :-

1) On each day the various grades of scrap after recovery and processing i.e. Steel Scrap, Ingot, LD slag, and Coke Breeze etc. are dispatched and routed through the Weigh Bridge maintained by BSP wherever applicable.

2) After weighment, the weigh bridge of BSP gives the weighment of each Tipper/dumper/Wagon that carried scrap/slag in each weighment report. One copy of the weighment report is retained by the Weighbridge of BSP

3) On the basis of weighment report of loading of the scrap in wagon or dumper as applicable, a challan called Shipment notice (SN) is prepared which is signed jointly by the representative of FSNL & Representative of respective operating authority department e.g. Material Recovery Deptt. (MRD).

4) The scrap so weighed is delivered to the end user i.e. SMS I, SMS II, SP II, SP III, BF, SBS, BBM or any user department as applicable by Rail or Road alongwith the Shipment notice which is again signed by the recipient department i.e. SMS I, SMS II, SP II, SP III, BF, SB, BBM, MRD or any user department as applicable.

5) Based on this signed shipment notices, an invoice is prepared for each job and alongwith this copy of Shipment notices and Measurement Book (MB), the invoice is sent to respective operating authority for certification and forwarding to Finance Department for payment."

5. The Commissioner has considered the above activities undertaken by the appellant within the plant of M/s Bhilai Steel and by following the Tribunal decision in the case of Modi Construction Co. vs. CCE, Ranchi (supra) has held that in as much as the activities in both the cases are identical, the ratio of the above declaration of the law is fully applicable in the present case also. It is further seen that the Adjudicating Authority also took note of various other decisions of the Tribunal and observed as under:-

"8.2.3 The CESTAT in their various subsequent decisions too have maintained the same view and demand of service tax waived in other services as well. Some case laws cited herein below are squarely applicable in this case and accordingly supporting my view to establish the above conflict is correct. CESTAT I the case of N.C. Paul & Co. vs. CCE, Bolpur reported in 2010 (20) S.T.R. 361 (Tri. - Kolkata) held that "Cargo Handling Service - Appellant contending that Goods Transport Agency service provided within mining area and loading and unloading incidental - Revenue treating loading and unloading of coal as covered under

Cargo Handling service - Appellant having strong case in their favour - Demand of Service tax of more than Rs. 2.75 crore - Amount of more than Rs.1.29 crore already deposited sufficient towards pre-deposit-Pre-deposit of balance amounts waived and recovery of such amounts stayed". The ratio of the decisions of the CESTAT in the case of Daelim Industrial Co. vs. CCE, Vadodara reported in 2003 (155) E.L.T. 457 and L&T VS, CCE, Cochin reported in 2004 (60) R.L.T. SOS (CESTAT) are held that when the work contract is on turn-key basis and cannot be vivisect for purpose of determination of service tax liability, then service tax cannot be demanded. Since I am bound by the decisions of the above said CESTAT decisions, thus following the said decision I am of the view that Noticee are not liable to pay service tax on Cargo & Handling services and case laws cited by the Noticee are found to have a conclusive bearing in their case and accordingly the allegations of non-payment of service tax under the Cargo Handling Service as made in the impugned show cause notices are not tenable and legally sustainable. Held accordingly."

6. Revenue in their memo of appeal have contested the said order on the ground that the decision in the case of Modi Construction Co. vs. CCE, Ranchi (supra) has not been accepted by the department and an appeal against the CESTAT's & decision has been filed before the Hon'ble High Court of Jharkhand. It stands brought to our notice that the Revenue's appeal in the case of Modi Construction Co. vs. CCE, Ranchi (supra) stand dismissed by the Hon'ble Jharkhand High Court reported as 2011 (23) S.T.R. 6 (Ihar.). As such, the ground raised by the Revenue in their memo of appeal is no longer available to them.

7. In any case, we have seen the decision of the Tribunal as upheld by Hon'ble High Court in the case of Modi Construction Co. vs. CCE, Ranchi (supra), it stands clearly held by the Tribunal that service of shifting, transportation of raw materials, waste materials, and finished products from one place to another, inside the plant itself, does not fall under the taxing category of Cargo Handling Services. The activities undertaken by the appellant are admittedly within the plant itself. As such, we find that the ratio of the law declared by the Tribunal in the above referred matter, which also stands upheld by the Hon'ble Jharkhand High Court, is fully applicable to the facts of this case.

8. Apart from that, we find that an identical issue was the subject matter of other Tribunal decisions reported as :-

(1) Sainik Minning & Allied Services Ltd. vs. CCE & ST, BBSR reported in 2008 (9) S.T.R. 531 (T);

(2) R.K. Transport Company vs. CCE, Raipur reported in 2012 (27) S.T.R. 496 (T) ;

(3) M/s Anupama Coal Carriers. Pvt. Ltd. vs. CCE, Raipur CESTAT Order dated 12/03/2012 and

(4) I.A. Dhas vs. CCE, Raipur reported in 2012 (28) S.T.R. 630 (T).

9. In fact, we find that in the case of I.A. Dhas vs. CCE, Raipur (supra), the appellant was engaged in undertaking identical activities for the same steel plant. As such, we are of the view that Commissioner has rightly dropped the demand and Revenue's appeal cannot be allowed.

10. As a consequence, the appeal filed by the assessee is required to be allowed. Accordingly, we reject the Revenue's appeal and allow the assessee's appeal.

(Dictated and pronounced in open court)