CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. III

(VIRTUAL HEARING)

Service Tax Appeal No. 54963 of 2023 – (SM)

(Arising out of Order-in-Appeal No. 288(RLM)ST/JPR/2022 dated 22.12.2022 passed by the Commissioner (Appeals), Customs, Central Excise & CGST, Jaipur)

Mr. Sitaram Jaggnath Prasad Sihotia **Appellant**
Silver Jubilee Road, Sikar, Rajasthan-32001.

VERSUS

Commissioner (Appeals), Customs, Central Excise & CGST, Jaipur **Respondent**

Appearance

Ms. Shuchi Sethi, Advocate – for the Appellant.

Shri Arun Sheoran, Authorized Representative – for the Respondent

CORAM :

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

Date of Hearing: 08/02/2024
Date of Decision: 27/02/2024

Final Order No. 54482/2024

Binu Tamta

The appellant has assailed the Order-in-Appeal No. 288/2022 dated 22.12.2022 passed by the Commissioner (Appeals) affirming the order in original and the proposal made in the show cause notice.

2. The facts of the case are that the appellant is running a petrol pump outlet under the dealership of M/s Bharat Petroleum Corporation Limited (hereinafter known as BPCL), which is outside

the purview of service tax. Further, the appellant also owns a commercial vehicle which is used for transportation of diesel/petrol from the premises of BPCL to various filling stations. According to the appellant, since the services provided by them are covered by Section 68(2) of the Chapter V of the Finance Act, 1994 read with Notification No. 30/2012-ST dated 20.06.2012 whereby service receiver is liable to pay service tax under reverse charge mechanism, hence it did not take service tax registration and also did not file any service tax return.

3. On the basis of third party data provided by the Income Tax Department, it was observed that the appellant received certain amount during the period 2012-13 on which TDS was deducted under Section 194C of the Income Tax Act, 1961. It further revealed that service of GTA was provided by the appellant to M/s BPCL as the appellant had provided the truck/tanker for supply of petroleum products and during the period 2012-13, the appellant received Rs. 13,67,340/- but did not pay the service tax thereon. Show cause noticed dated 20.04.2018 was issued proposing recovery of service tax amount of Rs. 1,69,003/- under proviso to Section 73(1) and penalty under Section 77 and 78 of the Finance Act, 1994. The adjudicating authority confirmed the demand and the appeal preferred by the appellant was rejected by the impugned order. Hence the present appeal has been filed by the appellant before this Tribunal.

4. The sum and substance of the contention raised by the appellant is that the services are taxable in the hands of the service receiver under Notification No. 30/2012-ST dated 20.06.2012 and

in terms thereof the service receiver, i.e. M/s BPCL has already discharged the service tax liability under RCM for which they have issued the certificate. The learned counsel also submitted that the appellant is owner of the truck which is used for transportation of diesel/petrol, they fall under the negative list and are exempted from levy of service tax.

5. The learned Authorised Representative has reiterated the findings of the authorities below.

6. Having heard both the sides and perused the records of the case, I find that the main thrust of the argument of the learned counsel for the appellant is that no service tax is chargeable as one of the basic ingredient as per the provisions of the Finance Act, 1994 to constitute "Goods Transport Agency" is that the service provider has to issue 'Consignment Note' is missing and the Tribunal in catena of decisions have held that issuance of Consignment Note is pre-requisite for taxability under GTA services. The Tribunal have categorically laid down the law that in absence of consignment note services cannot be considered as GTA services and the demand of service tax under the category of "Goods Transport Agency" does not sustain. Reference is invited to the decisions in **Dinshawas Dairy Foods Ltd. Vs. CCE – 2018 (13) GSTL 170, Mahanadi Coalfields Ltd. Vs. CCE – 2022 (57) GSTL 242 (Trib.), South Eastern Coalfields Ltd. Vs. CCE - 2017 (47) STR 93 (Trib.), East India Minerals Ltd. Vs. CCE and CST -2021 (44) GSTL 90 (Trib.) and CCE Vs. Salem Co-operative Sugar Mills ltd. – 2014 (35) STR 450 (Tribunal).**

7. I would like to refer the paragraphs from the latest decision relied on by the appellant in **Bharat Swabhiman (Nyas) Vs. Commr. Cus., C. Ex. & ST, Dehradun – 2022 (62) GSTL 470 (Tri-Del.),** where it has been held as under:

> **"17.** The next issue that remains to be decided is whether the appellant is liable to pay service tax on the freight amount paid by it on a reverse charge mechanism.
>
> **18.** 'Goods transport agency' service has been defined in Section 65(26) of the Finance Act to mean any person who provides service in relation to transport of goods by road and issues consignment notes, by whatever name called. In the present case, consignment notes have not been issued and so the activities cannot be said to be covered under 'goods transport agency' services.
>
> **19.** In this connection it would be useful to refer to the decision of the Tribunal in *Bhoramdeo Sahakari Shakhar Utpadam Karkhana* v. *Commissioner of Customs, Central Excise & Service Tax, Raipur* [2019 (10) TMI 1416-CESTAT, New Delhi], wherein it has been held that service tax can be levied only if consignment notes are issued.
>
> **20.** Thus, service tax liability could not have been fastened on the appellant under the reserve charge mechanism."

8. Further, in the case of **CCE Vs. JWC Logistics Pvt. Ltd. – 2019 (22) GSTL 237 (Tri.-Mumbai),** the Mumbai Bench laid emphasis on the purpose of issuing the consignment note as under:-

> **"9.** Revenue relies upon the invoices or monthly bills raised by M/s. V.B. Enterprises. An invoice, notwithstanding adequacy of details thereon is no substitute for a consignment note. An invoice creates liability of debt on the part of the recipient of the service. **A consignment note, on the other hand, carries with it a certain legal burden, the issuing of a consignment note is a contractual undertaking made to the entity that handed over the goods to the agency of responsibility for safe delivery at the stipulated destination. A consignment note also creates binding responsibility for each consignment.** In the absence of any evidence of such responsibility having devolved on M/s. V.A. Enterprises and the issue of monthly bills does not, *ipso facto*, creates such liability and the impugned order is not at fault for having held that tax liability does not arise."

9. The decision in **Mahanadi Coalfields Ltd.** (supra) have dealt with the issue in detail as under:

> **"9.** In the instant case, the issue before us is whether the appellant, who is a recipient of goods transportation services in the mines, is liable to pay service tax under RCM. We find that the service tax liability will arise only if the definition of 'taxable service' as contained in Section 65(105)(zzb) of the Act, which was in force during the material period, is fulfilled. As per the said provision, during the period in dispute, the taxable service, in relation to transport of goods in a goods carriage, means any service provided or to be provided to a customer by a goods transport agency service. We note that the term 'goods transport agency' has been specifically defined in Section 65(50b) to mean any commercial concern which provides service in relation to transport of goods by road and issues consignment note, by whatever name called.
>
> **10.** On perusal of the above statutory provisions, it is clearly evident that in order to constitute 'Goods Transport Agency', the provider of transportation service must issue the consignment notes or any other document by whatever name called. We find that the issue has already been examined in detail by the Tribunal, in Final Order dated 13-8-2014, in *South Eastern Coalfields Ltd.* v. *CCE, Raipur* 2016 (41) S.T.R. 636 (Tri. - Del.), the relevant portion is reproduced below :-
>
> > 5. If the transaction/service provided by the 24 transporters to "...5. the appellant fall within ambit of Goods Transport Agency service within the meaning of the aforesaid provisions, the appellant would be liable to tax though being recipient of the service is not contested by the appellant and it is conceded that under this taxable service, recipient of the service is liable to tax. The only issue canvassed is the one presented to the adjudication authority which did not commend acceptance namely, that since no consignment notes were issued by transporters, the services provided to the appellant fall outside the ambit of GTA.
> >
> > 6. The issue is no longer *res integra*. Learned Division Benches of this Tribunal in *Birla Ready Mix* v. *C.C.E., Noida* - 2013 (30) S.T.R. 99 (Tri. - Del.) and in Final Order Nos. ST/A/50679-50681/2014-CU(DB), dated 13-1-2014 [2014 (34) S.T.R. 850 (Tribunal) and in *Nandganj Sihori Sugar Co. Ltd. and others* v. *C.C.E., Lucknow* unambiguously enunciated the principle that *qua* the definition of "Goods Transport Agency" enacted in Section 65(50b) of the Act, to fall within the ambit of the defined expression issuance of a consignment note is non-derogable ingredient.
> >
> > 7. In view of the law declared and the factual matrix of this appeal since where admittedly no consignment notes were issued by the 24 transporters for transportation of the appellant's coal, the Goods Transport Agency

> service cannot be held to have been rendered. That being the position the appellant is not liable to tax."
>
> **11.** We note that the pursuant to directions of the Hon'ble Chhattisgarh High Court [2016 (41) S.T.R. 608 (Chhattisgarh)], in the remand proceedings, the Tribunal in its Final Order dated 28-7-2016 has re-affirmed the aforesaid legal position to hold that the assessee has not received any GTA service, so as to make them amenable to service tax in absence of consignment notes. The issue of consignment note, is a non-derogable ingredient to make the "goods transporter" as "Goods Transport Agency" as defined in the statute.
>
> **12.** We also find that the same view has been consistently followed by the co-ordinate Benches of the Tribunal, the decisions which have been admitted for consideration before the Hon'ble Supreme Court in Revenue Appeals. We note that though the matter is pending before the Apex Court, the aforesaid Tribunal decisions have not been stayed and therefore, we do not find any reason to take a contrary view. In so far as the decision in *Singh Transporter's* case (Supra) is concerned, we agree with the arguments canvassed by the Ld. CA for the appellant that the mandatory requirement of issue of consignment note, in order to constitute "Goods Transport Agency" as has been specifically defined in the Act, was not the subject matter of examination so as to decide the taxability in the hands of assessee receiving goods transportation services and therefore, the aforesaid Apex Court's decision has no application in the instant case."

10. From the facts of the present case, I find that the appellant apart from running the petrol pump outlet is also providing the transportation of petroleum pump on behalf of M/s BPCL, the service receiver and M/s BPCL has issued a certificate mentioning that service tax has been discharged by them on monthly basis being the person liable to pay tax on services received under Goods Transport Agency as per the provisions of the Finance Act. Therefore, the service tax liability has been discharged by the service receiver and consequently the appellant is not liable to discharge the same once again.

11. In terms of the negative list, the appellant being the owner of the truck and providing the transportation through it cannot be

treated as GTA service and would, therefore, squarely fall under the exemption, which reads as under:

> **"Section 66D. Negative list of services** – The negative list shall comprise of the following services, namely:-
>
> (p) services by way of transportation of goods-
>
> (i) by road except the services of –
>
> (A) a goods transportation agency; or
>
> (B) a courier agency."

12. In the present case, I find that it is an undisputed position that the appellant had not issued any consignment notes by whatever name and hence in view of the law laid down by the series of decisions, no service tax liability can be imposed.

13. I, therefore, hold that the demand proposed in the show cause notice for recovery of service tax of Rs. 1,69,003/- along with interest and penalty is liable to be dropped and the impugned order needs to be set aside. The appeal is accordingly, allowed.

(Pronounced in open Court on 27th February, 2024)

(Binu Tamta)
Member (Judicial)

RM