

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
CHENNAI**

REGIONAL BENCH - COURT No. III

**Service Tax Appeal No. 40541 of 2015**

(Arising out of Order-in-Original No.24/2014-Commr dated 09.12.2014 passed by Commissioner of Central Excise, Customs & Service Tax (Adjudication), No.6/7, A.T.D. Street, Race Course, Coimbatore 641 018)

**M/s. Indev Logistics Private Limited**

**.... Appellant**

SF No.129, Poondi Ring Road,  
Chettipalayam Village,  
Tirupur 641 652.

*VERSUS*

**The Commissioner of CGST & Central Excise**

**... Respondent**

Coimbatore Commissionerate  
No.6/7, A.T.D. Street, Race Course,  
Coimbatore 641 018.

**APPEARANCE :**

Shri M. Ponnuswamy, Consultant, for the Appellant  
Shri N. Sathyanarayanan, Authorized Representative for the Respondent

**CORAM :**

**HON'BLE MS. SULEKHA BEEVI.C.S., MEMBER (JUDICIAL)**  
**HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

**FINAL ORDER No.41004/2024**

**DATE OF HEARING : 24.07.2024**

**DATE OF DECISION :31.07.2024**

**Per: Ms. Sulekha Beevi. C.S**

Brief facts are that the appellant was appointed as 'Customs Cargo Service Provider' by the Commissioner of Central Excise & Customs, Coimbatore under the Handling of Cargo in Customs Area Regulations, 2009 in regard to Container Freight Station (CFS). In terms of the order dated 08.07.2010 by the Hon'ble High Court of Madras, the appellant-company was amalgamated with M/s.Indev Shipping Services (Tuticorin) Pvt. Ltd. to form M/s.Indev Logistics Private Ltd. w.e.f. 01.04.2009. Accordingly, M/s.Indev Logistics Private Ltd. had assumed responsibilities for all liabilities / dues of M/s. Continental Container Freight Station Pvt. Ltd. in so far as the activities conducted at CFS.

2. In pursuance of their appointment as Customs Cargo Service Provider, the appellant had provided cargo handling service, storage and warehousing services, goods transport service for which they are registered with the Central Excise Department. According to Department, as part of operations, the appellant receives cargo bound for export, unloads, stacks and stores them in the warehouse at CFS, opens the packages and produces them to the examining customs officers, repacks them when required, arranges for containers, trailers, trucks for transit of cargo to the gateway ports, handles the container / cargo and loads the cargo on to the containers / trucks. For providing the above services, the appellant raised bills on the exporters or their agents by charging under various heads viz., CFS charges, documentation charges, Cooper charges, communication charges, transportation charges etc. The appellant has raised consolidated bills under the head 'CFS charges'. During audit of accounts for the period April 2008 to June 2012, it was noted that the appellant has not paid service tax on certain amounts received for providing services while operating as 'Customs Cargo Service Provider'. Therefore, show cause notice dt. 21.10.2013 was issued for the period 2008-09 to April-June 2012. After due process of law, the original authority confirmed the

demand, interest and imposed penalties. Aggrieved by such order, the appellant is now before the Tribunal.

3. The Ld. Consultant Shri M. Ponnuswamy appeared and argued for the appellant. The Ld. Consultant made the following submissions :

3.1 The Appellant was running a Container Freight Station (CFS) at Tirupur and was providing 'Cargo Handling Service' as defined under Section 65 (23) of the Finance Act 1994, for the export cargo including its transportation to the Port terminal as required under the Handling of Cargo in Customs Area Regulation 2009. Since the service provided to the export cargo was specifically excluded from the levy of tax , they were not paying any service tax on the 'Cargo Handling Service'.

3.2 Based on the information furnished by the appellant, a Show Cause Notice dated 21.10.2013 was issued demanding Service tax on the entire value of the cargo handling service provided by the appellant during the period April 2008 to June 2012 treating it as 'Support Service of Business or Commerce' and the original authority vide impugned order confirmed the demand of Rs.2,96,27,390/- besides imposing equal penalty by invoking proviso to Section 73 of Finance Act, 1994.

3.3 The appellant was running CFS only for export cargo and all the activities carried out by them are in conformity with the 'Cargo Handling Service' as defined in Section 65(23) of the Finance Act 1994 and as per the Handling of Cargo in Customs Area Regulations 2009. It is alleged by the department that the service provided by the appellant is nothing but 'information and tracking of delivery schedules' as well as 'Managing distribution and Logistics', and

therefore it is a `Support Service of Business or Commerce' as defined in Section 65(104c).

4. The issue to be decided in this appeal is whether the services provided by the appellant is to be classified under `Cargo Handling Service' as contended by the appellant or under `Support Service of Business or Commerce' as demanded by the department.

5.1 The definition of `Cargo Handling Services' as defined under clause 23 of Section 65 of Finance Act 1994 is extracted as below:

**“(23) "cargo handling service”** means loading, unloading, packing or unpacking of cargo and **includes,—**

(a) cargo handling services provided for freight in special containers or for non-containerised freight, **services provided by a container freight terminal** or any other freight terminal, for all modes of transport, and cargo handling service incidental to freight; and

(b) service of packing together with transportation of cargo or goods, with or without one or more of other services like loading, unloading, unpacking, but does not include, handling of export cargo or passenger baggage or mere transportation of goods;”

**“(105) "taxable service”** means any service provided or to be provided,

.....

**(zr)** to any person, **by a cargo handling agency** in relation to cargo handling services;”

5.2 The definition of `**support service of business or commerce**' as provided in the Finance Act is extracted below:

**“(104c) “support services of business or commerce”** means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfilment services, **information and tracking of delivery schedules, managing distribution and logistics**, customer relationship management services, accounting and processing of transactions, operational or administrative assistance in any manner, formulation of customer service and pricing policies, infrastructural support services and other transaction processing.

**Explanation.**—For the purposes of this clause, the expression “infrastructural support services” includes providing office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security;”

“(105) "taxable service" means any service provided or to be provided

.....

(zzzq) to any person, by any other person, in relation to support services of business or commerce, in any manner;

5.3 For classification of Service, Section 65A of the Finance Act 1994, as it stood at the relevant time and extracted as below, is to be applied:

**“65A. Classification of taxable services** – (1) For the purposes of this chapter, classification of taxable services shall be determined according to the terms of the sub-clauses (105) of section 65;

(1) When for any reason, a taxable service is prima facie, classifiable under two or more sub-clauses of clause (105) of section 65, classification shall be effected as follows :-

(a) the sub-clause which provides the most specific description shall be preferred to sub-clauses providing a more general description;

(b) composite services consisting of a combination of different services which cannot be classified in the manner specified in clause (a), shall be classified as if they consisted of a service which gives them their essential character, in so far as this criterion is applicable;

(c) when a service cannot be classified in the manner specified in clause (a) or clause (b), it shall be classified under the sub-clause which occurs first among the sub-clauses which equally merits consideration;

5.4 As per the above provisions, classification of a taxable service shall be determined according to the terms of sub-clause of clause 105 of Section 65. In this case, **sub section (23) clearly include the services provided by the Container Freight Station (CFS) within the scope of Cargo Handling Service.** When there is no ambiguity in classifying the service provided by the appellant, as it is clearly classifiable under the definition given under sub section(23) of Section 65 read with sub-clause (zzzg) of clause 105, there is no need

for invoking the provisions of Section 65A (2) to determine its classification.

5.5 Assuming but not admitting that the service is classifiable under two or more sub-clauses, as per sub section 2(a), the sub-clause which provides the most specific description shall be preferred to clauses providing a more general description. The service provided by a CFS is specifically included under 'Cargo Handling Service' and is more specific to the role assigned to a CFS. Further, this being a composite service, the classification shall be based on its essential characteristic. The essential characteristic of the service provided by CFS is handling of Cargo, which include unloading and loading, unpacking and packing, storing, presenting to Customs examination, transporting to various ports and ensuring its loading on to the ships. Thus, even as per the provision of Section 65A (2) (b), the **composite service** provided by the CFS is nothing but a Cargo Handling Service and consequently, no tax was liable to be paid as it is provided for export cargo.

5.6. According to the Show Cause Notice (para-2) and as confirmed by the adjudicating authority vide the impugned order-in original (paras-19 & 20), the nature of service provided by the appellant is a composite service involving;

*'receipt of cargo bound for export; unloads, stacks and stores them in the warehouse of CFS; opens the packages and produces them for examination by Customs officers; repacks them when required; arranges for containers/trailers/trucks for transit of cargo to the gate way ports; handles the containers/cargo; and loads the cargo on to the containers/trucks and transport them to the gateway ports; handing over to shipping lines; tracking the delivery of the cargo at the gateway port so that the cargo is able to be loaded onto the scheduled trip etc.'*

5.7 It is a fact that the appellant is an approved CFS operator for handling EXIM cargo under 'Handling of Cargo in Customs Area Regulations 2009'. The Handling of Cargo in Customs Area Regulation 2009, under which the CFS was authorized to operate by the

jurisdictional Commissioner of Customs, spells out various conditions and responsibilities of the Service providers, which is extracted below:

“5. Conditions to be fulfilled by Customs Cargo Service provider: The Customs Cargo Service provider, for custody of imported goods or export goods and for handling of such goods in a customs area, shall fulfil the following conditions, namely:-

(2) Provide the following to the satisfaction of the Commissioner of Customs, namely:

(i).....

**(ii) safe, secure and spacious premises for loading, unloading, handling and storing of the cargo for the projected capacity and for the examination and other operations as may be required in compliance with any law for the time being in force;”**

“6. Responsibilities of Customs Cargo Service provider: (1) The Customs Cargo Service provider shall –

(a) keep a record of imported goods, goods brought for export or transshipment, as the case may be, and produce the same to the Inspector of Customs or Preventive Officer or Examining Officer as and when required;

**(b) keep a record of each activity or action taken in relation to the movement or handling of imported or export goods and goods brought for transshipment;**

(c) display or make available in any other manner, information of process or movement or handling of imported or export goods and goods brought for transshipment;

.....

**(K) be responsible for the secure transit of the goods from the said customs area to any other customs area at the same or any other customs station in accordance with the permission granted by the Deputy Commissioner or Assistant Commissioner of Customs;”**

5.8 As seen above, the CFS is required to handle the activities of receipt of export cargo, unloading, storing, unpacking for inspection by customs, repacking, loading to the container, transporting and delivering the cargo to the port terminal for loading on to the ship and keep a record of each activity in relation to the movement or handling of export goods. These activities squarely fit into the definition of

'Cargo Handling Services' as defined under the service tax provisions. As per the provisions of sub clause (zzzr) of clause 105, the cargo handling service is taxable if the same is provided by a 'Cargo Handling Agency. The **'Container Fright Terminal' (CFS) is specifically approved by the Commissioner of Customs as an agency to handle the Cargo in the Customs are as per the regulations 2009.**

5.9 The Appellant, in this case, receive the goods, unload them in CFS, stacks them, unpack for inspection, Pack or repack the cargo and load them to containers/trucks, transport them to the port safely, deliver them for loading on to the ship/vessel. All these activities together constitute a composite service of 'Cargo Handling Service' as defined under the Service tax provisions. **However, since the CFS provided service only for the cargo meant for export, no tax was paid by the them as the Cargo Handling of export cargo was not leviable to service tax in view of its exclusion from the scope of cargo handling service definition under clause 23 (b) of Section 65 of the Finance Act 1994.**

6. On the other hand, the BSS Service is nothing but a Service supporting a Business or Commerce in its functional and operational requirements. Whereas, Cargo handling service for export cargo is a specified composite service required for export of goods by complying with customs procedures and the same cannot be equated with support services such as telemarketing, evaluation of prospective customers, information and tracking of delivery schedules, managing distribution and Logistics and customer relationship etc. **The CFS do not provide any independent service of tracking of delivery schedules of export cargo** except carrying out its responsibility of handing over the cargo and recording its loading on to the ship as required under Cargo Handling Regulations, 2009. Similarly, **they do not also independently manage any distribution and logistics work for the exporters** except providing the services as required under the Regulation for which they were authorized by the Customs



to transport the export cargo to port terminals from CFS. Thus, the conclusion by the adjudicating authority that the CFS provide information tracking service and Managing distribution logistics service to the exporters is totally illogical and contrary to the facts.

6.1 The Show cause notice as well as the order-in original had recognized the fact that the appellant was providing a composite service of Handling the export cargo, as mandated under the Handling of Cargo in Customs Area Regulations, 2009. However, both the SCN & the adjudicating authority had deliberately described its essential character as 'Information and tracking of delivery schedules' and 'Managing distribution & Logistics' in order to bring it under Business Support Service definition so as to demand service tax. The appellant did not provide any such independent service of tracking of the delivery of the cargo and Managing the distribution logistics. What they had provided was purely a Cargo Handling Service, the essential character of which is handling of cargo by a CFS which include transportation of the cargo to the ports and ensuring its loading on to the ships for export.

6.2 Further, the adjudicating authority appeared to have focused on few bills issued by the appellant, where 'transportation' was mentioned, among other services, separately indicating higher amount than for other services, and came to the conclusion that the predominant service provided by the appellant is Logistics management and not cargo handling service; Therefore classified as Business Support Service. In this regard, it is submitted that the appellant generally raised bills for the entire cargo handling service as a package and only in few cases, wherever the customers specifically requested, split up bills approximately under various categories were issued but not based on the actuals. This was done only for the sake of information and not as per any contractual obligation. Normally, when cargo handling service consists of various sub-services, the service tax is to be calculated on the entire value charged collectively on the composite service of 'cargo Handling

service' and not on the value of individual services which was mentioned only for reference/convenience.

7.1 The CESTAT, Chennai in the case of **Sana Engineering Company vs Commissioner of CE.& ST, Coimbatore** – 2019 (26) G.S.T.L.210 (Tri-Chennai) while dealing with BSS had held that -

“although BSS definition is inclusive in nature but for any other activity to fit in it should pertain to be same class or category as given in definition.” Further, “ If the arguments adopted by the lower authorities that all services for business and commerce will fall within the scope of Section 65(104c) is to be accepted, there would not have been a need for the legislature to carve out so many types of services, which in the most, are performed only in relation to business or commerce.”

In the instant case, Cargo Handling Service is an exclusive Composite Service separately provided by the legislature independent of Business Support Service and therefore cannot be dissected to suit a part activity to be included under BSS definition. Further, while dealing with similar facts, CESTAT, Chennai - 2015(40) S.T.R.818 (Tri-Chennai) in the case of **Tirupur Container Terminal Pvt Ltd. vs Commissioner of CE Coimbatore**, had taken a view that transportation activity is part of composite cargo handling service and therefore cannot be classified under BSS service. Although, this is a view while granting the stay order, same hold good on merits as in many other cases also various judicial forums had taken similar stand. Further, Hon'ble Tribunal Ahmedabad, in its recent decision in the case of **Sea Bird Marine Services Pvt Ltd vs Commr OF C.EX & ST., Rajkot** - 2023 (68) G.S.T.L. 394 (Tri.-Ahmd), has dealt with the scope of cargo handling service and concluded that in a CFS Cargo Handling Service is the main service and all other services are incidental to cargo handling. The Tribunal relied on the Board's circular No. 104/7/2008-ST dated 6.8.2008 where it is very clearly clarified that **“Transportation is not the essential character of cargo handling service but only incidental to the cargo handling”**. In the present case, although transportation is provided by the appellant,

it is incidental to the cargo handling service and cannot be separated from the composite character of the cargo handling. Therefore, the order of the adjudicating authority classifying the composite Cargo handling Service under BSS service is not legally sustainable and deserves to be set aside on merits.

7.2 Further, the reliance by the department on the dictionary meaning of the word 'Logistics' and the CBIC's clarification letter F.No. 137/131/2007-CX-7 dated 12.12.2007 which was issued with reference to postal department for conveyance of Indian postal mails to various Ports of foreign countries and handling of export cargo by the shipping companies classifying it under 'Business Support Service' is out of context. In this regard, it may be pointed out that the above clarification was issued in the context of the Shipping company's role in collection, sorting and distribution of post parcels and letters in destination ports. Therefore, it cannot be equated with the composite services like Cargo Handling Service provided within the country for EXIM cargo. Further, the said clarification was also issued to the query made by the postal department when no service tax was leviable on Ocean freight. Thus, the reliance on the CBIC circular is out of context and not applicable to the case on hand.

7.3 On the other hand, the CBIC instructions issued vide F.No. B11/1/2002 TRU dated 1.8.2002 and TRU's clarifications issued vide D.O.F. 334/1/2008 dated 29.02.2008 had clearly spelt out the scope of the 'Cargo Handling Service' and categorically clarified that the cargo handling service provided to export cargo is kept out of service tax levy. Further, Hon'ble Supreme Court in the case of **Deputy Commissioner of Central Excise vs Sushil & Company** - 2016 (42) S.T.R.626 (SC), while examining the scope of Cargo handling service has also cited the above instructions of the board to conclude that the cargo handling service must be provided by an agency who would carry out loading or unloading or packing or unpacking the cargo meant to be transported to the terminal. After the amendment of the definition of cargo handling service in 2008, the services of '**packing**

**together with transportation'** of cargo with or without one or more services like loading, unloading, unpacking were declared as cargo handling service. Thus, as the CFS is providing the Cargo handling agency function and undertake transportation of the cargo to the ports for loading on to the vessels, the service is to be classified under cargo handling service. However, since the service is provided by the appellant is only for the cargo meant for export, it is not taxable under Finance Act 1994 as such service meant for export cargo is excluded from taxable services vide the definition under Section 65(23) of the said Act itself.

**Invocation of extended period is not sustainable:**

8.1. Notwithstanding the fact that the service is classifiable under 'Cargo Handling Service' but not leviable to service tax, the demand is also not legally sustainable as it is issued invoking the extended time limit. Because, on conducting the audit of the appellants books of accounts in the year 2008, **the dept had issued two SCNs dated 07.10.2009 & 17.04.2010 covering the period April 2005 to December 2009 demanding service tax, under reverse charge, on the transportation services received by them, classifying it as GTA service.** During the adjudication proceedings, the appellant has maintained that the service provided by them was cargo handling service and transportation was part of its activity. They had submitted all the records to the audit team who choose to demand tax from the appellant only as recipient of GTA service.

8.2 Subsequently, the present SCN was issued on 21.10.2013 demanding service tax on the total value classifying the entire service as 'Business Support Service' covering the period from 01.04.2008 to 30.06.2012. **The period of April 2008 to December 2009 was already covered in the earlier SCN and again, the same period was covered in the present SCN invoking extended period.** This indicates that the dept had no consistency and clarity as regards to classification and issue of SCN. Further, it may be seen that while

conducting audit itself the dept was aware of the full facts that the appellant was providing cargo handling service and not paying service tax as the service was only for export cargo. The two show cause notices covering consecutive periods was issued invoking extended period and passed orders confirming the demand under GTA service. Again, issuing another notice invoking extended period under suppression clause is legally not sustainable as the appellant did not do anything to suppress any facts with an intention to evade payment of service tax.

8.3 There is plethora of case laws holding that such an act of invoking suppression clause and demanding tax for the extended period cannot be legally sustainable. The Hon'ble Supreme Court, in the case of **Nizam Sugar Factory vs Collector of Central Excise, AP.** - 2006 (197) E.L.T. 465 (SC), had held that when all relevant facts were in knowledge of authorities at the time of issuing first show cause notice, suppression of facts cannot be alleged on the part of assesses while issuing second & third show cause notices as these facts were already in the knowledge of authorities. Based on this, the Hon'ble Supreme Court had set aside the demand and penalty. The ratio of this case law squarely applicable to the facts of the present case. Consequently, the demand of tax and imposition penalty is liable to be set aside as it is legally not tenable on this score alone.

8.4 In conclusion, it is submitted by Ld. Counsel that;

- i. The Service provided by the CFS is a composite Service by a CFS which is specifically included under 'Cargo Handling Service' definition.
- ii. When the service provided by a CFS is specifically included under cargo handling service, which is a specific entry, it cannot be classified under 'Business Support Service' which is a more general in nature.

- iii. The essential characteristic of the composite service provided by the appellant is handling the export cargo in Customs area under 'Handling of Cargo in Customs Area Regulations, 2009 including its transportation to the port for loading on to the ship for export.
- iv. The appellant did not provide any independent service of 'Information tracking of delivery schedules' of the export cargo or 'Managing distribution and logistics' service to exporters. They were simply carrying out their responsibilities as Customs area cargo handling service providers.
- v. The Composite Service cannot be dissected into various minor services when there is specific classification for such composite service.
- vi. The Board's instruction issued in F.No. 137/131/2007-CX.4 dated 12.12.2007 clarifying the service provided by shipping companies to postal dept as Business Support Services is not applicable to the present case as the CFS cannot be equated with shipping companies.
- vii. The Board's letters issued vide F.No.B.11/1/2002-TRU dated 1.8.2002 and F.No. 334/1/2008-TRU dated 29.02.2008 had clearly spelt out the scope of Cargo Handling Service and clarified that packing together with transportation is classifiable under Cargo Handling Service and such service for export cargo is kept out of service tax levy.
- viii. The Board's circular No.104/7/2008-ST date 6.8.2008 had clarified that transportation is not an essential character of cargo handling service but only incidental to cargo handling service. Since the CFS is mandated to transport export cargo to the port for loading on to ships, they are doing the function of 'Cargo Handling Agency' as required under service tax and under 'Handling of Cargo in the Customs Area Regulation' 2009.

ix. The orders passed by the lower authorities confirming the demand of tax by invoking the extended period on the grounds of suppression of facts or misstatement with an intent to evade payment of tax is legally not sustainable as the dept was fully aware of the entire facts as the appellant had submitted all the documents before the dept for audit based on which two previous SCNS were issued and adjudicated for the earlier period.

8.5 In view of the above submissions, the Ld. Counsel prayed that the impugned order may be set aside and appeal may be allowed.

9. Ld. A.R Shri N. Sathyanarayanan appeared and argued for the Department. Ld. A.R referred to para-23 of the impugned order and submitted that there is no doubt that the appellant acts under the authorization granted under the Handling of Cargo in Customs Area Regulations, 2009. However, the split-up bills raised by CFS clearly shows that the major component of the activity was for providing logistic support in relation to transport of export cargo and tracking of the delivery of the cargo at the gateway port so that the cargo was able to be loaded onto the scheduled slip. This activity clearly distinguishes the services from the serviced provided for mere loading and unloading of cargo. The adjudicating authority has referred to the meaning of 'Logistics' to examine whether the activity of transportation and tracking of cargo would come within the meaning of "Logistics". When the export cargo is handed over to the appellant (service provider) the services expected to be performed by the service provider is not mere loading, unloading, packing etc. but involves the crucial element of managing distribution and logistics and on services. It also includes services relating to information and tracking of delivery schedule which is not expected of in the case of Cargo Handling Service. Therefore, the element of service relating to 'information and tracking of delivery schedules' and 'managing

distribution and logistics' would give the essential character to the composite service provided by the appellant. For these reasons, the adjudicating authority has rightly confirmed the demand under "Business Support Service".

9.1 The Board circular dt. 12.12.2007 has been relied by the adjudicating authority which states that any activity of distribution, management and logistics services would fall under BSS.


9.2 As regards the issue of extended period of limitation, it is submitted by Ld. A.R that although earlier show cause notices were issued, for the period January 2005 to December 2008 and for the January 2009 to December 2009 demanding service tax on the transportation services provided by the appellant, the appellant had paid the service tax after confirmation of demand. They have not paid service tax and did not disclose the details about their liability to pay service tax under BSS. For these reasons, the appellant is guilty of suppression of facts with intent to evade payment of service tax. It is argued that invocation of extended period is legal and proper. Ld. A.R prayed that the appeal may be dismissed.

10. Heard both sides.

11. The issue to be considered is whether the demand raised under 'Business Support Service' (BSS) is legal and proper.

12. Undisputedly, the appellant has been issued licence as a Customs Cargo Service Provider. The said licence dated 14.10.2010 is reproduced as under :



  
भारत सरकार/ GOVERNMENT OF INDIA  
केन्द्रीय उत्पाद, सीमाशुल्क एवं सेवा कर आयुक्त का कार्यालय  
OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE, CUSTOMS & SERVICE  
TAX  
कोयंबटूर आयुक्तालय COIMBATORE COMMISSIONERATE  
6/7, ए.टी.डी.स्ट्रीट/A.T.D. Street, रेस कोर्स रोड .RACE COURSE ROAD:  
कोयंबटूर COIMBATORE-18.

CUSTOMS FACILITY NOTICE NO : 6/2010 Date : 14.10.2010

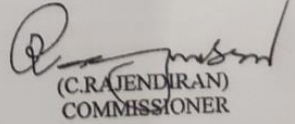
Sub: Customs – M/s. Indev Logistics Pvt. Ltd., Tirupur – Approval as “Customs Cargo Services Provider” – Reg.  
\* \* \* \* \*

M/s. Indev Logistics Pvt., Ltd has been appointed as **Custodian of Import/export goods** at the Inland Container Depot, Chettipalayam, at Tirupur by the Commissioner of Customs, Coimbatore vide Customs Public Notice No. 34/2002 dated 26.08.2002 and the ICD is in operation since then.

Now, in exercise of the powers conferred by sub-section (1) of Section 45 of the Customs Act, 1962 (52 of 1962), read with the Handling of Cargo in Customs Area Regulations, 2009, I, C.Rajendiran, Commissioner of Customs, Coimbatore hereby appoint **M/s. Indev Logistics Pvt. Ltd.** to be the “**Customs Cargo Services Provider**” including a Custodian of the Inland Container Depot, situated at Chettipalayam, Tirupur and they are responsible for the receipt, storage, delivery, dispatch or otherwise handling of imported goods and export goods received at the Inland Container Depot, Chettipalayam, Tirupur in accordance with the provisions of Chapter VIII of the Act ibid.

M/s. Indev Logistics Pvt. Ltd.. as the **Customs Cargo Services Provider /Custodian** of the goods meant for Export and Import shall be required to comply with the provisions of **Section 45 of the Customs Act, 1962 read with the Rules and Regulations framed under the Act** and instructions issued there under. They also shall fulfill all the conditions mentioned in **Regulation 5 and discharge all the responsibilities prescribed in Regulation 6 of the Handling of Cargo in Customs Area Regulations, 2009** (issued vide Notification No.26/2009 CUS (NT) dated 17.03.2009 and the Board’ Circular No. 13/2009-Customs dated 23.03.2009.

The appointment of M/s. Indev Logistics Pvt. Ltd. as the Customs Cargo Services Provider including Custodian of the Inland Container Depot, Chettipalayam, Tirupur is **upto 31.12.2014.**

  
(C.RAJENDIRAN)  
COMMISSIONER

(Issued from file C.No.VIII/48/50/2002-CUS.POL)

To  
(i) The Chief Commissioner of Customs, Central Excise & Service Tax, Coimbatore.  
(ii) The Deputy Commissioner of Customs, ICD, Chettipalayam, Tirupur.

POCO  
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13. It can be seen from the above licence issued by the Customs Department that the appellant has to abide and fulfil all the conditions mentioned under Regulation 5 and discharge all the responsibilities prescribed in Regulation 6 of the Handling of Cargo in Customs Area Regulations, 2009. The responsibilities of a cargo handling service provider as per these Rules has already been noticed above. The

service provider has to ensure the safety and security of the cargo and is responsible for loading, unloading, and storing of the cargo. They are also liable to present the cargo for examination before the officers. They have to maintain record of each activity and action in relation to movement and handling of exported goods. So also, they are responsible for secure transit of the goods from the customs area to any other customs area.

14. The main ground on which the show cause notice has been issued is that the activity in the nature of tracking of delivery schedule, managing distribution and logistics would give the essential character of the composite activities carried out by the appellant and the service is thus to be classified under Business Support Services (BSS). The definition of 'Business Support Service' has already been noticed above. It has to be noted that the service in the category of BSS is in the nature of service that is to be provided to a business or commerce. In other words, these activities are in the nature of providing support or facility to another for business or commerce. BSS intends to bring within the service tax net various outsourcing services. In the present case, the appellant does not support business of any other. They export the cargo of customers. The tracking of delivery schedule etc. is done to ensure the safety and transit of the cargo. So also, they are responsible under various provisions of Customs Act and Rules and have to report compliance for the transit of the cargo within the port area. To keep a record and also to comply with the Cargo Handling Regulations, 2009 the appellant manages, maintains the tracking. All these activities together fall under the category of 'Cargo Handling Service'. Merely managing the cargo within the CFS area does not mean that the appellant is providing a Business Support Service. The original authority has relied upon the Board circular dt. 12.12.2007 to hold that since there is distribution, management and logistics service, the activity would fall under BSS. We have to say that the reliance placed on the Board circular is erroneous and misconceived. In the present case, the appellant does

not do any distribution of cargo. They manage the cargo and do the logistics of packing and repacking or tracking only for ensuring safety and security of the cargo. There is no distribution of the cargo undertaken by the appellant. They have undertaken the activity of handling the cargo at the port premises for the purpose of export to the destination. This being the nature of activities carried out by the appellant, we do not find any ingredients which attract the levy of service tax under BSS.

15. The entire demand is raised on the amounts received in respect of export cargo. The definition of 'Cargo Handling Service' as reproduced above would show that it excludes handling of export cargo. The intention of excluding handling of export cargo from the levy of service tax, is to encourage export and also to prevent taxes being exported. When the definition of 'Cargo Handling Service' itself excludes the activity of handling of export cargo, the department is trying to bring in the consideration received by the appellant for handling export cargo under service tax net by classifying it artificially under BSS. This is pure harassment on an assessee. Even by the SCN it is seen that the appellants have been given the license as Customs Cargo Service Provider (CFS agent) and are providing the services of handling cargo. When the Customs department has issued licence for providing service of cargo at port area, the service tax wing has wrongly sought to bring the consideration received by them to be for supporting business of another under BSS.

16. The Ld. Consultant has submitted that certain invoices were raised separately only as per the request of the customers / CHA. Even if there may be some invoices raised separately, we find that the activity that is sought to be classified under BSS is information of tracking of delivery schedule, management, distribution and logistics to be under BSS. There is no activity of distribution at all. We cannot agree with the view taken by the adjudicating authority as these activities are part and parcel or incidental or ancillary to the cargo handling service. We find that the classification determined by the

department under BSS to raise the demand cannot sustain and requires to be set aside. The appellant succeeds on merits.

17. The Ld. Consultant has argued on the ground of limitation also. It is submitted that there were earlier SCNs issued alleging that the appellant has raised invoices separately for transportation services. After confirmation of demand, the appellant has preferred appeals. During the said period, the appellant was dealing with import cargo also. However, for the present dispute, the appellant has dealt with only export cargo. When there were earlier SCNs issued by the Department raising demands for the services rendered by the appellant, the allegation that the appellant has suppressed facts from the Department is without any basis. The entire fact was within the knowledge of the department. The appellant had not paid the service only on the bonafide belief that they were handling only export cargo, which was exempt from services under Cargo Handling Service. So also, they have been issued license by the Customs Department as customs cargo service provider. Apart from vague allegation that the appellant has suppressed facts there is no positive act of suppression established against the appellant. The issue of limitation is also answered in favour of the appellant.

18. In the result, the impugned orders are set aside. The appeal is allowed with consequential relief, if any.

(Order pronounced in the open court on 31.07.2024)

sd/-

**(VASA SESHAGIRI RAO)**  
Member (Technical)

sd/-

**(SULEKHA BEEVI. C.S)**  
Member (Judicial)