

2010-TIOL-439-CESTAT-AHM

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH, AHMEDABAD
COURT NO-II**

**Application No. ST/S/1440/2009
Appeal No. ST/328/2009**

Arising out of OIA No. 387 / 342-Raj)/2009/Commr(A) Dated: 6.5.2009
Passed by Commissioner of Central Excise & Customs (Appeals), Rajkot

Date of Decision : 7.1.2010

M/s ANUSHAKTI CHEMICALS & DRUGS LTD

Vs

CCE, RAJKOT

Appellant Rep by: Shri Vinod Awtani, CA
Respondent Rep by: Shri Avinash Thete, SDR

CORAM : Ashok Jindal, Member(J)
B S V Murthy, Member(T)

Appellant receiving inputs which is inclusive of freight element and transportation – Department demanding service tax on freight from appellant – Lorry Receipt does not show freight amount – invoice issued for supply of input shows it is inclusive of freight – reading both documents a conclusion can be drawn that freight is paid by supplier only and in such a situation liability to pay service tax is on supplier – Strong prima facie case – Pre-deposit waived and stay granted unconditionally.

ORDER NO. S/41/WZB/AHD/2010

Per : B S V Murthy :

The appellants are procuring the inputs from Reliance Industries Limited and the dispute has arisen regarding service tax on the freight. Department has taken a stand that the appellants are liable to pay the service tax on freight and subsequently a service tax demand of Rs.2,40,558/- for the period June 2006 to June 2007 has been confirmed. Penalty equal to the service tax demand has been imposed under Section 78 of Finance Act, 1994.

2. Learned Chartered Accountant on behalf of the appellant submits that the department has demanded the service tax from the appellant on the ground that the LR shows the service tax is payable by the consignee. Further, he submits that as per provisions of Rule 2(1)(d)(v) of Service Tax Rules, the service tax is payable on the transportation charges by a person who pays the freight. He submits that the appellant is not aware what is the actual freight amount and the input supplied by the supplier is inclusive of freight element and the transportation is also organized by the supplier. Since the appellant has not paid the freight to the transporter, he submits that the appellants have a very strong *prima facie* case in

their favour and therefore the stay may be granted against the recovery of service tax, penalty, interest etc.

3. Learned SDR, submits that in view of the fact that the service tax is payable by the consignee and has been so mentioned in the LR, appellant is liable to pay the same. Further, he also submits that the appellants should have verified whether the supplier had paid the service tax or not.

4. We have considered the submissions made by both sides. We find that the LR which is a document for the purpose of levy of service tax does not show what is the freight amount. On the other hand, the invoice issued for supply of input shows that it is inclusive of freight. By reading both the documents the obvious conclusion is that the freight is paid by the supplier only. Once freight is paid by the supplier, the liability to pay the service tax is on the supplier and not on the appellant. We are unable to accept the view that it is the job of the appellant to find out whether the supplier had paid the service tax. We find that the appellants have made out a very strong *prima facie* case in their favour and therefore we waive the requirement of pre-deposit of service tax, penalty and interest and allow the stay petition unconditionally during the pendency of the appeal.

(Dictated & Pronounced in Court)