

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 379 of 2011

(Arising out of Order-in-Appeal No. 22/2011 dated 28.03.2011 passed by the Commissioner of Customs and Central Excise (Appeals), No.1, Foulk's Compound, Anai Medu, Salem – 636 001)

A. Vijayakumar

: Appellant

D. No. 25/10D, Anthonypuram,
Behind Ram Theatre,
Salem – 636 005

VERSUS

**The Commissioner of Central Excise and
Service Tax**

: Respondent

No.1, Foulk's Compound, Anai Medu,
Salem – 636 001

APPEARANCE:

Shri D. Jaishankar, Advocate for the Appellant

Shri R. Rajaraman, Assistant Commissioner for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 40385 / 2023

DATE OF HEARING: 02.05.2023

DATE OF DECISION: 31.05.2023

Order : [Per Hon'ble Mr. P. Dinesha]

Brief facts as could be gathered from the Order-in-Appeal and the Order-in-Original are that the appellant is alleged to be rendering Cargo Handling Service, without registering with the Department, which appears to have prompted the Officers of Headquarters Preventive Unit, Salem, to visit the premises of the appellant on 06.07.2008.

2.1 During their visit, it appears that the officers required the Books of Accounts, Balance Sheet, Agreement, etc., for verification. It appears that later, i.e., on 17.07.2008, they appear to have recorded a statement from the appellant.

2.2 It appears that the appellant revealed the nature of his work, of loading cement from containers at Railway Goods Shed, Salem, to the trucks; transporting the same to the godown of M/s. J.K. White Cement Works at Salem / to the customers at various places in Tamil Nadu. The appellant also admitted to be unloading goods from trucks at the godown of M/s. J.K. White Cement Works, Salem; he would raise bills for the above works as per the rate fixed in the agreement entered into with M/s. J.K. White Cement Works on 01.12.2004, renewed on 01.02.2008. He also appears to have admitted to have registered with the Department under GTA, but had not paid any tax.

3. Based on the above, it appears that the Department issued a Show Cause Notice dated 12.04.2010 proposing to demand Service Tax under 'Cargo Handling Service' for the period from 24.12.2004 to 17.06.2008, appropriate interest under Section 75 of the Finance Act, 1994 and penalty under Sections 77 and 78 *ibid.*, to which it also appears that the appellant replied and relied on the Order of the Delhi Bench of the CESTAT in the case of *Dalveer Singh v. Commissioner of Central Excise Jaipur [2008 (12) STT 266]* and also relied on various other judicial pronouncements.

4.1 The matter was adjudicated and the Order-in-Original Sl. No. 18/2010-ST (JC) dated 21.10.2010 came to be passed by the Adjudicating Authority, wherein the terms of contract and even the bills raised appears to have been analysed, to hold that the appellant "... are not engaged in mere transport of goods." Paragraph 23 of the Order-in-Original is reproduced below: -

"23. Thus it can be seen that M/s. VFA are not engaged in mere transport of goods. They have to arrange for the clearance of the container from the Railway Yard, load them in lorries, transport the goods to the godown, unload the goods at the godown, stack the goods, despatch the goods to other godowns / parties. Thus, they are fully responsible for the cargo/goods sent by their principal and they are prohibited from 'handling' similar goods of other companies."

4.2 Thus, the Adjudicating Authority has confirmed the demands proposed in the Show Cause Notice and the appellant, feeling aggrieved, appears to have filed an appeal before the First Appellate Authority. The learned First Appellate Authority also having upheld the demands confirmed in the Order-in-Original vide impugned Order-in-Appeal No. 22/2011 dated 28.03.2011, the same has been assailed in the present appeal before this forum.

5. Heard Shri D. Jaishankar, Learned Advocate appearing for the appellant and Shri R. Rajaraman, Learned Assistant Commissioner representing the Revenue.

6.1 Learned Advocate for the appellant has, at the outset, submitted that the appellant did not provide Cargo Handling Service as is ascertainable from the contract with M/s. J.K. White Cement Works, which was enclosed to the synopsis filed during the hearing.

6.2 Learned Advocate has also *inter alia* relied on C.B.E.C. Circular No. 104/7/2008-S.T. dated 06.08.2008.

7. After hearing both sides, we find that the issue to be decided is: whether the demand, as upheld, is sustainable?

8.1 We find that the clarification issued by the Board in the above Circular mainly addresses the issue in respect of a GTA who also incidentally and by virtue of a single

composite contract, undertakes activities like loading/unloading, packing/unpacking, transshipment, temporary warehousing, etc., for which the GTA issues a consignment note.

8.2 It is thus clarified that transportation is not the essential character of Cargo Handling Service, but only incidental to the same. It also clarifies that where the service provider is *registered under GTA and issues consignment note for transportation of goods by road*, then the service is to be treated as GTA and not Cargo Handling Service.

8.3 In stark contrast, the appellant, though claims to have registered under GTA, but there is a finding of fact that it has never paid any tax, which finding has not at all been disputed by the appellant. Further, the appellant has also not showed anywhere, that it has been issuing consignment note in respect of the 'GTA' service apparently claimed by it, which is the requirement of the Circular (*supra*).

9. The Learned Advocate for the appellant has relied on the order in the case of *Commissioner of C.Ex., Raipur v. M/s. Drolia Electrosteels (P) Ltd. [2016 (43) S.T.R. 261 (Tri. - Del.)]* wherein the above circular is relied upon to affirm the service under GTA and so is in the order in the case of *Commissioner of Central Excise, Indore v. Arvind Singh Lal Singh [2017 (48) S.T.R. 63 (Tri. - Del.)]*. ... Hence, the above are not applicable as the facts are different here.

10. Section 65(23) of the Finance Act, 1994 defines "cargo handling service", as under: -

"(23) "cargo handling service" means loading, unloading, packing or unpacking of cargo and includes, —

(a) cargo handling services provided for freight in special containers or for non-containerised freight, services provided by a container freight terminal or any other freight terminal, for all modes of transport, and cargo handling service incidental to freight; and

(b) service of packing together with transportation of cargo or goods, with or without one or more of other services like loading, unloading, unpacking,

but does not include, handling of export cargo or passenger baggage or mere transportation of goods;"

11. We find from the activities of the appellant, as forthcoming from the orders of the lower authorities as well as the Show Cause Notice, as reproduced at paragraph 4.1 of this order, that they clearly fall under the definition of cargo handling service and therefore, we do not find any fault with the impugned demand.

12.1 The appellant has, without prejudice to the above, also urged before us that there was no suppression of any fact to evade payment of tax or duty and therefore, on this count alone, the demand was required to be set aside.

12.2 From the facts as recorded in the orders of the lower authorities, we find that the evasion of tax is blatant, that is to say, the appellant though got itself registered under GTA and promptly collected the service charges as well, but however, it did not bother to remit at least the tax collected and hence, the same cannot be anything short of evasion. Over and above this, it is also a fact borne on record that the appellant did not even file ST-3 returns within the prescribed time. Thus, we are convinced that even this contention of the appellant as to the invoking of extended period of limitation lacks merit.

13. In the light of the above facts, we find that the facts in the judicial pronouncements relied upon by the appellant are distinguishable.

14. In the result, we do not find any merits in the appeal and consequently, we dismiss the same.

(Order pronounced in the open court on **31.05.2023**)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sdd