Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.1

Service Tax Appeal No. 10750 of 2018

(Arising out of Order-in-Appeal No. CCESA-SRT-APPEALS-PS-153-2017-18 dated 30.10.2017 passed by Commissioner (Appeals-II), Suat)

Rushi Enterprise **...Appellant**
Brahmin Falia, Nava Gam
For Songarh, Dist. Tapi-Gujarat

VERSUS

CGST & Central Excise –Surat **...Respondent**
CGST & Central Excise Commissionerate
Central Excise Building, Chowk Bazar,
Surat-395001-Gujarat

APPEARANCE:
Shri Sunil Vatvani, Chartered Accountant appeared for the Appellant
Shri Himanshu P. Shrimali, Authorised Representative appeared for the Respondent

CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)
HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER(TECHNICAL)

FINAL ORDER NO. 10616 /2025

DATE OF HEARING: 31.07.2025
DATE OF DECISION:31.07.2025

SOMESH ARORA:

The issue involved in this case is that the appellant M/s Rushi Enterprise were providing service to M/s J.K. Paper under two different contracts, one for supply of Manpower and the other for transportation of goods. They were registered under Man Power Recruitment or Supply Agency Service as well as Goods Transport Agency Service. The period involved in this case is from 2009-2010 to 2012-2013. The department during audit noticed that the appellant were actually performing Cargo Handling Service but intentionally vivisecting the whole work into two parts as discussed above. Accordingly, after conducting inquiry, the department issued show cause notice dated 07.08.2014 to the appellant proposing classification of their service under "Cargo Handling Service" and demanding the differential service tax liability of Rs.12,630,41/- along with applicable interest and the penalties.

1.1 The show cause notice was adjudicated by the Additional Commissioner, Central Excise and Service Tax-Surat-I vide order dated 30.10.2015 wherein, he confirmed the demand of service tax of Rs. 12,63,041/- upon the appellant along with interest and imposed equal penalty. Aggrieved with this order, the appellant filed appeal before the Commissioner (Appeals) CGST & Central Excise-Surat who vide impugned order dated 30.10.2017 upheld the order of the lower authority and rejected the appeal.

2. The learned Chartered Accountant for the appellant states that the issue has been decided by this Tribunal in respect of M/s Riddhi Siddhi Enterprises which is their sister concern vide Final Order No. 10635/2024 dated 20.03.2024 in Service Tax Appeal No. 11013 of 2015. He pleaded that the ratio of the said decision is applicable in the instant case also as the issue in that case was decided both on merits as well as on limitations in their favour.

3. Learned Authorised Representative having gone through the contents of the judgment reiterates the findings of the lower authority and leaves the matter to the discretion of the Bench.

4. We have gone through the rival submissions. We find that the facts in this case are similar on merits to the facts as have been outlined in the matter of M/s Riddhi Siddhi Enterprise (supra) and also the findings on limitation are equally applicable. Para 5 and 6 of the above decision is reproduced below:

> *"5. Having heard both the sides, we find that there is no denying of the fact that appellant has entered into two separate work contracts/ agreements for providing two different services namely Manpower Recruitment or Supply Agency Service and Goods Transport Agency services. It is matter of record that the appellant has been filing their ST-3 returns regularly and have discharged service tax liability on providing Manpower Recruitment or Supply Agency Service as per provisions of law. The second work contract was for providing Goods Transport Agency services on which the service recipient M/s. JK Paper Limited being a "Specified" person has discharged service tax liability as per the provisions of Rule 2(1)(d) of the Service Tax Rules, 1994. The service recipient has discharged their service tax liability under reverse charge mechanism basis. Thus, we find that service tax has been paid on the provisions of both the services. Now the only question which needs to be answered is that whether the appellant have arbitrarily bifurcated the receipt of payments from M/s. JK Paper Limited under two separate service category i.e. Manpower Recruitment or Supply Agency Service and GTA service. We find that it is matter of record that appellant has entered into two separate agreements with M/s. JK Paper Limited on two different dates. This fact has been admitted by the department also. In such a situation, we are of the view that it cannot be alleged by the department that the appellant have arbitrarily bifurcated the value of services rendered by him*

> *under two types of invoices/ bills. The invoices which have been raised by the appellant are as per the legally valid work contracts/ agreements and it is accepted legal principle that for the purpose of levy of service tax, the individual contract need to be taken into account. Therefore, merely on the assumption that the appellant have entered into separate contracts intentionally to evade service tax is primafacie, not acceptable. In this regard we also rely upon the decision of this Tribunal in the case of E.V. Mathai & Company vs. CCE, Cochin (supra).*
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> *6. We find that the impugned order-in-appeal has also deserved to be set-aside on the ground that levy of service tax has been confirmed by invoking extended time proviso under Section 73(1) of Finance Act, 1994. We find that the appellant has regularly been filing their ST-3 returns wherein all the details of services provided by them have been mentioned. The service recipient has also been filing ST-3 returns and therefore, it cannot be alleged that there is any element of fraud, collusion, mis-declaration or suppression of facts with intent to evade service tax. We also take note of the fact that demand itself has been made from the financial record of the appellants which is mentioned in the audit report No. FAR/241/ST/2011-12 dated 08.02.2012. Therefore, we are of the opinion that there is no suppression of facts, fraud or misstatement with intent to evade payment of service tax and therefore, it was wrong on the part of the department to confirm demand of service tax under extended time period of Section 73(1) of the Finance Act, 1994."*

5. We are in full agreement with the above findings. In view of the foregoing, appeal is allowable and same is accordingly allowed with consequential relief, if any.

(Dictated & Pronounced in the open court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

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