

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
**NEW DELHI**

PRINCIPAL BENCH – COURT NO. – IV

**Service Tax Appeal No. 50342 of 2018 [DB]**

[Arising out of Order-in-Appeal No. 32/Central Tax/AppI-II/Delhi-2017 dated 24.10.2017 passed by the Commissioner of Central Goods & Service Tax (Appeals-II), Chandigarh]

**M/s. Container Corporation of India Ltd.** **...Appellant**  
CONCOR Bhawan,  
C-3, Mathura Road,  
New Delhi - 110076

*VERSUS*

**Commissioner of Central Excise,  
Customs, Central Goods and Service Tax,  
Delhi –I** **...Respondent**  
2<sup>nd</sup> & 3<sup>rd</sup> Floor, Plot No.2B,  
EIL Annexure Building,  
Bhikaji Cama Place,  
New Delhi - 110066

**APPEARANCE:**

Shri R.P. Jindal, Advocate for the Appellant  
Shri S.K. Meena, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)**  
**HON'BLE MRS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)**

DATE OF HEARING: 23.11.2023  
DATE OF DECISION: **22.03.2024**

**FINAL ORDER No. 55448/2024**

**DR. RACHNA GUPTA**

The appellant in the present case is registered with the service tax department for rendering taxable services of Customs House Agent and Storage and Warehousing Services. During the audit of appellant's record department observed following shortcomings:

- (i) During the period 01.05.2003 to 16.07.2003, the appellant has not paid service tax on the value of services rendered on account of ground rent of empty containers, resulting into the non-payment of service tax of Rs.1,02,416/-.
- (ii) The noticees were charging for the services rendered in respect of handling of empty containers but have not paid the service tax for the same. Resultantly, the service tax of Rs.6,14,860/- was found as not paid during the period August, 2002 to December, 2003.
- (iii) The appellant was also observed to pay their service tax liability for December, 2003 after 25<sup>th</sup> of the following month. Accordingly, amount at the rate of 15% interest per annum amounting to Rs.1,264/- was opined to be the appellant's liability.

1.2 With these observations vide Show Cause Notice No. 265 dated 11.04.2005, an amount of Rs.7,17,276/- (1,02,416/-+ 6,14,860/-) along with interest and the interest of Rs.1,264/- was proposed to be recovered and penalty was also proposed to be imposed. The said proposal was initially confirmed vide Order-in-Original No. 53/2005 dated 29.12.2005. Appeal against the said order has been rejected vide Order-in-Appeal No. 142/2007 dated 29.06.2007 except that the confirmation of interest of Rs.1,264/- as was ordered to be recovered under Section 75 of the Finance Act, 1994 was set aside.

1.3 The appellant has challenged the said order before this Tribunal. Vide Final Order No. 56944/2013 dated 04.07.2013, the Tribunal remanded back the matter for both the issues involved in

the appeal to be re-adjudicated, Keeping in view the cum tax value and as to whether the benefit thereof can be given. With respect to the second issue about service of storage and warehousing services, this Tribunal found that authorities below have not discussed about the activity undertaken by the appellants and how this activity fulfills the conditions of storage and warehousing services. Under these circumstances, the matter was remanded back pursuant to the direction of remand that the Order-in-Original No. 90/2016 dated 13.12.2016 was passed vide which the cum tax benefit was given to the appellant. Accordingly, the amount already paid by the appellant (Rs.95,079/-) as service tax in respect of handling of empty containers during the impugned period was held correct and the demand of balance service tax was set aside. However, with respect to the second issue of demand rejecting the activity of appellant as that of Storage and Warehousing Services, the authority, after discussion of this activity has confirmed the demand. The appeal against the said order has been disposed of vide the impugned order under challenge i.e. Order-in-Appeal No. 32/93/2017 dated 24.10.2017, vide which the findings of original adjudicating authority have been upheld except that imposition of penalty amounting to Rs.63,663/- has been set aside. Still being aggrieved, the appellant is before this Tribunal.

2. We have heard Shri R.P. Jindal, learned Advocate for the appellant and Shri S.K. Meena, learned Authorized Representative for the department.

3. Learned counsel for the appellant has mentioned that the activity on which service tax has been confirmed is not covered

under the taxable service of storage and warehousing of empty containers. It is clarified that in case of import of cargo in containers, after custom clearance by custom authorities, if container is destuffed within CONCOR yard/Terminal, the empty container on the request of the shipping lines is handled in the following ways:

(i) The empty container is moved to the CONCOR warehouse for storage. In this case charges are collected for godown rent of the warehouse from the respective shipping line and no separate charges are collected for movement of empty containers. Service tax has been discharged on the godown rent based on cum tax value.

(ii) If the shipping line has pre-existing order from the customer, the empty container immediately after de-stuffing is moved to the outbound vehicle to the customer place and charges for handling of empty container from the CONCOR yard to the outbound vehicle are collected from the shipping line and no service tax has been paid on the activity considering the same to be handling charges for movement of the empty container.

(iii) Empty containers are moved from the warehouse to the outbound vehicle for movement to the customers' (of shipping lines) place and charges for handling of empty container from the CONCOR warehouse to the outbound vehicle are collected from the shipping line and no service tax has been paid on the activity considering the same to be movement of the empty container.

3.1 It is submitted that the department has erroneously relied upon Circular No. 60/9/2003 dated 10.07.2023 to assume that impugned activity of handling of empty containers outside the storage area was covered under storage and warehousing of the containers. With these submissions the order under challenge is prayed to be set aside and appeal is prayed to be allowed.

4. While rebutting these submissions, learned Departmental Representative has mentioned that the issue involved in the present appeal is about non-payment of service tax and handling of empty containers. The Circular No. B11/1/2002-TRU dated 01.08.2002 clarifies that all the activities of making arrangement for space to keep the goods, loading, unloading and stacking of the goods in the storage area, keeping inventory of goods, making security arrangements, providing insurance cover etc., all are covered under the taxable activity of storage and warehousing. Hence, the activity of handling the empty container is rightly held to be covered under the said activity. Circular No. 60/9/2003 has also been rightly relied upon. Impressing upon no infirmity in the order and while relying upon the decision of this Tribunal, Kolkata Bench, in the case of **M/s. Balmer Lawrie & Co. Ltd. Vs. Commissioner of Service Tax, Kolkata reported as 2013 (30) S.T.R 75 (Tri-Cal)**, appeal is prayed to be dismissed.

5. Having heard the rival contentions and perusing the records.

6. Initially the show cause notice has proposed demand on two counts:

(i) The service tax of Rs.1,02,416/- for the period 01.05.2003 to 16.07.2003 on the value of services rendered on account of ground rent of empty containers.

(ii) The service tax for the said period on handling of empty container charges under the category of Storage and Warehousing Services.

7. The proposal was confirmed on both these issues. However due to the plea of the appellant being eligible of cum tax benefit that this Tribunal vide Final Order No. 56944/2013 dated 04.07.2013 had remanded back the matter. We observe that subsequent to remand, the benefit of cum tax has been given to the appellant, accordingly, the entire demand on the aforementioned first issue was absolutely dropped. However, the demand on second count is confirmed holding the activity done by the appellant to be called as storage and warehousing services. We observe that there is no denial about discharge of service tax by the appellant with respect to handling of empty containers which were stored in the appellant's area or were warehouse. The demand is with respect to such empty containers which were handled prior reaching the appellant's storage area/warehouse. The issue therefore is as to whether the said activity can be called as the part of taxable service "Storage and Warehousing". Storage and Warehousing is defined under Section 65(102) of the Finance Act, 1994 in the following words:

*"Storage and warehousing includes storage and warehousing services for goods including liquids and gases but does not include*

*any service provided for storage of agricultural produce or any other service provided by a cold storage.”*

8. No doubt Circular No. 60/9/2003-ST dated 10.07.2003 clarifies that handling of empty containers would be covered within the scope of Storage and Warehousing Services. However, for the applicability of this circular the goods/empty containers should first have been stored or warehoused and should be handled within the said warehouse or the storage space. Apparently and admittedly, the same is not the case for the impugned demand. Hence the appellant's activity of handling containers cannot be called as taxable activity of storage and warehousing. The handling of the containers which were never stored or warehoused since is not covered in the taxable activity of storage and warehousing, we hold that the service tax on the amount received for handling of non-stored/non-warehoused empty containers is wrongly demanded and thus is held to have wrongly been confirmed.

9. The activity of handling of container cannot to be covered under the taxable activity of cargo handling as cargo handling service also. This activity is essentially a service in relation to merchandise. As per the dictionary also cargo means goods carried on a ship, aircraft or motor vehicle. The empty containers are not the merchandise. The Circular No. B11/1/2002-TRU has explained that empty containers cannot be treated as cargo. In light of these observations, the activity in question cannot even be called as the taxable activity of Cargo Handling Service. The order under challenge for the said reason is liable to be set aside.

10. In view of the entire above discussion, the order under challenge is held not sustainable. Same is accordingly therefore set aside. Consequent thereto, appeal stands allowed.

[Pronounced in the open court on **22.03.2024**]

**(DR. RACHNA GUPTA)**  
**MEMBER (JUDICIAL)**

**(HEMAMBIKA R. PRIYA)**  
**MEMBER (TECHNICAL)**

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