

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

REGIONAL BENCH – COURT NO. 03

Service Tax Appeal No. 302 of 2011

[Arising out of OIA-39/2011/COMMR-A-/CMC/RAJ Dated 08/03/2011 passed by CCE-RAJKOT]

M/s. Crossword Agro Industries
Plot No. 371, Aji Gide-ii, Nr. Amul Sotve,
Rajkot, Gujarat.

.....Appellant

VERSUS

C.C.E. & S.T.-Rajkot
Central Excise Bhavan, Race Course Ring Road,
Income Tax Office, Rajkot, Gujarat.

.....Respondent

APPEARANCE:

Shri. R. Subramanya, Advocate for the Appellant
Shri. G. Jha, Authorized Representative for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final ORDER NO. A/ 10784 /2019

DATE OF HEARING:11.04.2019
DATE OF DECISION:03.05.2019

PER: RAJU

This appeal has been filed by M/s Crossword Agro Industries against order confirming, demand of service tax, interest and imposition of penalty under Section 76, 77 & 78 of the Finance Act, 1994.

2. Ld. Counsel pointed out that the appellant is engaged in paying transport charges and is registered in service tax discharging the service tax liability. It was pointed out that the appellant was issued notice to pay service tax on commission income of Rs. 2,84,721/- for the period ending 31.03.2006. Ld. Counsel argued that the appellant had not provided any other services in the said year. Entire taxable value was under the basic exemption limit of Rs. 4 Lakhs as described under Notification No. 6/2005-ST dated 01.03.2005. The Commissioner

(Appeals) has denied the small scale benefit holding that during the year 2005-06, the appellant had paid service tax to the tune of Rs. 17,20,256/- under reverse charge in terms of Section 66A of the Finance Act, 1994. Ld. Counsel pointed out that the impugned order wrongly holds that the services received by the appellant are to be considered as part of the aggregate value for the purpose of grants of exemption Notification No. 6/2005-ST. Ld. Counsel pointed out that the Notification No. 6/2005-ST, grants exemption up to taxable service of aggregate value not exceeding Rs. 10 Lakhs in any financial year from whole of the service tax leviable thereon. Ld. Counsel pointed out that the aggregate value has been defined as follows on the said notification:

"[(B) "aggregate value" means the sum total of value of taxable services charged in the first consecutive invoices issued or required to be issued, as the case may be, during a financial year but does not include value charged in invoices issued towards such services which are exempt from whole of service leviable thereon under Section 66 of the Finance Act under any other notification.]"

2.1 Ld. Counsel pointed out that the service tax paid by them in respect of service receives cannot be considered as part of the aggregate value for the period of exemption Notification 06/2005-ST.

3. Ld. AR relies on the impugned order.

4. We have considered the rival submissions. The Notification No. 6/2005-ST the taxable services of aggregate value not exceeding 10 Lakhs Rs. 4 Lakhs in the financial year. The aggregate value has been denied as under:

"[(B) "aggregate value" means the sum total of value of taxable services charged in the first consecutive invoices issued or required to be issued, as the case may be, during a financial year but does not include value charged in invoices issued towards such services which are exempt from whole of service leviable thereon under Section 66 of the Finance Act under any other notification.]"

5. It is clear from the definition that the aggregate value only includes the amounts charged by the appellant. The aggregate value, however, does not include the amounts paid by the appellant. In so far as service tax paid by the appellant for reverse charge basis as concern, the consideration would have been paid by the appellant to the foreign service provider. The term aggregate value does not include the amounts paid by the appellant.

5. In view of above, we find merit in the submission of the appellant that they are entitled to small scale exemption. Consequently, the appeal is allowed. The impugned order is set aside.

*(Order pronounced in the open court on **03.05.2019**)*

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)