

2013 (4) ECS (198) (Tri – Ahd)

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
WEST ZONAL BENCH, AHMEDABAD  
COURT**

**M/s Friends & Friends Shipping Pvt. Limited  
Vs.**

**CCE & ST, Rajkot**

Appeal No. ST/130 of 2007

Arising out of : OIA No. 92/2007/Commr (A)/RAJ dated 26.4.2007

Passed by : Commr. (Appeals) C. Excise & Customs, Rajkot

Represented by :

Shri V.M. Doiphode, Adv.

For the appellant

Dr. J. Nagori A.R.

For the respondent

**CORAM:**

**HON'BLE MR. M V RAVINDRAN, MEMBER (JUDICIAL)**

**MR. H.K. THAKUR, HON'BLE MEMBER (Technical)**

Date of Hearing: 24.07.13

Date of Decision:17.9.13

ORDER No. A/11167/WZB/AHD/2013, dt 17.09.13

**“There is also no documentary evidence or contract to the effect that CHA was working as an agent of the appellant. A Cenvat credit case can be taken only with respect to the services availed by the service recipient and the document indicating duty payment is in appellant’s name. in the debit note, relied upon by the appellant, there is no mention of the services being provided by the CHA to the appellant. Appellant has not directly availed the services from Kandla Dock Labour Board and Kandla Port Trust, therefore, appellant is not eligible to the service tax credit paid by the CHA to the Kandla Dock Labour Board and Kandla Port Trust as there**

**is also no evidence that the CHA was acting as an agent of the appellant.”**  
**[Para 5]**

**“The document indicating payment of service tax to Kandla Dock Labour Board and Kandla Port.Trust also does not contain the name of appellant as service recipient. In view of the above, there is a misstatement on the part of the appellant and extended period will be attracted in this case.”**  
**[Para 6]**

**Per : H.K. Thakur, Mr. :**

1. This file have been filed by the appellant against Order – in – Appeal No. 92/2007/Commr (A)/RAJ dated 26.4.2007. The issue involved in this appeal is whether or not the appellant is entitled to Service Tax credit of Rs. 28,20,610/- on the strength of debit notes issued by M/s Arvind V. Joshi & Company, a Custom House Agent (CHA) for the service tax paid by CHA, with respect to the service rendered by Kandla Port Trust and Kandla Dock Labour Board, to the appellant.
2. Shrii V M Doiphode, learned advocate appearing on behalf of the appellant made us go through one of the representative debit notes issued by CHA and the copy of the duty paying voucher issued by Kandla Dock Labour Board and Kandla Port Trust (KDLB & KPT) to the CHA. He argued that all the activities done by the said CHA are carried out on appellant’s behalf and the credit has been correctly availed by the appellant as the CHA has only acted as an agent of the appellant. Shri Doiphode (Advocate) relied upon the following case laws:-
  - (i) CCE, Triupati vs. Indian Cements Limited – [2012 (279) ELT 423 (Tri. Bang.)]
  - (ii) Pharmalab Process Equipments Pvt. Limited vs. CCE Ahmd. – [2009 (16) STR 94 (Tri. Ahmd.)]
3. Departmental representative Shri J. Nagori (A.R.) on the other hand argued that CHA M/s Arvind V. Joshi has not rendered any service to the appellant for which the debit notes are issued. He argued that the original duty paying voucher is in the name of CHA and the procedure adopted by the appellant only amounts to transferring the service tax paid by the CHA to the appellant without CHA providing any service to the appellant. As no service is directly rendered by the Kandla Dock Labour Board and Kandla Port Trust (KDLB and KPT) to the appellant, no credit is admissible.

4. At the end of the hearing both sides were asked to file written submission by 01.08.2013. Dr. Jeetesh Nagori, Additional Commissioner (A.R.) vide letter F. No. ST/130/2007/712 dated 14.08.2013 made the following written submissions:-
- (i) That as per provisions of Rule 5 of the Service Tax Credit Rules, 2002 and Rule 9 of the Cenvat Credit Rules, 2004, the credit of service tax suffered on an input service can be taken by an assessee on the basis of an invoice/bill/Challan issued to him by the input service provider to the credit taking assessee.
  - (ii) That in the present case, the said CHA has only raised the debit note without providing any service to the appellant.
  - (iii) That the said CHA has only passed on the service tax paid by him to the KDLB & KPT and there is no provision in the Service Tax Credit Rules, 2004 to take such credit.
  - (iv) That there is no contract or evidence on record that the said CHA was acting as an agent of the appellant.
  - (v) That as per Rule 5 (3) of the Service Tax Credit Rules, 2002 and Rule 9 (5) of the Cenvat Credit Rules, 2004 the burden of proof regarding payment of service tax and admissibility of cenvat credit lies upon the person claiming such credit.
  - (vi) That the said CHA has not raised any bill/debit notes showing any service tax paid by him in respect of the work executed by the CHA for the appellant.
  - (vii) That type of debit note available with the appellant is not a credit taking document prescribed under Rule 9 of the Cenvat Credit Rules, 2004.
  - (viii) That appellants took service tax credit by mentioning in ST – 3 returns that services are provided by Kandla Dock Labour Board and Kandla Port Trust where as Kandla Dock labour Board / Kandla Port Trust has only rendered service to the CHA who paid the tax. It was, therefore, a case of mis – statement and extended period is applicable.
  - (ix) The following case laws were relied upon to support the case of the Revenue:-
    - (a) M/s Akay Cones VT. Vs. Lt. Governor of Delhi – (2003 (154) ELT 22 (Delhi High Court)

(b) M/s Doypack Systems (Pvt.) Limited vs. UOI – (1988 (36) ELT 201 (SC)

(c) M/s. Arvind Mills Limited (Ankur Textiles) vs. CCE & C. Ahmedabad – (1999 (111) ELT 244 (Tri.).

5. Heard both sides and perused the case records. The issue involved in this case is whether appellant was right in taking credit on the basis of debit notes issued by M/s. Arvind V. Joshi & Company, Gandhidham (CHA) to the appellant. It is seen from the representative copy of the debit note No. 538/2003-2004 dated 09.8.2003 relied upon by the appellant that the same describe an amount paid as Service Tax by the CHA on appellant's behalf of Kandla Dock Labour Board / Kandla Port Trust. However, the enclosed document dated 10.07.2003 issued by Kandla Dock Labour Board nowhere describe that CHA is acting or paying tax on behalf of the appellant. There is also no documentary evidence or contract to the effect that CHA was working as an agent of the appellant. A Cenvat credit case can be taken only with respect to the services availed by the service recipient and the document indicating duty payment is in appellant's name. In the debit note, relied upon by the appellant, there is no mention of the services being provided by the CHA to the appellant. Appellant has not directly availed the services from Kandla Dock Labour Board and Kandla Port Trust, therefore, appellant is not eligible to the service tax credit paid by the CHA to the Kandla Dock Labour Board and Kandla Port Trust as there is also no evidence that the CHA was acting as an agent of the appellant. The provisions regarding taking of cenvat credit under Rule 5 (3) of the Service Tax Credit Rules, 2002 and Rule 9 (5) of the Cenvat Credit Rules, 2004 are very clear and has to be interpreted as per the words contained therein as laid down in the Revenue's relied upon cases of Akay Cones VT. Pvt. Limited vs. Lt. Governor of Delhi – [2003 (154) ELT 22 (Delhi)], Doypack Systems (Pvt.) Limited vs. UOI [1988 (36) ELT 201 (SC)] and Arvind Mills Limited (Ankur Textile) vs. CCE & C, Ahmedabad [1999 (111) ELT 244 (Tribunal)].
6. So far as invocation of extended period is concerned, it is seen from the case records that ST – 3 returns filed by the appellant has described CHA as the input service provider and the type of activities done by CHA are weighment, ground rent, port wage, handling charges, container lifting, Kandla Dock Labour Board charges etc. these ST 3 returns do not specify at all that Kandla Dock Labour Board charges and service tax are paid by the CHA on behalf of the appellant. The document indicating payment of service tax to Kandla Dock Labour Board and Kandla Port.Trust also does not contain the name of appellant as service recipient. In view of the above, there is a misstatement on the part of the appellant and extended period will be attracted in this case.

7. In the light of the observation made above, appeal filed by the appellant is rejected.

(Order pronounced in the Court on 17/9/2013)