[2017] 6 S.C.R. 997

SIGNODE INDIA LIMITED

v.

COMMR.OF CEN. EXCISE & CUSTOMS - II

(Civil Appeal No. 6038-6039 of 2007)

MARCH 08, 2017

[RANJAN GOGOI AND NAVIN SINHA, JJ.]

Finance Act, 1994:

ss.2(23), s.65 (23), s.65 (76b), s.65(105)(zr) and s.65 (105) (zzzf) – Service tax – Service rendered by appellant in the manufacturing unit of Principal manufacturer – Liability sought to be fastened on the appellant on ground that service rendered by appellant amounted to "cargo handling service", however, appellant claimed that service rendered by it amounts to a "packaging activity", which has become exigible to service tax by amendment to Finance Act, 1994 and by insertion of s.65(76b) and s.65(105)(zzzf) with effect from 16.06.2005 – Tribunal found appellant liable to pay service tax for its activity for period prior to 2005 – Held: Cargo is understood to denote goods which are ready for transportation whereas packaging of goods is a stage prior – Activity undertaken by the appellant, though related to packing activity, is at a stage when the goods are yet to clear the factory gate as manufactured goods for onward transportation – Admittedly, the appellant has nothing to do with the transportation of goods which it packs within the factory unit of the principal manufacturer prior to the goods leaving the factory – All activity undertaken by the appellant is related to packaging activity – "packaging activity" u/s.65(76b) and "service rendered in relation to packaging activity" u/s.65(105)(zzzf) were inserted by the Finance Act, 2005, which is sufficiently indicative of legislative intent that packaging activity is different from cargo handling activity – Making appellant liable to tax for pre-amended period (prior to 16.06.2005) on basis that the activity undertaken by it involves rendering of cargo handling service would run counter to the express legislative intention, in a situation where liability of appellant for post amendment period in "packaging activity" has not been even disputed by the Revenue –

A *Therefore, the appellant would not be liable to pay service tax on the service rendered by it in terms of s.65(23) r/w. s.65(105)(zr) of the Act prior to amendment made by the Finance Act, 2005.*

ss.65 (23), s.65 (76b), s.65(105)(zr) and s.65 (105) (zzzf) – Distinction between the expressions "Cargo Handling Service" and B *"Packaging Activity" – Held: Cargo is understood to denote goods which are ready for transportation whereas packaging of goods is a stage prior i.e. before they become cargo and in fact on completion of such packaging the goods become cargo – Circular no.F.No.B.11/1/2002-TRU dated 1.8.2002 issued by CBEC – Clause 3.*

C

Allowing the appeals, the Court

HELD: 1. Sections 65(76b) and 65(105)(zzzf) were both inserted by the Finance Act, 2005 with effect from 16.06.2005. The said amendment is sufficiently indicative of legislative intent D **that packaging activity is different from cargo handling activity. A view, which would make the appellant liable to tax for the pre-amended period (prior to 16.06.2005) on the basis that the activity undertaken by it involves rendering of cargo handling service would run counter to the expressed legislative intention in a situation where its liability, for the post amendment period, on** E **the basis that the appellant is engaged in "packaging activity" has not been disputed by the Revenue. [Para 6] [1001-E-F]**

2.1 There is no dispute on the fact that the liability sought to be fastened on the appellant is on account of the activity undertaken by the appellant in the manufacturing unit of the F **principal manufacturer. It is also not in dispute that such activity is prior to the goods leaving the factory gate and the charges paid to the appellant for rendering the service forms a part of the assessable value of the manufactured goods of the principal manufacturer. In such a situation, what to discern is the distinction** G **between the two expressions "Cargo Handling Service" and "Packaging Activity", as defined in the respective provisions of the Act. [Para 7] [1001-G-H; 1002-A]**

2.2 A careful reading of Section 65(23) of the Act, which defines Cargo Handling Service would go to show that though H **the word packing is included therein, the same is referable to**

the word "Cargo" whereas in Section 65(76b) "Packing Activity" is defined to mean "Packaging of Goods". [Para 8] [1002-B] A

2.3 The distinction between the two expressions, namely, "cargo" and "goods" in the two different provisions of the Act becomes evident if cargo is understood to denote goods which are ready for transportation whereas packaging of goods is a stage prior i.e. before they became cargo and in fact on completion of such packaging the goods become cargo. Admittedly, the appellant has nothing to do with the transportation of goods which it packs within the factory unit of the principal manufacturer prior to the goods leaving the factory. [Paras 9, 10] [1002-C-F] B C

3. In a Circular issued by the Central Board of Excise and Customs, services liable to tax under the category of "cargo handling services", has been clarified to mean services provided by cargo handling agencies which is, in effect what Section 65(zr) provides for. Clause 3, makes the position abundantly clear that even the department had understood services provided by Cargo handling agencies undertaking the activities of packing, unpacking, loading and unloading of goods meant to be transported by any means of transportation, namely truck, rail, ship or aircraft as services liable to tax as "cargo handling services". Clause 3.2 of the circular makes it clear that mere transportation of goods is not covered in the category of cargo handling. Clause 15 of the circular also makes it clear that an individual undertaking the activity of loading or unloading the cargo would not be liable to pay service tax on such activity as being an activity undertaken by a cargo handling agency. All activity undertaken by the appellant, though related to packing activity, is at a stage when the goods are yet to clear the factory gate as manufactured goods for onward transportation. The appellant would not be liable to pay service tax on the service rendered by it in terms of Section 65(23) read with Section 65(105)(zr) of the Act. [Paras 12-15] [1002-F-G; 1003-A-F] D E F G

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 6038-6039 of 2007.

From the Judgment and Order No. A-1570 & 1572/KOL/07 dated 10.08.2007 of the Customs, Excise & Service Tax Appellate Tribunal, Kolkata in Service Tax Appeals No. EDM-806/04 and EDM-06/06. H

A V. Lakshmikumaran, Yogendra Aldak, Karan Sachdev, M. P. Devanath, Kartik Kurmy, Praveen Kumar, S. B. Sharma, Ashok Anand, Advs. for the Appellant.

K. Radhakrishna, Sr. Adv., Ms. Nisha Bagchi, Ms. B. Sunita Rao, Ms. Pooja Sharma, B. V. Balaram Das, Arind Kumar Sharma, Advs. B for the Respondent.

The Judgment of the Court was delivered by

RANJAN GOGOI, J. 1. Heard learned counsels for the parties and perused the relevant material.

C 2. The liability of the appellant to service tax on the basis that the service rendered by the appellant amounts to "cargo handling service" within the meaning of Section 2(23) of the Finance Act, 1994 [as amended by Finance (No.2) Act, 2004] is the core issue that arises for determination in these cases.

D 3. The appellant seeks to disclaim such liability by contending that the service rendered by it amounts to a "packaging activity" which has made exigible to service tax by amendment to the Finance Act, 1994 and by insertion of Section 65 (76b) and Section 105(zzzf) with effect from 16.06.2005. The appellant has been paying service tax on the aforesaid basis i.e. service rendered by it amounts to a packaging activity E and no dispute on this score has been raised by the Revenue.

4. The appellants though granted the facility of centralized registration with effect from 10.10.2004 have been found to be liable to pay service tax on its activity by the Kolkata Bench of the Customs, Excise, Service Tax Appellate Tribunal (for short, 'the Tribunal') for the F period prior to 2005, whereas in respect of the very same activity it has been found to be not so liable by the Bangalore Bench of the learned Tribunal, which order has since been affirmed by the High Court of Andhra Pradesh being the jurisdictional High Court in respect of the *lis* decided by the Bangalore Bench of the learned Tribunal.

G 5. To appreciate the issues arising in the present case, Section 65(23) which defines "cargo handling service"; Section 65(105)(zr) which deals with the "taxable service rendered by a cargo handling agency"; Section 65 (76b) which defines "packaging activity" and Section 65(105)(zzzf) which makes "service rendered in connection with packaging activity" exigible to the service needs to be extracted below:-

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"Section 65-In this Chapter, unless the context otherwise requires:- A

(23) "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-containerised freight, services provided by a container freight terminal or any other freight terminal, for all modes of transport and cargo handling B service incidental to freight, but does not include handling of export cargo or passenger baggage or mere transportation of goods;

(76b) "packaging activity" means packaging of goods including pouch filling, bottling, labelling or imprinting of the package, but does not include any packaging activity that amounts to C "manufacture" within the meaning of clause (f) of Section 2 of the Central Excise Act, 1944.

Section 105 – "taxable service" means any service provided or to be provided:-

(zr) to any person, by a cargo handling agency in relation to cargo D handling services;

(zzzf) to any person, by any other person, in relation to packaging activity."

6. Sections 65(76b) and 65(105)(zzzf) were both inserted by the E Finance Act, 2005 with effect from 16.06.2005. The above amendment, to our mind, is sufficiently indicative of legislative intent that packaging activity is different from cargo handling activity. A view, which would make the appellant liable to tax for the pre-amended period (prior to 16.06.2005) on the basis that the activity undertaken by it involves rendering of cargo handling service would run counter to the expressed F legislative intention in a situation where its liability, for the post amendment period, on the basis that the appellant is engaged in "packaging activity" has not been disputed by the Revenue.

7. At this stage notice must also be had of the fact that there is no dispute on the fact that the liability sought to be fastened on the appellant G is on account of the activity undertaken by the appellant in the manufacturing unit of the principal manufacturer, namely, Tata Refractories Limited. It is also not in dispute that such activity is prior to the goods leaving the factory gate and the charges paid to the appellant for rendering the service forms a part of the assessable value of the H

A manufactured goods of the principal manufacturer, namely, Tata Refractories Limited. In such a situation, we will really have to discern what is the distinction between the two expressions "Cargo Handling Service" and "Packaging Activity", as defined in the respective provisions of the Act.

B 8. A careful reading of Section 65(23) of the Act, which defines Cargo Handling Service would go to show that though the word packing is included therein, the same is referable to the word "Cargo" whereas in Section 65(76b) "Packing Activity" is defined to mean "Packaging of Goods".

C 9. The distinction between the two expressions, namely, "cargo" and "goods" in the two different provisions of the Act becomes evident if cargo is understood to denote goods which are ready for transportation whereas packaging of goods is a stage prior i.e. before they became cargo and in fact on completion of such packaging the goods become cargo. The position becomes more clear if the dictionary meaning of the D word "cargo" is taken into account, as set out below:

> As per *Black' Law Dictionary*, the word "cargo" means "Goods transported by a vessel, airplane, or vehicle; According to *Oxford Dictionary of English*, "cargo" means goods carried on a ship, aircraft, or motorvehicle and as per *Webster's Comprehensive* E *Dictionary*, "cargo" is Goods and merchandise taken on board a vessel.

10. Admittedly, the appellant has nothing to do with the transportation of goods which it packs within the factory unit of the principal manufacturer prior to the goods leaving the factory.

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11. There is yet another aspect of the case which would require a mention. In a Circular bearing F.No.B.11/1/2002-TRU dated 01.08.2002 issued by the Central Board of Excise and Customs, services liable to tax under the category of "cargo handling services", has been clarified to mean services provided by cargo handling agencies which is, in effect G what Section 105(zr) provides for.

12. Clause 3 of the circular is in the following terms:

"3. The services which are liable to tax under this category are the services provided by cargo handling agencies who undertake the activity of packing, unpacking, loading and unloading of goods

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meant to be transported by any means of transportation namely truck, rail, ship or aircraft. Well known examples of cargo handling service or services provided in relation to cargo handling by the Container Corporation of India, Airport Authority of India, Inland Container Depot, Container Freight Stations. This is only an illustrative list. There are several other firms that are engaged in the business of cargo handling services."

Clause 3, extracted above, makes the position abundantly clear that even the department had understood services provided by Cargo handling agencies undertaking the activities of packing, unpacking, loading and unloading of goods meant to be transported by any means of transportation, namely truck, rail, ship or aircraft as services liable to tax as "cargo handling services".

13. Clause 3.2 of the circular makes it clear that mere transportation of goods is not covered in the category of cargo handling. Clause 15 of the circular also makes it clear that an individual undertaking the activity of loading or unloading the cargo would not be liable to pay service tax on such activity as being an activity undertaken by a cargo handling agency.

14. It is nobody's case before us that the appellant is a cargo handling agency. All activity undertaken by the appellant, though related to packing activity, is at a stage when the goods are yet to clear the factory gate as manufactured goods for onward transportation.

15. In the light of the discussions that have preceded, we are of the view that prior to the amendment made by the Finance Act of 2005 with effect from 16.06.2005, the appellant would not be liable to pay service tax on the service rendered by it in terms of Section 65(23) read with Section 105(zr) of the Act.

16. The demand raised on the appellant may be understood in the aforesaid light and all reliefs as may be due in terms of the above be granted forthwith.

17. The appeals, consequently, are allowed and the order of the Tribunal is set aside.

Ankit Gyan Appeals allowed.