CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70210 of 2023

(Arising out of Order-in-Appeal No.790/ST/ALLD/2023 dated 16/03/2023 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Allahabad)

M/s Rohit Poles, **.....Appellant**
(386, Karvat, Rathupura (Dandi), Mudhalsarai, Chandauli)

VERSUS

Commissioner of Central Excise &

CGST, Varanasi, **....Respondent**

(Nadesar, Division, Varansi)

APPEARANCE:

Shri Gopal Krishna Darolia, Representative &
Shri Rajendra Sharma, Representative for the Appellant
Shri Manish Raj, Authorised Representative for the Respondent

CORAM: **HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

FINAL ORDER NO.70082/2024

DATE OF HEARING : 22 December, 2023
DATE OF PRONOUNCEMENT : 16 February, 2024

SANJIV SRIVASTAVA:

This appeal is directed against order in appeal No 790/ST/Alld/2023 dated 16.03.2023 of Commissioner (Appeal) Central Goods and Service Tax & Central Excise, Allahabad. By the impugned order Commissioner (Appeal) has upheld order in original No 181/Div/VNS/2022 dated 03.11.2022 holding as follows:

"ORDER

i. I drop the demand of Service Tax amounting to Rs 11,58,817/- as discussed in para 7.5.

ii. *I confirm the demand of Service tax amounting to Rs 3,31,667/- (Rupees Three Lac Thirty One Thousand Six Hundred and Sixty Seven only) under GTA Service and Rs 11,397/- (Rupees Eleven Lac Three Hundred and Ninety Seven only) under "Legal and Professional Charges" service against M/s Rohit Poles, 386, Karwal, Ralhupura (Dandi), Mugalsarai, Chandauli 232101 under Section 73 (2) of the Finance Act, 1994 read with Section 174 of CGST Act, 2017 along with interest under Section 75 of the Finance Act, 1994..*

iii. *I impose a penalty amounting to Rs 3,43,064/- (Rupees Three Lac Forty Thousand and Sixty Four only) upon M/s Rohit Poles, 386, Karwal, Ralhupura (dandi), Mugalsarai, Chandauli 232101 under Section 78 of the Finance Act, 1994 read with Section 174 of CGST Act, 2017.*

iv. *I impose a penalty Rs 5000/- (Rupees Five Thousand only) upon M/s Rohit Poles, 386, Karwal, Ralhupura (Dandi), Mugalsarai, Chandauli 232101 under Section 77(1)(a) of the Finance Act, 1994 read with Section 174 of CGST Act, 2017.*

v. *I impose a penalty Rs 5000/- (Rupees Five Thousand only) upon M/s Rohit Poles, 386, Karwal, Ralhupura (Dandi), Mugalsarai, Chandauli 232101 under Section 77(2) of the Finance Act, 1994 read with Section 174 of CGST Act, 2017.*

vi. *I order to appropriate the service tax amount of rs 3181/-, interest amount of Rs 4236/- and penalty amount of Rs 573/-*

The Service Tax, Interest and Penalties are to be deposited fortwith."

2.1 Appellant is registered with the service tax department and is paying service tax under the category Transfer of Goods by Road/ Goods Transport Agency Services" in terms of Section 69 of the Finance Act, 1994 read with Rule 4 of the service Tax Rules, 1994.

2.2 On the basis of the information gathered from third party sources and on comparison of the amounts shown against various head in the Balance Sheet and Profit and loss Account of appellant for FY 2013-14 to FY 2017-18 with the figures reflected in the ST-3 return filed by the appellant, jurisdictional authorities were of the view that appellant had short paid the service tax in respect of the GTA Services on reverse charge basis by not including various expenses in the taxable value. They had also not paid service tax in respect of the amounts shown under the category of "Legal and Professional Charges". Also certain short payment of service tax was noticed by comparison of the amounts shown in 26AS statement received from the income tax authorities and the ST-3 returns filed by the appellant.

2.3 A show cause notice dated 04.04.2019 dated was issued to the appellant asking them to show cause as to why:

(I) *The service tax (including cessses) amounting to Rs 15,01,881/- (Rupees Fifteen lac One Thousand Eight Hundred and Eighty One only) should not be demanded and recovered from them under the proviso to Section 73 (1) of the Finance Act, 1994 along with interest as applicable under Section 75 of the Finance Act, 1994.*

(II) *Penalty should not be imposed upon them under Section 77(1) (a) of the Finance Act, 1994 for contravention of Section 69 (1) of Finance Act, 1994 read with Rule 4 (1) of Service Tax Rules, 1994.*

(III) *Penalty should not be imposed upon them under Section 77(2) of the Finance Act, 1994 for each default for contravention of Section 70 of Finance Act, 1994 read with Rule 7 of Service Tax Rules, 1994.*

(IV) *Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 for suppression of facts from the department with intent to evade payment of service tax.*

2.4 Show cause notice was adjudicated as per the order in original referred in para 1 above.

2.5 Aggrieved appellant filed an appeal before the Commissioner (Appeal), which has been dismissed by the impugned order.

2.6 Aggrieved appellant has filed this appeal.

3.1 I have heard Shri Gopal Krishna Darolia and Shri Rajendra Sharma, Authorized Representative for the appellants and Shri Manish raj, Authorized Representative for the revenue.

3.2 Arguing for the appellant learned representatives of the appellant submit that:

3.3 Arguing for revenue learned authorized representative while reiterating the findings recorded in the impugned order submits as follows:

- Appellant has entered into separate agreement with M/s Purvanchal Vidyut Nigam Limited and others for transportation of PCC Poles manufactured by them on fixed rates/ per pole depending upon the distance. The rates includes transportation loading and unloading, stacking/ packing etc.
- Appellants engaged the services of GTA for the purpose of transportation while for the purpose of loading/ unloading, stacking/ packing they employed casual labours under their own supervision.
- From the invoices/ GR/ Bills of the transporters produced by them, it is evident that GTA had performed the work of transportation, and according appellant paid service tax under the RCM on the amount of freight paid by them.
- Copies of the GR's/ invoices and bills of the transporters were not submitted before the adjudicating authority and Commissioner (Appeal).
- Appellant have mentioned and charged the amount of transportation on their manufacturing invoices.

- Phrase “only for Transportation” appears on the bills/ GR’s/ invoices but there is no mention of loading and unloading charges.
- From the ledger of “loading and unloading” charges and copy of payment vouchers submitted along with appeal it is evident that appellants have made payment to the casual labours employed for this purpose separately. These payment vouchers were not submitted to the adjudicating authority.
- The demand in respect of “legal and Professional Services” have been made on the basis of the figure available in the balance shett. Appellant contended that the service tax in respect amounts paid to individual advocate or a firm of advocates. They have accordingly paid service tax in respect of such charges determined by them. In respect of the remaining amount they had not established by production of documents that these amounts were paid for other purposes.

4.1 I have considered the impugned order along with the submissions made in the appeal and during the course of argument.

4.2 The order in original records following findings to hold against the appellant.

“7.2 The instant SCN No V (30) ST/Dem/VNS/Rohit Poles/124/2019/1529 dated 04.04.04.2019 was issued to the party for demand of –

(i) Service Tax under RCM on the amount received by the party under Ledger account of ""Freight, Insurance & Other Charges"', "Loading & Unloading Charges', 'Pole Shifting & Stacking Charges', Freight, Outward & Other Charges" for the period of FY 2013-14 (Oct 2013-Mar 2014) to FY 2017- 18 (Apr' 2017-Jun' 2017).

(ii) Service Tax on amount of Rs. 83,94,735/- received by the party as per form 26AS during the period from FY 2013-14 (Oct 2013-Mar 2014) to FY 2017-18 (Apr' 2017-Jun' 2017) and

(iii) Service Tax under RCM on the Expenditure shown under the head 'Legal & professional Charges' as per Balance Sheet & P/L account for the FY 2013-14 (Oct 2013 to March' 2014) to FY 2017- 18 (Apr' 2017 to Jun' 2017).

7.3. I find that the Party is registered under Central Excise having Regn No AAHFRO759EXM001 and is a manufacturer engaged in manufacture and sale of PCC Poles falling under chapter 68 of the Central Excise Tariff and also registered under Service Tax under Finance Act, 1994 having Registration No. AAHFRO7S9ESTO01 for taxable service namely 'Transport of Goods by Road/Goods Transport Agency Service'

7.4. The first issue is whether demand of Service Tax under RCM on the amount received by the party ander Ledger account of "Freight, Insurance & Other Charges', 'Loading &Unloading Charges', 'Pole Shifing & Stacking Charges', Freight, Outward & Other Charges' for the period of FY 2013-14 (Oct' 2013-Ma' 2014) to FY 2017- 18 (Apr' 2017-Jun'-2017) is liable or not. As per ST-3 return as well as submission of the party , It appears that the party got themselves registered under service tax under the category of "Transport of Goods by Road/ Goods Transport Agency Service" as consignee for payment of service tax in terms of the sub- section (2) of section 68 of the Act under RCM and paid the Service Tax for GTA service under RCM. I find that as per party's submission in reply to the impugned SCN, the party has affirmed that they have got the re-imbursement the amounts of expenditure occurred under "Ledger account of 'Freight, Insurance & Other Charges', 'Loading & Unloading Charges', 'Pole Shifting & Stacking Charges', Freight, Outward & Other Charges"' for the period from FY 2013-14 (Oct 2013-Ma' 2014) to FY 2017- 18 (Apr 2017-Jun' 2017) from M/s Purvanchal Vidyut Vitran Nigam Limited (here-in-after referred to as 'M/s PVVNL'). It appears that the party has not included all amounts receipt towards 'Freight, Insurance &

Other Charges' 'Loading & Unloading Charges', 'Pole Shifting & Stacking Charges' which are component of GTA service for arriving Taxable value for calculating Service Tax payable under "Transport of Goods by Road/ Goods Transport Agency Service", however, the party has availed the abetment of 75% on the Value. The GTA provides a service in relation to transportation of goods by road which is a single composite service. GTA also issues consignment note. The composite service may include various intermediate and ancillary services provided in relation to the principal service of the road transport of goods. Such intermediate and ancillary services may include services like loading/unloading, packing/unpacking, transshipment, temporary warehousing etc., which are provided in the course of transportation by road. These services are not provided as independent activities but are the means for successful provision of the principal service namely, the transportation of goods by road. The contention that a single composite service should not be broken into its components and classified as separate services is a well-accepted principle of classification. As clarified earlier vide F.No. 334/4/2006-TRU dated 28.2.2006 (para 3.2 and 3.3) and F. No. 334.1/2008-TRU dated 29.2.2008 (para 3.2 and 3.3), a composite service, even if it consists of more than one service, should be treated as a single service based on the main or principal service and accordingly classified. While taking a view, both the form and substance of the transaction are to be taken into account. The guiding principle is to identify the essential features of the transaction. The method of invoicing does not alter the single composite nature of the service and classification in such cases are based on essential character by applying the principle of classification enumerated in section 65 A. Thus, if any ancillary/intermediate service is provided in relation to transportation of goods, and the charges if any, for such services are included in the invoice issued by the GTA, and not by any other person, such service would form part of GTA service and, therefore, the abatement of 75% would be *available on it. The differential (short paid) demand of Service Tax amounting to Rs. 3,31,667/- under the head of "Freight, Insurance & Other Charges', 'Loading & Unloading Charges', 'Pole Shifting & Stacking Charges', Freight, Outward & Other Charges" for the period of FY 2013- 14 (Oct 2013-Ma' 2014) to FY 2017- 18 (Apr' 2017-Jun' 2017) made vide impugned SCN is proper and party is liable to pay the amount of Rs.3,31,667/-under GTA Service along with appropriated interest.*

….

7.6. Now, I am taking up the third issue viz. Service Tax under RCM on the Expenditure shown under the head 'Legal & professional Charges' as per Balance Sheet & P/L account for the FY 2013-14 (Oct 2013-Ma' 2014) to FY 2017- 18 (Apr' 2017-Jun' 2017). As per Notification No. 30/2012-ST dated 20-06-2012, i legal service IS provided or agreed to be provided by the individual advocate or firm of advocates by way of legal service to a business entity located in the taxable territory then recipient of service would be liable for payment of Service Tax under reverse charge mechanism. The party has agreed that they have failed to pay service tax on 'Legal and Professional Charges'. However, they have paid the Service Tax of Rs. 3,818/- along with interest of Rs. 4,236/- and penalty of Rs. 573/- deposited vide challan CTIN No. 2009280651 dated 26.09.2022 on the total Amount of Rs. 28,238/- in contrary to the demanded Service Tax amount of Rs. 11,397/- on total taxable Value of Rs. 86,998/-. Tabulation of Service Tax payment by the party is as under-

Period	Expenditure shown under the head 'Legal & Professional Charges" as per balance sheet &P/L account as mentioned in SCN (in Rs.)	Legal charges paid to the individual advocates or a firm of advocates as per Ledger of 'Legal and Professional Charges' (Rs.)	Rate of Service Tax rate including Cesses @	Service Tax payable under RCM which remained unpaid (Rs.)
2013-14 (Oct 13 to March 14)	7700	6200	12.36	766
2014-15	10400	8300	12.36	1026

2015-16	44970	7000	14.5	1015
2016-17	2710	600	15	90
2017-18(Apr 17 to June 17)	21218	6138	15	921
Total	86998	28238		3818

In the impugned demand notice the Values of 'Legal and Professional Charges' have been taken from the P/L and Balance Sheet of the Party, however, the party has not submitted any documents in support of their claim that they have paid only Rs. 28,238/- for 'Legal and Professional Charges' during the period. In want of the documentary evidence, the claim of the party is not acceptable and the party has short paid the Service Tax of Rs. 7,579/-(11397/-less 3818 = 7579/-) during the period under the Service Tax head of 'Legal and Professional Charges' and party is liable to pay the said amount along with appropriate interest and penalty."

4.3 Impugned order records the following findings for holding against the appellants:

"4.3.1 It has been further submitted by the appellant that for the purpose of accounting the appellant prepares one ledger for 'freight Outwards & other charges' which includes the entries of amount paid to GTA and loading & unloading charges and separate ledger is also prepared for loading/ unloading charges and pole shifting & stacking charges. Any service provided along with GTA service that is part of composite service and not as separate supplies. However, if such incidental services are provided as separate service and charged separately, whether in the same invoice or separate invoice they shall be treated as separate work. The confirmation of Service Tax of Rs.3,31,667/- on "loading/unloading charges" and "Pole shifting & stacking charges" incurred by the appellant under GTA is not proper as these charges have been paid to casual labours engaged for the purpose and not GTA.

4.3.2 It has been held in the impugned order that the appellant have received the reimbursements of the amount *of expenditure occurred under ledger account for "freight, Insurance & other charges", "Loading and unloading charges" "Pole shifting & stacking charges', "freight, outward & other charges" for the period 2013-14(Oct'13 to March'14) to F.Y. 2017-18 (Upto June'17) from PVVNL and the party has not included all amounts of receipt towards "Freight, Insurance & other charges", "Loading and unloading charges", "Pole shifting & stacking charges" which are component of GTA services for arriving taxable value for calculation of service tax payable under GTA.*

4.3.3 It has been stated in the impugned order that GTA provides a service in respect to transportation of goods by road which is a single composite service. The composite service may include various intermediate and ancillary services provided in relation to the principal service of road transport of goods. Such intermediate and ancillary service may include services like loading/unloading packing/unpacking, transshipment, temporary warehousing etc. which are provided in the course of transportation by road and these services are not provided as independent activities but are means for successful provision of the principal service i.e transportation of goods by road. The contention of the appellant that a single composite service should not be broken into components and classified as separate service has been clarified vide F. No.334/4/2006-TRU dated 28.02.2006(para 3.2 and 3.3) and F. No.334/1/2008-TRU dated 29.02.2008 that a single service even if it consists of more than one service, should be treated as a single service based on the main or principal service and accordingly classified. The guiding principle is to identify the essential feature of the transaction. The method of invoicing does not alter the single composite nature of service and classification in such cases are based of essential character by applying the principal of classification enumerated in section 65A of the Act. Thus any ancillary/intermediate, if any for such services are *included in the invoice issued by GTA and not by any other person, such service would form part of GTA service and abatement of 75% would be available on it. It has been held in the impugned order that the differential (short paid) service tax of Rs.3,31,667/- for the period 2013-14(Oct'13 to March'14) to F.Y. 2017-18 (upto June'17) is liable to be paid by the appellant*

4.3.4 It is observed that appellant in its support has provided documents viz. ledger A/c for "ledger account for freight, Insurance & other charges", "Loading and unloading charges". It is seen that no copy of agreement of PVVNL has been provided showing details of terms and conditions and scope of work, although it has been claimed by the appellant that charges of PCC per poles as per distance has been provided in the agreement with PVVNL. The charges of "Loading and unloading charges, shifting & stacking charges are claimed to be billed to buyers along with invoice. On examination of the ledger A/c it is found that vouchers type have been mentioned but no document/voucher has been provided to show the details of transaction whether the same is against consignment note of GTA or transaction against any sale. It is also seen that that the appellant is a manufacturer of PCC poles and the transaction of sale of PCC pole on payment of central excise duty/VAT, should be inclusive of all the expenses incurred on account of manufacture and sale. These expenses, if part of sale must have to undergo burden of VAT. However the appellant did not provide any documentary evidence to show that these expenses are part of sale and undergone burden of VAT. Hence it is clear that these expenses reimbursed by the recipient are part of services on account of "Loading and unloading charges", "shifting & stacking charges".

4.3.5 Now it is to be seen that whether these services are ancillary in nature for transportation of goods by road. The clarification vide F. No.334/4/2006-TRU dated

28.02.2006(para 3.2 and 3.3) and F. No.334/ 1/2008-TRU dated 29.02.2008, provides that the GTA services in relation to transportation of goods by road is a single composite service. The composite service may include various intermediate and ancillary service provided in relation to principal service of road transport of goods which may include service of loading, unloading, packing unpacking. The composite service even if consist of more than one service should be treated as single service based on the main or principal service and accordingly classified. The appellant did not provide any document to show that the transaction do not pertain to composite contract whereas they have maintained ledger A/c under a common head of A/c's as "ledger account for freight, Insurance & other charges", "Loading and unloading charges", 'Pole shifting & stacking charges', "freight, outward & other charges". The common head A/c in their ledger indicates that main transaction is related to freight and other expenses are ancillary/intermediary to provision of services in relation to transportation of goods by road

4.3.6 The appellant has failed to substantiate their claim that transactions mentioned in "ledger account for freight, Insurance & other charges", "Loading and unloading charges", "Pole shifting & stacking charges", "freight , outward & other charges" are not on account of transportation of goods by road. Therefore it is held that the amount mentioned in "ledger account for freight, Insurance & other charges", "Loading and unloading charges", "Pole shifting & stacking charges" "freight ', outward & other charges" are taxable under GTA and it has been rightly found in the impugned order that they have not included the differential value in GTA services and short paid service tax amount to the tune of Rs.3,31,667/ during the period 20 13-14(0ct'13 to March'14) to F.Y. 2017-18 (upto June'17)

4.4 It has been further contested by the appellant that the service tax under RCM on expenditure shown under the head of Legal & Professional Charges has been confirmed in the impugned order. The appellant has stated that they have already paid service tax on legal expenses incurred on services received from individual advocates as per Notification No.30/2012-ST dated 20.06.2012. The rest amount of Rs.58,760/- shown under Legal & Professional Charges' are related to expenditure incurred on amount paid to CA for tax audit, cost of TDS filing to Accountants, cost of stamp paper, cost paid to Excise consultants, court expenses, miscellaneous expenditure etc. Out of these expenses, only the amount paid as legal expenditure to individual advocates or a firm of advocates is chargeable to service tax under RCM. The CA fees, statutory fees etc. are not amount paid to Advocates or firm of Advocates for legal services.

4.4.1 It has been held in the impugned order that the appellant failed to provide in support of Rs.58,670/- as expenses not incurred for advocates or firm of advocates for legal services and therefore held the value of Legal and professional charges as mentioned in expenditure side of Profit & Loss A/c to be taxable under RCM.

4.4.2 It is observed that the expenses mentioned under head of 'Legal & Professional charges' have been held to be taxable under RCM treating the same as expenses towards legal charges paid to Advocates & Group of Advocates for the legal services and appellant liable for payment of under RCM as per provisions of Notification No.30/2012-ST dated 20.06.2012. It has been found. that at this stage also no documentary evidence has been provided by the appellant to reveal the nature of transaction to be pertaining to CA fees, statutory fees etc. as claimed by the appellant in respect of amount of Rs.58,670/-. Only mention of these amount in ledger A/c under head "Legal & professional Charges" as paid to Kedar Nath Tandon, paid to S.N.

Khemka & Co. for Vat Audit, paid to Krishna Kumar, cost of TDS return filing, cash paid to Sashi Bhushan Advocates, Vat audit, cost of stamp Paper etc. is not sufficient enough to show the actual transaction as these are not supported by any basic documentary evidence of transaction viz. bill/invoice/voucher etc.

4.4.3 It is observed that the appellant have failed to substantiate their claim and it is therefore held that these amount has been rightly held to be taxable under RCM as found to be mentioned under head Legal & professional charges and confirmation of service tax amounting to Rs.11,397/- in the impugned order is proper and sustainable

4.5 It is observed that under the self-assessment procedure specified in the statute, appellant was required to assess & pay their Service Tax liability correctly, on their own. The appellant has suppressed the correct receipt of payment for taxable services by not furnishing the correct amount in the statutory returns. The short payment of Service Tax could be detected only during the course of enquiry conducted by the Department. Thus, it is a clear case of suppression of facts and contravention of the statutory provisions, with intent to evade payment of Service Tax. Thus, I find that extended period of limitation has been rightly invoked in this case for confirming the demand along with the interest and penalty under Section 78 of the Act."

"Freight, Insurance & other charges", "Loading and unloading charges", "Pole shifting & stacking charges" "freight ', outward & other charges"

4.4 it appears that the authorities below have totally misunderstood the scheme of taxation on GTA under RCM scheme. Admittedly appellant is paying the service tax on the value of GTA Service as per consignment note/ bilty/ invoices of the GTA service provider on RCM basis. They are receiving certain other services from different service provider which they have put under the category of Loading and Unloading Charges, Pole shifting and stacking services. When the services are received from two different sources how can the same been clubbed under the category of GTA services as composite service. The entire case of the revenue is based creating a composite service of GTA by including these charges while determining the taxable value. Appellant is not providing GTA service to their customers PVVNL, but are manufacturing and selling the PCC Poles to their customers, which they deliver to their customer at the location specified by the customer. For delivering the PCC poles, appellant recover the charges on per pole basis dependent upon the distance. Whether these charges need to be added to the assessable value for payment of Central Excise duty is not the question before me. But the question which I am concerned is whether these services can be said to be composite service received by the appellant for determination of the taxable value for payment of service tax under the category of GTA services. I do not find any merits in the order holding so, as when the services are received from separate source and accounted separately in separate ledgers their cannot be any question of clubbing them under one category. Board has issued Circular No 186 /5/2015-ST dated 05.10.2015 clarifying as follows:

> *"3. Goods Transport Agency (GTA) has been defined to mean any person who provides service to a person in relation to transport of goods by road and issues consignment note, by whatever name called.* ***The service provided is a composite service which may include various ancillary services such as loading/ unloading, packing/unpacking, transshipment, temporary storage etc., which are provided in the course of transportation of goods by road. These ancillary services may be provided by GTA himself or may be sub-contracted by the GTA. In either case, for the service provided, GTA issues a consignment note and the invoice issued by the GTA for providing the said service includes the value of ancillary***

> ***services provided in the course of transportation of goods by road.*** *These services are not provided as independent activities but are the means for successful provision of the principal service, namely, the transportation of goods by road.*
>
> *4.* ***A single composite service need not be broken into its components and considered as constituting separate services, if it is provided as such in the ordinary course of business. Thus, a composite service, even if it consists of more than one service, should be treated as a single service based on the main or principal service. While taking a view, both the form and substance of the transaction are to be taken into account. The guiding principle is to identify the essential features of the transaction. The interpretation of specified descriptions of services in such cases shall be based on the principle of interpretation enumerated in section 66 F of the Finance Act, 1994. Thus, if ancillary services are provided in the course of transportation of goods by road and the charges for such services are included in the invoice issued by the GTA, and not by any other person, such services would form part of GTA service*** *and, therefore, the abatement of 70%, presently applicable to GTA service, would be available on it."*

It is not even the case of the revenue that the GTA was providing the services categorized under category of "loading and unloading charges" and pole shifting and stacking charges". It is also not the case of revenue that the charges in respect of these service received by the appellant were paid to GTA. Not even a single invoice to this effect has been produced or relied upon by the revenue in entire proceedings. Hence I do not find any merits in this demand.

Professional and Legal Services:

4.5 Appellant ahs admitted the part demand to the extent of Rs 3181/- along with the interest of Rs 573/- during the course of investigation and prior to issuance of Show Cause Notice.

4.6 They have challenged the remaining demand of Rs 8216/- (Rs 11,397-Rs 3,181/-). While challenging the said demand they have stated that the expenditure which has been shown in the profit and loss account, is inclusive of the expenditure incurred on the purchase of stamp papers, CA for tax audit, cost of TDS filing to Accountants, excise consultants.

4.7 Notification 30/2012-ST dated 20.06.2012 provides for payment of service tax on reverse charge basis by the recipient of the services in certain cases as specified in the said notification. The relevant excerpt of the said notification is reproduced below:

> *GSR ......(E).-In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), and in supersession of (i) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 15/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i),vide number G.S.R 213(E), dated the 17th March, 2012, and (ii) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2004-Service Tax, dated the 31st December, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 849 (E), dated the 31st December, 2004, except as respects things done or omitted to be done before such supersession, the Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely:-*

I. The taxable services,-

(A) (i) …..

(ii) ….

(iii) ….

(iv) provided or agreed to be provided by,-

(A) …, or

(B) an individual advocate or a firm of advocates by way of support services, or

(C) ……..,-

(v) ….

(B) provided or agreed to be provided by any person which is located in a non-taxable territory and received by any person located in the taxable territory;

(II) The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified in (I) shall be as specified in the following Table, namely:-

Table

Sl No	*Description of a service*	*Percentage of service tax payable by the person providing service*	*Percentage of service tax payable by the person receiving the service*
5	*in respect of services provided or agreed to be provided by individual advocate or a firm of advocates by way of legal services*	*Nil*	*100%*

From the plain reading of the entries in the notification it is evident that under Reverse Charge Mechanism only on the charges paid to individual advocates or a firm of advocates could have been subjected to tax under this category. The term "advocate" has been defined as per the Advocate Act, 1961, as follows:

(a) "advocate" means an advocate entered in any roll under the provisions of this Act;

So in terms of this notification I do not find any merits in respect of the demand made by the revenue on the expenditure incurred by the appellant which they have categorized under the category of "Professional and Legal charges", which in fact are not paid to advocate or the firms of advocate. Along with the appeal appellant have furnished the vouchers of payment, ledger accounts in respect of these expenses, which substantiate their claim that these expenditures were made for the purchase of stamp papers, for TDS return filing, cost of court expenses/ fees etc. The ledgers of these expenditure were also produced before the lower authorities, and Commissioner (Appeal) has in the impugned order referred to some of the entries made in these ledgers. In view of the discussion as above I am not in position to uphold this demand too.

4.8 Thus I do not find any merits in these two demands and can uphold the impugned order to the extent of tax deposited by the appellant along with interest during the course of investigation (Rs 3181/- + Rs 573/-). This amount had been deposited by the appellant even prior to issuance of the SCN. As the amount is meager and has been deposited even prior to issuance of SCN, I am not inclined to uphold the penalty under Section 78 which has been imposed against this amount. All other penalties which have been imposed in terms of Section 77 (1) (a), 77 (2) and 78 also cannot be upheld as the demand itself has no merits.

5.1 Appeal is allowed.

(Pronounced in open court on-16 February, 2024)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

akp