

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

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No. 51202 of 2022 (SM)

(Arising out of Order-in-Appeal No. DDN/EXCUS/000/APPL/21/2021-22 dated 30/11/2021 passed by the Commissioner (Appeals), CGST & Customs, Dehradun.).

M/s Universal Industries

B-8, Industrial Estate
Bazpur Road Kahsipur,
U.S. Nagar,
Uttarakhand-244713

Appellant

VERSUS

Commissioner, CGST- Dehradun

2nd & 3rd Floor,
Shree Palace Natthanpur, Dehradun,
Uttarakhand-248001

Respondent

APPEARANCE:

Mr. Rajeev Singhal, General Manager for the appellant
Mr. Ishwar Charan, Authorised Representative for the respondent

CORAM:

HON'BLE SHRI ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER : 50975 / 2022

DATE OF HEARING: 14.10.2022
DATE OF DECISION: 14.10.2022

ANIL CHOUDHARY:

The appellant is in appeal against demand of service tax on ocean freight under RCM.

2. The appellant is a manufacturer of Zinc Sulphate and is also a trader of calcium nitrate. They imported fertilizers vide Bill of Entry dated 06/07/2017 and 14/07/2017. The appellant paid IGST on ocean freight alongwith custom duty at the time of import.

3. A Show Cause Notice bearing No. 4/2019-20 issued under C.No. V91)Audit/Cir. KSH/CGST/Universal/673/19 dated 26.06.2020 was

issued to the appellant by the Assistant Commissioner, CGST Audit, Circle Kashipur, inter alia, demanding the Service tax of Rs. 91,110/- alleged to be short paid on the services viz. Ocean freight services, paid by the appellant during the period from 23.04.2017 to 30.06.2017.

4. it was alleged that the Exemption Notification no. 25/2012-ST dated 20.06.2012 was amended vide Notification no. 1/2017-ST dated 12.01.2017 and a proviso was inserted in entry no. 34, to the effect that exemption provided to the services of transportation of goods by a vessel from a place out-side India upto the Customs station of clearance in India ('Ocean Freight' for short) was withdrawn. In the sequence vide Notification no. 15/2017-ST dated 13.04.2017, with effect from 23.04.2017 the importer was made the person liable to pay the Service tax on Reverse charge basis.

5. Furthermore, vide Notification no. 14/2017-ST dated 13.04.2017, a new Rule 8B was inserted into the Point of Taxation Rules, 2011 and the Point of taxation in respect of the said services was made to be the date of Bill of Lading of such goods loaded in the vessel at the port of export.

6. In spite of the fact that the appellant had paid the IGST on ocean freight, revenue demanded service tax on the ocean freight under Reverse Charge Mechanism, alleging that the Bills of Entry had been filed on 22/05/2017 & 14/06/2017 (during service tax regime). The demand was confirmed being Rs. 91,110/- alongwith interest and penalty under Section 78. Being aggrieved the appellant had preferred appeal before Commissioner (appeals) who vide impugned order in appeal have been pleased to dismiss the appeal.

7. Assailing the impugned order, Mr. Rajeev Singhal, General Manager of the appellant, *inter alia* urges that the appellant have paid custom duty on CIF value which includes ocean freight element. Thus, there can be no demand of service tax on the purchase price of goods, even under Reverse Charge Mechanism. Accordingly, he prays for allowing the appeal with consequential benefits.

8. Learned AR for revenue relies on the impugned orders.

9. Having considered the rival contentions, I hold that admittedly, the appellant have purchased fertilizers which is their inputs, at CIF value which includes the ocean freight element. Thus, the demand under service tax is not attracted. I further find that the show cause notice is also on wrong facts as the date of filing of two Bills of Entry is on 6/7/2017 and 14/7/2017, but it is wrongly alleged that these have been filed on May & June 2017. Thus, the show cause notice is also erroneous on this score. In view of my findings and observations, I allow this appeal and set aside the impugned order. The appellant shall be entitled consequential benefits in accordance with law. Appeal is allowed.

(Order dictated in the open court)

(Anil Choudhary)
Member (Judicial)