

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

(E-Hearing)
REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70469 of 2020

(Arising out of Order-In-Original - 18-19-PrCommr-ST-Noida-2020-21, dated-18/08/2020 passed by Commissioner, CGST, Noida)

M/s Pranish Carriers LLP.

.....Appellant

(G-41, Sector-39
Noida, Uttar Pradesh 201301)

VERSUS

Commissioner of Central Goods & Service Tax, Noida

....Respondent

(C-56/42, Renu Tower, Sector 62, Noida)

APPEARANCE:

Shri Gopal Mundhra, Advocate for the Appellant

Shri A.K. Choudhary, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)

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

FINAL ORDER NO.-70259/2024

DATE OF HEARING : 04.04.2024

DATE OF DECISION : 04.04.2024

P. K. CHOUDHARY:

The present appeal has been filed by the Appellant assailing the Order-In-Original No. 18-19-PrCommr-ST-Noida-2020-21, dated 18.08.2020. By the order, learned Commissioner, CGST, Noida has held as follows:-

ORDER

"A. Show Cause issued vide C. No. V(15)Adj./Noida/CGST/Pranish/06/2019/1866 dated 23.04.2019 for the period April, 2015 to March, 2016:

(i) I confirm the demand of the Service Tax amounting to Rs. 1,77,97,667/- (inclusive of all Cesses) (Rs. One Crore Seventy Seven Lakhs Ninety Seven Thousand Six Hundred Sixty Seven only) against M/s Pranish Carriers LLP, G- 41,

Sector-39, Noida (UP) under Section 73(2) of the Finance Act, 1994 as discussed supra.

(ii) I confirm the demand of interest at appropriate rate against the said M/s Pranish Carriers LLP, G41, Sector-39, Noida (UP) on the confirmed amount of service Tax mentioned at the A (1) above under Section 75 of the Finance Act, 1994 as discussed supra,

(iii) I impose a penalty of Rs. 1,77,97,667/- (Rs. One Crore Seventy Seven Lakhs Ninety Seven Thousand Six Hundred Sixty Seven only) on the confirmed demand at the A(i) above, upon the said M/s Pranish Carriers LLP, G-41. Sector-39, Noida (UP) under Section 78 of the Finance Act, 1994 for willful contravention of various statutory provisions with the intent to evade the payment of service taxes discussed supra;

(iv) I impose penalty of Rs. 10,000/- (Ten Thousand only) under Section 77(1) (a) of the Finance Act, 1994 upon M/s Pranish Carriers LLP, G-41, Sector-39, Noida (UP) as discussed supra.

B. Statement of Demand issued vide C. No. V(15)Adj./Noida/CGST/Pranish/06/2019/1882 dated 23.04.2019 for the period April, 2016 to June, 2017:

(i) I confirm the demand of the Service Tax amounting to Rs. 2,67,22,126/- (inclusive of all Cesses) (Rs. Two Crores Sixty Seven Lakhs Twenty Two Thousand One Hundred Twenty Six only) against M/s Pranish Carriers LLP, G- 41, Sector-39, Noida (UP) under Section 73(2) of the Finance Act, 1994 as discussed supra.

(ii) I confirm the demand of interest at appropriate rate against the said M/s Pranish Carriers LLP, G41, Sector-39, Noida (UP) on the confirmed amount of service Tax mentioned at the B (i) above under Section 75 of the Finance Act, 1994 as discussed supra;

(iii) I impose a penalty of Rs.26,72,213/- (Rs. Twenty Six Lakhs Seventy Two Thousand Two Hundred Thirteen Only) i.e. 10% of the confirmed demand at the B (i) above, upon M/s Pranish Carriers LLP, G-41, Sector-39, Noida (UP) under Section 76 of the Finance Act, 1994 as discussed supra;

(iv) I impose penalty of Rs. 10,000/- (Ten Thousand only) under Section 77(1) (a) of the Finance Act, 1994 upon M/s Pranish Carriers LLP, G-41, Sector-39, Noida (UP) as discussed supra.

All the dues adjudged above shall be paid by the said party forthwith."

2. Heard both the sides and perused the appeal records.
3. The period involved in the present appeal is from April 2015 to June 2017. We find that for the earlier period i.e. from October 2010 to March 2015, in the Appellant's own case, on the self same issue, this Bench of the Tribunal, in Service Tax Appeal No.70692 of 2017 being Final Order No.70183 of 2023 dated 09.11.2023 allowed the appeal of the Appellant. The relevant paragraphs of the Tribunal's order dated 09.11.2023 are reproduced below for ready reference:-

"4.3 In the present case one of the most important fact for determination of the liability to payment of service tax is the nature of transaction that is in dispute. Undisputedly, appellant was issuing consignment notes to cover the transportation of the goods from premises of service recipient to various points and for such transportation he was paid tax on the fixed amount and variable amount, nature of payment will not alter the nature of transaction. The transaction continues to be governed by the documents made in this regard which are the consignment notes. These consignment notes clearly established that the service provided by the appellant was the services of GTA and it has been constantly held that once consignment notes are issued then there cannot be any doubt in this regard. In the case of Commissioner of Central Excise and Service Tax, Dhanbad Vs M/s Bharat Coking Coal Ltd., M/s Eastern Coalfield Ltd. 2022 (9) TMI 435-CESTAT-Kolkata, following has been held:-

"5. We find that the issue is no longer res-integra inasmuch as the same has been decided by this Tribunal in the case of South Eastern Coalfields Limited vs. Commr, C. EX, Raipur 2017(47) S.T.R. 93 (Tri.- Del), wherein it has been held that the transportation services cannot be classified under GTA services where the consignment notes are not issued by the transporters.

Further, the issue has also been examined in detail in the case of Mahanadi Coalfields Limited Vs. Commr, C. EX & S.T., BBSR-1 2022 (57) G.S.T.L. 242 (Tri. – Kolkata). The relevant portion of the said decision is reproduced herein below:

"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.

13. We find it worth taking note of the observation made by the Tribunal in JWC Logistics Pvt. Ltd. (supra) as below:

"8. It is not the transportation of goods by road that is subject to tax but the services rendered by a goods transport agency in relation to the transportation of goods by road and road transport agency tasked with responsibilities that others connected with road transport are not, with consignment note being the point of difference. There is also no doubt that Rule 4B of the Service Tax Rules, 1994 lays down the contents of a consignment note."

14. In view of the above discussions and the decisions cited (supra) and taking into consideration the essential requirement of issuance of 'consignment note', in order to attract the definition of "Goods Transport Agency", we hold that the transport contractors rendering the coal transportation services in mines cannot be said to be "Goods Transport Agency" and therefore, their services cannot be made amendable to levy of service tax in the category of "transportation of goods by road services". Hence, the impugned demand of service tax, interest and penalty cannot sustain and therefore, the same is set aside."

In view of the above, we find that the findings made by the Ld. Commissioner cannot be interfered with and hence, the demand has been rightly dropped in the impugned adjudication orders."

4.4 On sample basis we take up for examination one of agreements dated 23.07.2010 made between the INOXAP and the appellant. Various conditions of the agreement which support the case for holding that these transactions are of transport of goods are reproduced bellow:-

- a. The Appellant is transport contractor and is engaged in business of carriage of goods (clause B);*
- b. In consideration Appellant will ply the fleet for transporting the products of Inox (Clause 2);*
- c. INOXAP had the right to mopunt either new or old VITT's. The decision to install or Uninstall any tank on any lorry chassis was with INOXAP.*
- d. The Appellant is responsible to make the payment of toll charges, octroi expenses and any other state and Inter-state*

duties/taxes during every trip of transporting the product (Clause 6);

- e. The Appellant shall always maintain its Lorry Chassis in goods roadworthy conditions so that it can render smooth and uninterrupted transport services (Clause 8.I);*
- f. The Appellant is also responsible to insure the Lorry Chassis, drivers, other cabin crew and other employees/agents engaged for transportation Clause 8. VI);*
- g. The Appellant is required to ensure that each Lorry Chassis is equipped with registration book, Valid Pollution Control (PUC) certificate, road and other tax certificates and with all valid and subsisting permits from respective transport/road authorities and also valid driving license of the Lorry Chassis driver required for authorized road movement (Clause 8.VIII);*
- h. The Appellant shall keep the Lorry Chassis registered in its name with the concerned R.T.O., Government, Municipal or any other authority (Clause 8.VIII);*
- i. The Appellant is required to ensure that the drivers employed are qualified and medically fit. The Appellant is responsible for payment of wages to the drivers/cleaners who will be exclusive employees of the Appellant (Clause 8.X);*
- j. The Appellant has to ensure that the drivers employed by it possess at least 5 years of experience in driving heavy motor vehicles of which 2 years should be of driving hazardous liquid cargo (Clause 8.XI).*
- k. All the appointments of drivers are to be made by Owner of the Appellant and all drivers/cleaners/other employees engaged for this work should always carry an ID card duly signed by the Owner of the Appellant (Clause 8.XIII).*
- l. The Appellant has to ensure that the drivers/cleaners observe at all times the safety and other procedures as prescribed (Clause 8.XIV).*
- m. The Appellant has to ensure that the crew associated with the vehicle operates the vehicle in a safe manner associated with the product being transported (Clause 8.XVI).*
- n. The Appellant is also required to ensure that the Lorry Chassis and its accessories are maintained properly in good working conditions at all times. The maintenance and repair of the Lorry Chassis is the responsibility of the Appellant (Clause 8.XIX).*
- o. The VITT's attachments and fittings mounted/ attached on/ to each of the vehicle/ prime mover was at all times the property of INOXAP. Appellant was responsible for its safety and was responsible and liable for return of the VITT's attachment and fittings to INOXAP in good condition, on expiry or sooner termination of the agreement (Clause XXI, XXII, XXIII).*
- p. Appellant was responsible to ensure the delivery of goods loaded on the lorry at destination within transit time as*

agreed mutually with INOXAP. In case of delay which is not explained properly penalty was impossible on the appellant (Clause 8.XXIV)

- q. The Appellant should ensure that the vehicles are running on round the clock basis and will suitable arrangement of advances to the drivers for diesel and other expenses for each trip (Clause 8.XXVII).*
- r. The Appellant is required to submit to INOX the bills for transportation in prescribed format (Clause 10).*
- s. The Appellant is responsible for all statutory requirements like provident fund, ESIC etc for the drivers and cleaners engaged by them for running the Lorry Chassis (Clause 18).*
- t. Agreement is subject too the provisions of Carriers Act, (Clause 23)*

4.5 Relevant Provisions of the Carrier Act, 2007 are reproduced below:

"Section 2 Definitions:

In this Act, unless the context otherwise requires,--

- (a) "common carrier" means a person engaged in the business of collecting, storing, forwarding or distributing goods to be carried by goods carriages under a goods receipt or transporting for hire of goods from place to place by motorised transport on road, for all persons indiscriminatingly and includes a goods booking company, contractor, agent, broker and courier agency engaged in the door-to-door transportation of documents, goods or articles utilising the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles, but does not include the Government;*
- (b) "consignee" means the person named as consignee in the goods forwarding note;*
- (c) "consignment" means documents, goods or articles entrusted by the consignor to the common carrier for carriage, the description or details of which are given in the goods forwarding note;*
- (d) "consignor" means a person, named as consignor in the goods forwarding note, by whom or on whose behalf the documents, goods or articles covered by such forwarding note are entrusted to the common carrier for carriage thereof;*
- (e) "goods" includes--*
 - (i) containers, pallets or similar articles of transport used to consolidate goods; and*
 - (ii) animals or livestock;*
- (f) "goods forwarding note" means the document executed under section 8;*
- (g) "goods receipt" means the receipt issued under section 9;*

Section 9 Goods receipt

- (1) A common carrier shall,--*
 - (a) in case where the goods are to be loaded by the consignor, on the completion of such loading; or*

- (b) *in any other case, on the acceptance of the goods by him, issue a goods receipt in such form and manner as may be prescribed.*
- (2) *The goods receipt shall be issued in triplicate and the original shall be given to the consignor.*
- (3) *The goods receipt shall be prima facie evidence of the weight or measure and other particulars of the goods and the number of packages stated therein.*
- (4) *The goods receipt shall include an undertaking by the common carrier about the liability under section 10 or section 11.*

Section 10 Liability of common carrier.

(1) The liability of the common carrier for loss of, or damage to any consignment, shall be limited to such amount as may be prescribed having regard to the value, freight and nature of goods, documents or articles of the consignment, unless the consignor or any person duly authorized in that behalf have expressly undertaken to pay higher risk rate fixed by the common carrier under section 11.

(2) The liability of the common carrier in case of any delay up to such period as may be mutually agreed upon by and between the consignor and the common carrier and specifically provided in the goods forwarding note including the consequential loss or damage to such consignment shall be limited to the amount of freight charges where such loss, damage or delay took place while the consignment was under the charge of such carrier:

Provided that beyond the period so agreed upon in the goods forwarding note, compensation shall be payable in accordance with sub-section (1) or section 11:

Provided further that the common carrier shall not be liable if such carrier proves that such loss of, or damage to, the consignment or delay in delivery thereof, had not taken place due to his fault or neglect or that of his servants or agents thereof.

From the above referred clauses of the agreement dated 23.07.2010, and the provisions of the Carrier Act, and the fact that the appellant was issuing the consignment notes for the transportation of these gases cleared by the INOXAP, we are firmly of the view that the agreement/ transaction between the appellant and his client was of the good transport by road, and the services so provided will be classified under the category of Good Transport Agency Service (Section 65 (105)(zzp) read with Section 65 (50b) of Finance Act, 1994 (pre amendments made by the Finance Act, 2012 and Section 65B (26) post amendments made in 2012).

4.6 Further, in the case of *Shripad Concrete Pvt. Ltd. Vs Commissioner of Central Excise & ST, Surat-I 2023 (8) TMI 707- CESTAT Ahmedabad*, the issue has been examined

both for pre-negative list period and post-negative list period and following has been held:-

"12. In order to appreciate the submissions it would be appropriate to refer to the work orders. The first order is dated 1 April, 2008 and is for a period of three years. The second work order is dated 1 April, 2011 and is valid for the period commencing 1 April, 2011 upto 30 September, 2012. The third work order is dated 1 March, 2013 and is valid up to 31 May, 2013. The relevant terms of the first work order dated 1 April, 2008 are reproduced below :-

"1. You shall load material (Ready Mix Concrete) in your Vehicles, transport the same to the required destinations unload the material at customer sites, return and take another load on similar basis in a clean vehicle in accordance with prudent industrial practices.

2. For this purpose you will deploy fleet of 6 M3 Capacity of vehicles mounted on suitable chassis in numbers adequate to transport 9000 M3 of Ready Mix Concrete every month.

3. The services shall commence within 15 days from the date of acceptance of this work order.

11. Transportation Charges: The transportation charges payable to you shall be as below :

(a) Rs. 140/- per cum for quantity of Ready Mix Concrete transported during a calendar month; and

(b) Rs. 20.34 per km for distance travelled during the month in the transportation of our Ready Mix Concrete.

12. Minimum quantity : we assure to provide a minimum load of 745 cum per month per vehicle. In case the actual transportation is less than 745 cum we shall pay for minimum quantity of 745 cum.

15. Escalation :

The rates per km at Rs. 20.34 mentioned in clause 11(b) are on the basis of diesel prices of Rs. 34.13 per litre. In case of any variation in rates of diesel the transportation charges payable shall be increased by Rs. 0.58 per km for each Re. 1.00 of increase in diesel rates.

22. You will carry out all operation and maintenance activities at your cost. You will maintain all vehicles used for providing the services under this agreement in good working condition with periodical servicing and repair.

26. Unloading Time :

The Ready Mix Concrete is a product which has a low setting time and in case if material is not unloaded within 4 hours of loading time, then vehicle driver should inform the Company Representative and follow his instructions regarding diversion/unloading of the material, so that setting of the material is avoided. In case of setting of the material is bowl unit for the above reasons, the cost of removing the material will be borne by the company. But in case delay is on account of transit time due to fault of driver then cost of removing the material from bowl will be borne by you.

32. Your drivers and cleaners/helpers shall take all precautions to ensure that the material loaded in the Bowl is delivered at the customers' sites in good condition. In case of any loss due to improper conduct by your people the loss shall be recovered from your bills at the rate of Rs. 3000.00 per cum.

36. Receipts of Goods :

You will issue consignment notes for all loads and obtain proper receipts from the customers after the goods are delivered. You shall provide us the copies of consignment notes and of customer acknowledgements and also submit reports to us in the formats supplied by us at the required intervals."

(emphasis supplied)

13. The basic terms remain the same for the second and third work orders, except for a change in the transportation charges and the medium quantity.

14. Having reproduced the essential terms of the work orders, it will now be appropriate to refer to the relevant provisions in regard to the pre-negative and the post-negative list.

Pre-Negative List

15. Section 65(50b) of the Act defines a 'goods transport agency' as follows :-

"65(50b) 'goods transport agency' means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called;"

16. The corresponding taxable service under Section 65(105)(zzp) is as follows :-

'taxable service' means any service provided or to be provided- to any person, by a goods transport agency, in relation to transport of goods by road in a goods carriage;"

17. On the other hand, the taxable entry for supply of taxable goods is contained in Section 65(105)(zzzzj) and is as follows :-

"65(105)(zzzzj) to any person, by any other person in relation to supply of tangible goods including machinery, equipment and appliances for use, without transferring right of possession and effective control of such machinery, equipment and appliances;"

Post-Negative List

18. Section 66B provides that there shall be levied a tax to be referred to as service tax on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such a manner as may be prescribed. The 'negative list' is provided for in Section 66D of the Act. Section 65B(44) of the Act as inserted w.e.f. 1 July, 2012 defines 'service' to mean any activity carried out by any person for another for consideration and includes a declared service but would not

include certain services specified in clauses (a), (b) and (c). Declared services have been enumerated in Section 66E of the Act. Sub-clause (f) of Section 66E, which is relevant for the purposes of the controversy involved in this appeal, is as follows :-

"(f) transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods;"

19. *The appellant claims to be transporting RMC in vehicles under the contract awarded by the customers, particularly Grasim Industries Ltd. and Ultratech Cement Ltd. This transportation of RMC takes place in transit mixers from the premises of the customers on the basis of work orders issued. A perusal of the work order dated 1 April, 2008 issued to the appellant by Grasim Industries Ltd. indicates that the appellant was required to load RMC in the vehicles of the appellant and transport the same to the required destinations where it was required to be unloaded. The transportation charges payable to the appellant were in two parts. The appellant was to receive Rs. 140/- per cum for the quantity of RMC transported during the month. Under the second part, the appellant was to receive Rs. 20.34 per km for distance travelled in the transportation of RMC.*

20. *It is clear that under the work order, the appellant was required to load RMC in the vehicles belonging to the appellant and thereafter transport the RMC to the required destination and unload it. The work order does not speak of hiring the vehicles of the appellant. In fact the appellant was required to keep all its vehicles used for providing the service under the agreement in good working condition with periodical service and repair. The Commissioner has, however concluded from a perusal of the work order that the recipient of service i.e. M/s. Grasim Industries Ltd. and M/s. Ultratech Cement Ltd. needed a large number of vehicles for transportation of RMC from their plant to the premises of the customer and they have entered into an agreement for deployment of 6M3 capacity vehicles which can be used by the recipient and serve as per their requirement. The Commissioner, therefore, observed that the appellant had given on hire vehicles to the service recipient for use in the transportation of RMC from its plant to the premises of the customer though the right to possession and effective control over the vehicles remained with the appellant and it had to deploy manpower to operate and control the vehicles.*

21. *This conclusion drawn by the Commissioner is a patently wrong understanding of the conditions of the work order. The appellant did not give on hire the vehicles. Even the subject matter of the "work order is for transportation of Ready Mix Concrete in vehicle/vehicles from our Jaipur 1TD Ready Mix Plant at Jaipur". The contract that has been awarded is also for transportation of Ready Mix Concrete*

from the plant of the appellant on the terms and conditions mentioned in the work order. Condition No. 1 of the work order is that the appellant shall load RMC in the vehicle and transport the same to the required destination and unload it at the customer's site. Merely because the work order requires the appellant to deploy a fleet of 6M3 capacity vehicles for transport of 9000 M3 of RMC every month does not mean that the appellant has given vehicles on hire. The work order only requires the appellant to ensure that it has available a fleet of vehicles adequate enough to transport a particular quantity of RMC every month. Even the transportation charges are under two heads. The first is payment of a certain amount for the quantity of RMC transported during a calendar month and a certain amount per km for the distance travelled for transportation of RMC during the month.

22. *It is for this reason that the appellant had contended that the activity of transportation of RMC by road falls under the taxable service GTA. However, this contention of the appellant has not been accepted by the Commissioner for the reason that clause 12 of the work order deals with a minimum quantity of RMC to be transported per month per vehicle. According to the Commissioner, it cannot be said to be a case of transportation of goods by road by a goods transport agency "because in the case of transport of goods by road the service recipient books a vehicle for transportation of goods and pays freight for such booking for the transportation of goods". The Commissioner failed to appreciate that under the work order, the appellant was required to transport RMC for which purpose the appellant was required to load RMC in the vehicles of the appellant and transport the same to the required destination and unload it. The requirement under the work order that the appellant should have a fleet of vehicles, adequate enough to transport 9000 M3 RMC every month would not mean that the appellant had given the vehicle on hire. The Commissioner was required to examine all the conditions of the work order but the finding is based on an assumption that vehicle was hired for transportation of RMC.*

23. *The Commissioner also fell into an error in assuming that if a minimum load of 745 cum per month per vehicle is not loaded, then too the appellant would be entitled to payment on this minimum quantity to conclude that in this manner payment would also be made for goods that have not been transported and no consignment note would have been issued for the same.*

24. *Under Rule 4B of the Service Tax Rules, 1994 a consignment note is a document issued by a GTA reflecting the name of the cosigner and consignee, registration number of the goods carried in which the goods are transported, details of the goods transported, details of the place of origin*

and the destination and the person liable for paying the service tax. The consignment notes issued to by the appellant which are contained from the pages 112 to 130 of the appeal paper book contain all the particulars as mentioned in Rule 4B and the issuance of the consignment note has not been disputed in the show cause notice.

25. It would be seen from that pre-negative list period prior to 1 July, 2012 that the following two conditions have to be satisfied for a service to fall within the purview of GTA service :-

- (i) There should be transportation of goods by road; and
- (ii) Issuance of consignment note by GTA for the post-negative list period from 1 July, 2012 to 31 March, 2013.

26. The following conditions have to be satisfied pre-negative list for a service to qualify as a GTA service :

- (i) There should be an activity in relation to transport of goods by road;
- (ii) Issuance of consignment note by the GTA;
- (iii) Activity is performed by a GTA for another; and
- (iv) Activity is performed for consideration.

27. It cannot be doubted that the first condition with regard to both pre-negative list and the post-negative list is satisfied since RMC has been transported by the appellant using transit mixers of the appellant by road. The second condition relating to issuance of consignment note by GTA in the pre-negative list period and the post-negative list period is also satisfied as the appellant had issued the consignment notes. The third condition in the post-negative list period is that the activity should be performed by the GTA for another. It cannot be doubted that the appellant has undertaken the transportation of RMC for the mine owners. The fourth condition of the post-negative period is that the activity should performed for a consideration. It cannot also be doubted that the appellant is receiving consideration from the service recipient as is clear from the invoices raised by the appellant to the service recipient.

28. Thus, the appellant has been rendering GTA service by transporting RMC from one place to another as per the directions of the service recipient. The finding to the contrary recorded in the impugned order by the Commissioner that the appellant was not performing GTA service but was performing STG service cannot be sustained.

29. It is, therefore, not necessary to examine the other contentions raised by the Learned Counsel for the appellant. The impugned order dated 15 January, 2016 is accordingly, set aside and the appeal is allowed."

6. From the above decision of the principal Bench of this Tribunal, it can be seen that the facts such as transportation of RMC by similar vehicles for M/s. Ultratech Cement Limited for transportation from M/s. Ultratech Cement Limited plant

to the customer's site of M/s. Ultratech Cement Limited, it was held that appellant in that case are rendering GTA service by transportation RMC from one place to another as per the direction of the service recipient. Therefore, the same is not classifiable under supply of Tangible Goods for Use service.

7. Considering the above decision which is directly on the issue coupled with the facts clearly coming out from the contract, we are of the view that the appellant's service is correctly classifiable under Goods Transport Agency service for which service recipient M/s. Ultratech Cement Limited have discharged the service tax as required under Rule 2(d) of Service Tax Rules, 1994 under reverse charge basis. Therefore, the demand under the category of Supply of Tangible Goods service shall not sustain. Accordingly, the impugned orders are set-aside and the appeals are allowed."

4.7 Similar view has been expressed by this Bench in the case of M/s Narendra Road Lines Pvt. Ltd. 2022 (64) GSTL 354 (Tri.-All.)"

4. As all the evidences available on record and the decisions as above clearly show that the transactions were of GTA, service tax has rightly been paid by the recipient of service i.e. M/s Inox.

5. Admittedly, in the present case entire tax due has been paid in respect of these transactions between the Appellant and his client. That being so, we are of the view that the same transaction could not be levied to service tax both at the hands of the service recipient and the service provider under different category of services. In this case, if these transactions were to be taxed under the category of SOTG, as has been held by the impugned order, entire amount paid by the service recipient under the category of GTA services on the reverse charge basis should have been refunded. There is no scope of double taxation under the statute. The demand made in the present case after noting the payment of tax at the hand of service recipient, the same transaction goes contrary to Article 265 of the Constitution and hence cannot be sustained.

6. As we are unable to sustain the demand of service tax on merits, issues of extended period of limitation, demand of

interest and penalties imposed are irrelevant and are not being taken up.

7. In view of the above discussions, it is our considered view that the impugned order cannot be sustained and is therefore set aside. The appeal filed by the Appellant is allowed with consequential relief.

(Operative part of the order was pronounced in open court)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

Nihal