

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

**Service Tax Appeal No.2624 Of 2012**

[Arising out of Order-in-Appeal No.221/BK/PKI/2012 dated 31.05.2012 passed by the Commissioner of Central Excise (Appeals), Delhi-III, Gurgaon]

**The Food Corporation of India** : **Appellant (s)**  
 Chatha Complex, Kurukshetra,  
 Haryana

Vs

**The Commissioner of Central** : **Respondent (s)**  
**Excise and Service Tax, Panchkula**  
 SCO 407-408, Sector-8,  
 Panchkula-134119

**APPEARANCE:**

Shri Sunil Kumar Mukhi and Mr. Iqbal, Advocates for the Appellant  
 Shri Ravinder Jangu, Authorised Representative for the Respondent

**CORAM :**  
**HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)**  
**HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER No.60234/2023**

Date of Hearing:28.07.2023

Date of Decision:01.08.2023

**Per :P.ANJANI KUMAR**

M/s Food Corporation of India (FCI), Kurukshetra, the appellants procure grain through State Government Agencies like HALFD, CONFED, HAIC and HWC etc. and also directly from the millers; at the time of unloading the grains, in the godowns of FCI, the appellant FCI causes the weighment of the trucks irrespective of whether or not the trucks were weighed earlier by their suppliers or not; the appellant deducts charges, for such weighment, in the

payments made to the agencies, supplying grain. Revenue opined that the weighment charges, collected by the appellants, from their customers, charges constitute the consideration for the "Business Auxiliary Service" alleged to have been rendered by the appellants. Revenue issued a show cause notice, dated 08/12/2008, seeking to recover service tax of Rs. 4,70,059/-, for the period 2004-05 to 2006-07. The lower authority, vide order dated 30/11/2009, confirmed the demand along with equal penalty under Section 78 of Finance Act, 1994 and also by imposing penalty under Section 77 *ibid.* Commissioner appeals, on an appeal filed by the appellants, upheld the order of the lower authority. Hence, this appeal.

2. Shri Sunil Kumar Mukhi, learned Counsel, appearing for the appellants, submits that FCI, the appellants, have godowns all over the country; However, the department in their wisdom chose to select only the appellants for raising a demand. He submits that the show cause notice does not specify as to under which clause of "Business Auxiliary Service" Clauses (i) to (vii), the activity undertaken by the appellants falls. He submits that the appellants did not render any service to their customers; they did not receive any consideration for any service; the deduction was on account of recovery of weighment charges and as such it cannot be called as remuneration for any service. Learned counsel relies on *Commissioner of Central Excise, Chandigarh Vs Northern Computer 2009 (13) STR 34 (TRI-DEL)* and submits that weighment does not constitute provision of any service and the charges thereof are not payment of any consideration.

3. Shri Ravinder Jangu, Learned Authorized Representative, for the Revenue, reiterates the findings of OIO and OIA.

4. Heard both sides and perused the records of the case. On going through the definition of "Business Auxiliary Service", we find that the service alleged to have been rendered by the appellants, does not appear to fall under any of the sub causes (i) to (vii). The Revenue did not produce any evidence to show that there is an agreement or an understanding between appellant and their customers for rendering of any service; there is no agreement on any consideration. The nature of service should emanate from the terms of the contract or agreement or understanding mutually agreed upon by the parties. Alternatively, the service, if any, has to fulfill the criterion laid down under the definitions provided by the statute for various services. We are of the considered opinion that in the instant case the Revenue fails to establish either of the conditions. We find that weighment, by the appellants, is done to ensure that the declared quantity of grains is supplied by the agencies; therefore, it cannot be said that the weighment is a service, leave alone Business Auxiliary Service; deduction of weighment charges is not a consideration towards any service rendered. We find that the appellants are deducting certain charges, in addition to weighment charges, towards the allowance for moisture if any.

4. We find that the Tribunal, in the case of Northern Computer (supra), relies on Deepak Computers and others Final Order No. ST/151 to 185/2008 dated 24/06/2008, in which Tribunal observed as follows ;

*"We find that in these appeals the respondents are owner of Dharamkanta and they are undertaking the weighment of the goods. We find the Business Auxiliary Service means any service in relation to promotion or marketing or sale of goods produced or provided by or belonging to clients. As respondents are not concerned with the sale or marketing of the goods, therefore, cannot be said to be provider of incidental or auxiliary service to any activity such as promotion or marketing or sale of goods produced. In these circumstances, we find no infirmity in the impugned orders. The appeals are dismissed".*

5. In view of the above, we find that the impugned order cannot be sustained and is liable to be set aside. Accordingly we set aside the impugned order and allow the appeal.

*(Pronounced in the open Court on 01/08/2023)*

**(S. S. GARG)**  
MEMBER (JUDICIAL)

**(P. ANJANI KUMAR)**  
MEMBER (TECHNICAL)

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