

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No. 419 of 2012

(Arising out of O-I-A 258/2012/COMMR (A)/RBT/RAJ dated 17.05.2012 passed by
Commissioner of Central Excise, (Appeals),-Rajkot)

LAVIOSA TRIMEX INDUSTRIES PVT LTD.Appellant

CHITRAKUT-5, PACHSHEEL SOCIETY
SANSKAR NAGAR, BHUJ-KUCTH GUJARAT

VERSUS

C.C.E. & S.T.-RAJKOTRespondent

CENTRAL EXCISE BHAVAN,
RACE COURSE RING ROAD...INCOME TAX OFFICE,
RAJKOT, GUJARAT-360001

AND

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CENTRAL EXCISE BHAVAN,
RACE COURSE RING ROAD...INCOME TAX OFFICE,
RAJKOT, GUJARAT-360001

APPEARANCE:

Shri Mahesh Basutkar (Assistant Account Manager) appeared for the Appellant
Shri R.K. Agarwal, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final Order No. A/ 10113-10114 /2023

DATE OF HEARING: 19.01.2023
DATE OF DECISION: 25.01.2023

RAMESH NAIR

In the present case the lower authorities have denied the refund of service tax in terms of Notification No. 17/09-ST on the ground that the refund is admissible on CHA Service, whereas the appellant have received various other services which are other than CHA services.

2. Shri Mahesh Basutkar, learned Assistant Account Manager of the Company submits that the bills raised by the CHA clearly mentioned the custom house agency charges, therefore, there is no dispute that the service received by the appellant are CHA Service. He also submitted the relevant invoices of CHA which bears the shipping bill No. which correlates with the export consignment. He submits that since the refund claim was made against the CHA service, received by the appellant, refund cannot be rejected.

3. Shri R.K. Agarwal, learned (Superintendent) Authorized Representative appearing for the Revenue reiterates the findings of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the records. We find that the lower authorities have denied the refund on the ground that the appellant have claimed the refund in respect of service which does not fall under the category of CHA Service. In this regard, we scan below a sample invoice of CHA.

E-MAIL :pradeepan@actship.com
: accounts@actship.com

TEL NO. (02836) 229967/239743/231734
FAX NO.(02836) 238864/270579

ACT INFRAPORT LTD.

ADITYA', PLOT NO.286, SECTOR 1 (A), GANDHIDHAM - 370201
REGD. OFFICE NO. 14, SHIPPING HOUSE, GR. FLOOR, KUMPTA STREET, FORT, MUMBAI - 400 001
S/TAX REG NO. AR/GIM/CHA-05/2004-05
PAN NO. AAECA9098H
PAN based Service Tax Regn No.AAECA9098HST003
BILL FOR SERVICES RENDERED

B/NO.ACTIL/KDL/EXP/164/2009-10		DATE :18.11.2009	
M/S. LAVIOSA TRIMEX INDUSTRIES (P) LTD., CHITRAKUT - 5, PANCHSHSEAL SOICIETY SANSAKAR NAGAR , BHUJ		VESSEL : M.V.BSLE EXPRESS PORT : KANDLA CARGO : PROCESSED BENTONITE LUMPS SHIPPED QTY : 3500.000 MT TOTAL QTY : 3525.250 GMT	
S/B NO. :1158772/03.11.09		FOB VALUE : RS.5353530.00	
INVOICE. NO. : LTIPL/GJ/BNL/076- 31.10.09			
S.NO.	PARTICULARS	RATE	AMOUNT
1	OUR CUSTOM HOUSE AGENCY CHARGES WHICH INCLUDES RECEIVING THE CARGO AT PORT ,UNLOADING FROM THE TRUCKS , STORAGE IN OPEN PLOT FOR A PERIOD OF 30 DAYS, HIGH HEAPING OF CARGO AT PLOT , LOADING ONTO THE TRUCKS / DUMPERS & SHIFTING TO WHARF, ON- BOARD STEVEDORING, CUSTOMS AND PORT CLEARANCE, PAYMENT OF WHARFAGE TO THE PORT AUTHORITIES & OUR AGENCY CHARGES.	RS.100.00 PMT.	350000.00
	SERVICE TAX ON SERVICE CHARGES @ 10%		35000.00
	EDUCATION CESS @ 2 % OF SERVICE TAX -> 0.20 %		700.00
	SECONDARY AND HIGH. SEC. CESS @ 1% OF SERVICE TAX -> 0.10 %		350.00
	TOTAL		386050.00
	(RUPEES IN WORDS: THREE LAC EIGHTY SIX THOUSAND FIFTY ONLY.)		

E & OE

PAYMENT TO BE MADE IN CROSSED CHEQUE/DEMAND DRAFT PAYABLE GANDHIDHAM/MUMBAI/DELHI
OUR HDFC A/C NO. 2160330000653

FOR ACT INFRAPORT LTD


ACCOUNTANT



From the above it is clear that the appellant is a CHA and they have issued the invoices showing the description as Custom House Agency

Service Charges. Therefore, there is no dispute that the services on which the refund claim was made is indeed CHA Service. Moreover, even if any other service provided by CHA, the refund claim is admissible as per the Notification No. 17/09-ST which allow the refund in respect of services provided by CHA that means even if any service which even does not fall under the CHA Service but the same is provided by CHA, the same will be admissible for refund. In the Notification, it is not service specific but it is a service provider specific, hence any service provided by CHA, the refund is admissible. Accordingly, we are of the view that the ground taken by the lower authorities for denying the refund is absolutely against the statutory provision under the Notification No. 17/09-ST, therefore, the appellant is rightly entitled for the refund. Hence, the impugned orders are set aside. Appeals are allowed.

(Pronounced in the open court on 25.01.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha