

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI.**

**PRINCIPAL BENCH - COURT NO.III**

**Service Tax Appeal No.54669 of 2023 (SM)**

(Arising out of Order-in-Appeal No.64(AK)ST/JDR/2023 dated 20.03.2023 passed by the Commissioner (Appeals), Central Excise and Central Goods and Service Tax, Jodhpur]

**M/s.White N White Minerals Pvt. Ltd.**  
Gotan Road, Borunda,  
Jodhpur, Rajasthan-342 604.

**Appellant**

VERSUS

**Commissioner of Central Goods &  
Service Tax and Central Excise,**  
G-105, New Jodhpur Industrial Area,  
Jodhpur (Rajasthan)-342 003.

**Respondent**

**APPEARANCE:**

Shri O.P. Agarwal, Chartered Accountant for the appellant  
Shri Arun Sheoran, Authorised Representatives for the respondent

**CORAM:**

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

**FINAL ORDER NO. 50098/2024**

**DATE OF HEARING:11.01.2024  
DATE OF DECISION: 18.01.2024**

**BINU TAMTA:**

1. Challenge in this appeal is to the Order-in-Appeal No.64(AK)ST/JDR/2023 dated 20.03.2023, whereby the Commissioner (Appeals) affirmed the demand of service tax on the appellant in the category of "Goods Transport Agency".

2. The appellant is engaged as a receiver of services under the category of "Goods Transport Agency" (hereinafter referred to as GTA) and registered under Service Tax. In the course of audit conducted by the officers of Central Excise, Jaipur, it was observed that the assessee had been recipient of services falling under the category of GTA and paying the service tax as per provisions of Rule 2(1)(d)(v) of the Service Tax Rules, 1994, however, the assessee while determining the tax liability escaped the amount paid to the various transport agencies exceeding Rs.750/- but less than Rs.1,500/- treating it as exempted by wrongly availing the benefit of Notification No. 34/2004 – ST dated 3.12.2004 (as amended). According to the Department, since in this case the gross amount charged for an individual consignment exceeds Rs.750/-, it is chargeable to service tax whereas as per the exemption notification, the gross amount charged on an individual consignment transported in a goods carriage should not exceed Rs.750/- for availing the exemption benefit. Show cause notice dated 09.04.2013 was issued to the assessee to why service tax amounting to Rs.3,16,261/- along with interest and penalty under Sections 76, 77 and 78 should not be imposed. The Adjudicating Authority vide order-in-original dated 28.02.2022 confirmed the demand under the show cause notice. The appeal filed by the appellant was also rejected by the impugned order and hence the present appeal has been filed before this Tribunal.

3. The learned counsel for the appellant submitted that the services received by them do not fall under the definition of "Goods Transport Agency" as in terms thereof no 'consignment note' has been issued by the service provider and referred to series of decisions in support thereof. He also sought the exemption benefit under the Notification No.34/2004 as

freight charges for the full truck load for individual trip was less than Rs.1500/- and that the full truck load was for an individual consignee (appellant) and hence Clause (i) of the notification relating to individual consignee is applicable and as the gross amount did not exceed Rs.1500 as prescribed therein the same was exempted from whole of the service tax. Lastly, he challenged the invocation of the extended period of limitation as there was neither any suppression, fraud or wilful miss statement rather it was a case of interpretation of the applicability of the exemption notification. The learned Authorised Representative for the Revenue relied on the findings of the authorities below and submitted that the case is covered by the decision in **Coromandel Agro Products & Oils Vs. CCE – Guntur – 2014 (33) STR 660** and also distinguished the decisions cited by the learned counsel for the appellant on the ground that the same related to the transport service within the mines. He also reiterated that the case of the appellant is covered by clause (ii) of the notification which specifically says the gross amount charged should not exceed Rs.750/-, whereas the case of the appellant is covered by clause (ii) which is related to individual consignment therefore the benefit of the exemption notification cannot be granted.

4. 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 Section 65(50b) of the Finance Act, 1994 to constitute "Goods Transport Agency" whereby 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 provisions of section 65(50b) are quoted below :

“65(50b) “goods transport agency” means any 5[person who] provides service in relation to transport of goods by road and issues consignment note, by whatever name called]”

5. I find that the authorities below relying on the decision of the learned Single Member **in Coromandel Agro Products & Oils Ltd vs Commissioner of Central Ex. Guntur (supra )** have non-suited the appellant on the ground that it is incorrect to say that any transport company which is not issuing Consignment Note is presumed to be GTO. However, I find that the later decisions by the Division Benches of 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 Diary Foods Ltd. Vs. CCE – 2018 (13) GSTL 170, Mahandai Colafields Ltd. Vs. CCE – 2022 (57) GSTL 242 (Trib.), South Eastern Coalfields Ltd. Vs. CCE -2 017 (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).**

6. I would like to refer the paragraphs from the latest decision in **Mahanadi Coalfields Ltd. (Supra) :**

**“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."

7. From the facts of the present case I find that the goods were transported locally from the mines to the factory site and since the distance to be covered is short, no consignment note has been issued by the service provider and therefore the levy of service tax under the category of Goods Transport Agency is not sustainable in view of the various decisions of the Division Benches of the Tribunal which is binding on me. Therefore, the distinction sought to be placed by the Revenue that the earlier decisions related to mines is not sustainable.

8. The appellant has taken alternative argument that freight charges related to transportation of goods in a goods carriage and that the freight charges for the full truck load for individual trip was less than Rs.1,500/- and that the full truck load was for an individual consignee (appellant). Such transportation of goods was exempted from whole of service tax leviable thereon under the notification no.34/2004-ST dated 03.12.2004 as amended. Since I have decided the main issue in favour of the appellant it is not necessary for me to go into the question of the applicability of the

exemption notification no.34/2004–ST dated 03.12.2004 or for that matter the invocation of the extended period of limitation which has been challenged by the appellant on the ground of incorrect interpretation.

9. The impugned order deserves to be set aside on the ground that the transport services were rendered by the individual truck or transport operators and therefore no consignment note was issued and as a result, the same would not fall within the scope of the definition of “Goods Transport Agency” as given in section 65(50 b) of the Finance Act, 1994. The appeal is, accordingly allowed.

[Order pronounced on 18<sup>th</sup> January, 2024]

**(Binu Tamta)**  
**Member (Judicial)**

Ckp.