

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 40585 of 2014

(Arising out of Order-in-Original No. 20/2013-ST dated 23.12.2013 passed by the Commissioner of Central Excise and Service Tax, No.1, Williams Road, Cantonment, Tiruchirappalli – 620 001)

M/s. The Ramco Cements Limited

: Appellant

[Formerly 'M/s. Madras Cements Limited']
PAC Ramasamy Raja Nagar,
Alathiyur Works, Post-Cement Nagar,
Senthurai Taluk, Ariyalur District – 621 730

VERSUS

Commissioner of Central Excise

: Respondent

No. 1, Williams Road, Cantonment,
Tiruchirappalli – 620 001

APPEARANCE:

Shri R. Parthasarathy, Consultant for the Appellant

Shri N. Satyanarayanan, Assistant Commissioner for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 40853 / 2023

DATE OF HEARING: 03.08.2023

DATE OF DECISION: 27.09.2023

Order : [Per Hon'ble Mr. P. Dinesha]

It is the case of the Revenue, through the Show Cause Notice dated 20.04.2012, that during the course of audit of accounts, the assessee appeared to have engaged the services of various contractors for transportation of limestone from the mines to their factory which was covered under the category of Goods Transport Agency (GTA) under Section 65(105)(zzp) of the Finance Act, 1994 read with Section 65(50b) *ibid*. It is also their case that as

per sub-rule 2(1)(d)(v) of the Service Tax Rules, 1994, the person liable for paying Service Tax on the transportation service provided by a GTA in cases where the consignor or consignee of goods falls under any of the seven sub-clauses under the said sub-rule, is the person who pays or is liable to pay freight for the transportation of such goods, which in the instant case having been made by the assessee, therefore, the assessee was liable to pay Service Tax.

1.2 It appears that the assessee furnished the details of freight paid to various contractors for transportation of limestone vide their letter dated 10.08.2011 which, according to the Revenue, had not been disclosed by the assessee in its S.T.-3 returns filed and that the same came to light only during the course of audit of the assessee's accounts.

2. Entertaining a doubt that the above amounted to suppression with intent to evade payment of Service Tax for the above service, the above Show Cause Notice (dated 20.04.2012) came to be issued, for the period from 2006-07 to 2010-11, proposing, *inter alia*, to demand Service Tax along with applicable interest under Section 75 *ibid.* and penalties under Sections 76, 77 and 78 *ibid.*

3. The assessee, upon receipt of the Show Cause Notice, filed a detailed reply thereby seriously disputing its liability to Service Tax under GTA and also disputing the basic factual assumption insofar as transportation of limestone from mines to crusher / stock pit located within the mining area was concerned, on the following grounds:-

- As and when limestone is extracted, the same is required to be moved on a continuous basis to be fed in lumps to crushing units.
- For this purpose, they had appointed various transporters who own tipper lorries for transportation of limestone extracted / excavated to

the crushing unit located within the precincts of their mines.

- The rate of transportation charges payable per tonne of limestone is given by means of a work order, which is released on individual transporters, containing specification of the transport vehicle to be used, the distance to be covered and the rate of transportation which was payable on per tonne basis.
- The rate of transportation as of above released varied between Rs.20/- per M.T. to Rs.31/- per M.T., depending on the distance to be covered and in any case, the maximum transportation charges payable per trip was Rs.558/- only.
- In terms of Notification No. 34/2004-S.T. dated 03.12.2004 is applicable only for goods transport vehicles used by goods transport agencies (GTA) whereas the transporters who were involved in the case on hand are not the GTA but the owners of the vehicles used.
- GTA is applicable only to big transport companies owning a fleet of trucks or lorries and those who issue consignment note, whereas in the case on hand the transporters who were used are not GTA and also, they would not issue any consignment note in respect of the goods transported.
- Freight paid towards transportation of goods *per se* will not attract any Service Tax under reverse charge mechanism unless the agency to which freight is paid came under the purview of GTA and that such freight paid for each trip is more than Rs.750/- per trip. Even on this count, the case of the appellant cannot be held to be covered under Rule 2(1)(d)(v) *ibid*.

- With regard to the allegation as to suppression of facts, what is required to be filed is only the value of taxable services on which Service Tax is required to be paid and since freight paid to the individual transporters was not exigible to Service Tax under GTA, the same was not shown in their S.T.-3 return.
- Even otherwise, the freight paid per trip was less than Rs.750/- and hence, any freight amount lesser than Rs.750/- per trip being not "value of taxable services" received by them, the aggregate was not required to be incorporated in their S.T.-3 return. Hence, for this reason, the allegation as to suppression of facts is without any basis.
- In any case, omission to furnish details in S.T.-3 return, which is not legally required, cannot be held to be suppression of fact.
- They relied on the following decisions / orders: -
 - i. *Commissioner of C.Ex. v. Gujarat Narmada Fertilizers Co. Ltd.* [2009 (240) E.L.T. 661 (S.C.)]
 - ii. *Maruti Suzuki Ltd. v. Commissioner of Central Excise, Delhi-III* [2009 (240) E.L.T. 641 (S.C.)]
 - iii. *Ispat Industries Ltd. v. Commissioner of C.Ex., Raigad* [2006 (199) E.L.T. 509 (Tri. - Mum.)]
 - iv. *NRC Ltd. v. Commissioner of C.Ex., Thane-I* [2007 (209) E.L.T. 22 (Tri. - Del.)]
 - v. *Chemicals & Fibres of India Ltd. v. Collector of C.Ex., Bombay* [1988 (33) E.L.T. 551 (Tri.)]
 - vi. *Akbar Badruddin Jiwani v. Collector of Cus.* [1990 (47) E.L.T. 161 (S.C.)]
 - vii. *Secretary, Town Hall Committee v. Commissioner of C.Ex., Mysore* [2007 (8) S.T.R. 170 (Tri. - Bang.)]
 - viii. *Commissioner of C.Ex., Jaipur-I v. Sikar Ex-Servicemen Welfare Co-op. Society Ltd.* [2006 (4) S.T.R. 213 (Tri. - Del.)]
 - ix. *Haldia Petrochemicals Ltd. v. Collector of C.Ex., Haldia* [2006 (197) E.L.T. 97 (Tri. - Del.)]

- x. *Siyaram Silk Mills Ltd. v. Commissioner of Central Excise, Mumbai-II [2006 (195) E.L.T. 284 (Tri. - Mum.)]*
- xi. *Fibre Foils Ltd. v. Commissioner of Central Excise, Mumbai-IV [2005 (190) E.L.T. 352 (Tri. - Mum.)]*
- xii. *ITEL Industries Pvt. Ltd. v. Commissioner of C.Ex., Calicut [2004 (163) E.L.T. 219 (Tri. - Bang.)]*
- xiii. *Commissioner of Central Excise v. Mega Air Tech Engineers [2009 (238) E.L.T. 35 (Guj.)]*

4. The adjudicating authority / Commissioner having considered the reply of the appellant during adjudication, however, vide impugned Order-in-Original No. 20/2013-ST dated 23.12.2013 has confirmed the demands, as proposed in the Show Cause Notice, but has dropped the imposition of penalty under Section 76 *ibid.* alone.

5. It is against the demand in the said order that the present appeal has been filed by the assessee / appellant, before this forum; Revenue has not filed any appeal against the dropping of penalty by the Commissioner.

6. Shri R. Parthasarathy, Ld. Consultant, appeared for the appellant and Shri N. Satyanarayanan, Ld. Assistant Commissioner, defended the Commissioner.

7. Facts are not in dispute. The only short point that arises for our consideration is: whether the payment of freight attracted Service Tax levy under GTA, as confirmed in the impugned order?

8.1 The Ld. Consultant would submit, at the outset, that the transportation of limestone was undertaken by transport operators who were actually the owners of such trucks, with whom the appellant had directly entered into contract for transportation, such transport operators were not covered by the definition of GTA and hence, the appellant entertained a *bona fide* doubt that there was no liability to pay Service tax on the freights that were paid directly to such transport operators / truck owners.

8.2 Further, he would submit that such truck owners also did not issue any consignment note, which is also an essential ingredient of the definition of GTA under the statute, but however, the activity of transportation was executed as per the work orders issued to the respective truck owners.

8.3 He would also refer to the following orders of various CESTAT Benches to contend that the leviability of Service Tax under reverse charge mechanism in respect of transportation charges paid directly to truck owners has been settled in favour of the assessee: -

- i. *Commissioner of C.Ex. & Cus., Guntur v. Kanaka Durga Agro Oil Products [2009 (15) S.T.R. 399 (Tri. – Bang.)]*
- ii. *Nandganj Sihori Sugar Co. Ltd. v. Commissioner of C.Ex., Lucknow [2014 (34) S.T.R. 850 (Tri. – Del.)]*
- iii. *Caps & Prints P. Ltd. v. Commissioner of S.T., Kolkata [2013 (30) S.T.R. 426 (Tri. – Kol.)]*
- iv. *Lakshminarayana Mining Co. v. Commissioner of S.T., Bangalore [2009 (16) S.T.R. 691 (Tri. – Bang.)]*
- v. *K.M.B. Granites Pvt. Ltd. v. Commissioner of C.Ex., Salem [2010 (19) S.T.R. 437 (Tri. – Chennai)]*
- vi. *Commissioner v. K.M.B. Granites Pvt. Ltd. [2013 (32) S.T.R. J205 (Mad.)]*
- vii. *Mahanadi Coal Fields Ltd. v. Commissioner of C.Ex. & S.T., BBSR-I [2022 (57) G.S.T.L. 242 (Tri. – Kol.)]*
- viii. *Dinshaws Dairy Foods Ltd. v. Commissioner of C.Ex., Nagpur [2018 (13) G.S.T.L. 170 (Tri. – Mum.)]*
- ix. *Bhima Sahakari Sakhar Karkhana v. Commissioner of C.Ex., Pune-III [2016 (41) S.T.R. 438 (Tri. – Mum.)]*
- x. *Ultra Tech Cement Ltd. v. Commissioner of C.Ex, Kolhapur [2018 (10) G.S.T.L. 80 (Tri. – Mum.)]*
- xi. *South Eastern Coal Fields Ltd. v. Commissioner of C.Ex., Raipur [2016 (41) S.T.R. 636 (Tri. – Del.)]*

9. *Per contra*, the Ld. Assistant Commissioner relied on the findings in the impugned order.

10. We have heard the rival contentions and we have perused the order of the lower authority.

11.1 In the case of *M/s. K.M.B. Granites Pvt. Ltd. v. Commissioner of C.Ex., Salem [2010 (19) S.T.R. 437 (Tri. - Chennai)]* this Bench had an occasion to consider an almost similar issue of liability to Service Tax on services of GTA vis-à-vis Rule 2(1)(d)(v) *ibid.* After hearing both sides, this Bench has held as under: -

"3. Heard both sides. It has been consistently contested by the assesseees that services were not being provided to them by the Goods Transport Agency but by individual truck owners/lorry owners. Before the lower appellate authority they have also provided written submissions in support of their above submission. It has been held by the Tribunal in the case of Lakshminarayana Mining Co. v. CST, Bangalore - 2009 (16) S.T.R. 691 (Tri.-Bang.) and in the case of CCE, Guntur v. Kanaka Durga Agro Oil Products Pvt. Ltd. - 2009 (15) S.T.R. 399 (Tri.-Bang.) that transport undertaken by individuals owning and operating lorry and trucks is not subject to service tax as in these cases services has not been provided by Goods Transport Agency Service. Following the ratio of the above decisions, I hold that the appellants are not liable to Service tax and imposition of penalty. I, therefore, set aside the impugned orders and allow these appeals."

11.2 It appears that the Revenue filed an appeal before the Hon'ble jurisdictional High Court of Madras against the above order and the Hon'ble High Court vide its Order reported in *2013 (32) S.T.R. J205 (Mad.)* has dismissed the appeal, thereby upholding the order of this Bench.

11.3 Further, we find that the other orders relied upon by the Ld. Consultant clearly confirm the view that the essential requirement is the issuance of consignment note in order to be covered under the definition of GTA and in the absence of the same, the transporters/contractors rendering transport services in mines cannot be said to be GTA and therefore, their service cannot be made amenable to the levy of Service Tax under the category of 'transportation of goods by road' service.

12. The above consistent view expressed by various co-ordinate benches of the CESTAT, judicial discipline demands to follow the said view of the co-ordinate Benches. This is also for the reason that in one of the cases, even the Hon'ble jurisdictional High Court has upheld the order of this Bench. Following therefore the same view, we hold that the demand of Service Tax confirmed in the impugned order cannot sustain.

13. Resultantly, we allow the appeal with consequential benefits, if any, as per law.

(Order pronounced in the open court on **27.09.2023**)

Sd/-
(M. AJIT KUMAR)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sdd