# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
# ALLAHABAD

REGIONAL BENCH - COURT NO.I

**Service Tax Appeal No.70235 of 2024**

(Arising out of Order-In-Appeal No. 551-ST-ALLD-2022, dated -15/11/2022 passed by Commissioner (Appeals) CGST & Central Excise, Allahabad)

**R S And Brothers,** **.....Appellant**
(Village-Meeranpur Sadar Ali
Fareedpur Kalan, Tanda
Ambedkar Nagar, Uttar Pradesh 224145)

*VERSUS*

**Commissioner, CGST & Central Excise, Lucknow**

**....Respondent**

(38-M. G. Marg

Prayagraj, Uttar Pradesh 211001)

**APPEARANCE:**

Shri Atul Kakkar, Advocate for the Appellant
Shri A. K. Choudhary, Authorised Representative for the Respondent

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

**FINAL ORDER NO.70033/2026**

DATE OF HEARING : 10.11.2025
DATE OF DECISION : 12.02.2026

**P.K. CHOUDHARY:**

The present appeal has been filed by the Appellant assailing the Order-In-Appeal No. 551-ST-ALLD-2022, dated -15/11/2022 by which the appeal of the Appellant has been rejected by the learned Commissioner (Appeals) CGST & Central Excise, Allahabad.

2. The facts of the case in brief are that the Appellant Shri Radhe Shyam Verma, Proprietor of M/s R.S. & Brothers, was registered with the Service Tax Department. On the basis of data received from the Income Tax Department for the Financial Year 2014-15 it was noticed that there was some discrepancy in the figures as per Form 26AS and the data as per ST-3 Returns.

3. Accordingly, a Show Cause Notice[1] dated 16.12.2020 was issued proposing to demand Service Tax of Rs.7,79,168/- alongwith applicable interest and imposition of penalties under various Sections. The calculation of Service Tax liability is a per Para 7 which is reproduced as under:-

| SI. No. | Financial Year | Taxable value as per ITR (in Rs.) | Service Gross Taxable value as per ST-3 return (Rs.) | Short Amount declared in ST-3(in Rs.) | Rate of Service Tax (including cess) | Short payment/Not paid of Service Tax (including cess)(in Rs.) |
|---|---|---|---|---|---|---|
| 1 | 2014-15 (Oct'14 to Mar'15) | 11468448 | 9875506 | 1592942 | 12.36% | 196888 |
| 2 | 2015-16 | 21738779 | 18916896 | 2821883 | 14.50% | 409173 |
| 3 | 2016-17 | 22925392 | 21771344 | 1154048 | 15% | 173107 |
| | **Grand Total** | **56132619** | **50563746** | **5568873** | | **779168** |

4. Reply to the SCN was filed and vide Order-In-Original dated 07.01.2022, the demand as proposed in the SCN was confirmed alongwith applicable interest and penalty of equal amount was imposed under Section 78 of the Finance Act, 1994. Penalty of Rs.10,000/- was imposed under Section 77(1)(c) of the Finance Act, 1994. Late fees of Rs.2,600/- were also imposed for the Return filed for the period from April 2015 to September 2015.

5. On appeal before the First Appellate Authority, the Appeal filed by the Assessee was rejected by the impugned Order-In-Appeal. Hence, the present appeal before the Tribunal.

6. The learned Advocate appearing on behalf of the Appellant submits that the difference in figures of ST-3 Returns and Form 26AS is for the reasons that the Appellant has provided

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[1] SCN

'Manpower Recruitment/ Supply Agency Services' to M/s Utility Powertech Ltd. It is his case that in view of the Notification No.30/2012-ST dated 20.06.2012 as amended by Notification No.7/2015-ST dated 01.03.2015 Para (B) Serial No.8 of the Table, the Tax liability was to be paid by the service recipient. Other than this there is no discrepancy whatsoever and the entire Service Tax liability has been paid and duly reflected in the ST-3 Returns. These facts were regularly being brought to the notice of the Department while filing the reply to the SCN, before the Adjudicating Authority and also before the learned Commissioner (Appeals). Para 6.4 of the adjudication order discusses the dispute in the present appeal. I do not understand on what basis the Adjudicating Authority has categorized and classified the services provided by the Appellant as 'Cargo Handling Services'

7. Further, vide the impugned order, the learned Commissioner (Appeals) in Para 4.2 has observed as under:-

> *"I observe that in the present case the appellant has provided services relating to rake movement & consideration were not paid on per man per day basis for the personnel supplied by the appellant. Thus, it is evident that the services rendered by the appellant do not come under the category of supply of manpower services. Therefore, I find no force in the contention of the appellant they were eligible for benefit of notification No.30/2012-ST, dated 20.06.2012."*

8. On perusal of the Work Order/Award Letter by M/s Utility Powertech Ltd. (A joint venture of Reliance Infrastructure & NTPC Ltd.) dated 29.11.2016, I observe as under:-

> *"Letter of Award for the work of "Deployment of Ex-Railway staff for Rake Movement at CHP Tanda for year 2016-17" at NTPC-Tanda."*

9. The award letter specifically mentions the scope of work which is reproduced as under:-

> *"1. ********* You will ensure that all works assigned to you are carried out properly, which "Deployment of Ex-Railway Staff for Rake Movement at CHP Tanda for year 2016-17" at NTPC- Tanda, or any other work as assigned by Engineer-In-charge. You will deploy adequate numbers of persons to carry out the job smoothly and provide substitute in case of absenteeism, so that the work is not hampered. You will carry out personal supervision to see that the work is going on smoothly."*

10. This clearly shows that the Appellant was awarded the contract with specific directions that in executing the work awarded through this contract, he was required to deploy Ex-Railway staff for rack movement and was categorically instructed to deploy adequate number of persons to carry out the job smoothly and to provide substitute in case of absenteeism, so that the work is not hampered. This contract is out and out with specific direction to the awardee of the contract.

11. In my considered view, the services provided by the Appellant/Assessee in respect of the work order awarded to him under the contract would appropriately be classified under the category of 'Manpower Recruitment/ Supply Agency Services'. There is no ambiguity in the work order and the instructions are very very crisp and clear and there is no scope for classifying the services under any other category.

12. I also find that on similar facts the learned Deputy Commissioner, CGST, Division-III, Ghaziabad in Order-In-Original No.224/DC/TPD/S.Tax/D-III/GZB/2022-23 dated 31.03.2023 has passed the following order:-

***6.3*** *The genesis of the Instant case was CBDT data which envisaged that there was a difference of Rs.21,94,745/- between the value of sale of services of Rs.62,61,902/- mentioned in the ITR and sale of services of Rs.40,67,157/- mentioned in the Service Tax returns (ST-3) filed by the party during the F.Y. 2016-17. To verify the information, the party was requested to submit their ITR, STR, 26A5, Balance Sheet, Reconciliation statement along with supporting documents for F.Y. 2016-17 by the Superintendent, CGST Range XI, Division, Ghariatad vide letter C. No. 20-CGST/R-11/D-B/T.P.16-17/10/2021 dated 28.09.2021. However, as the reply dated 30.09.2021 submitted by the party was Incomplete/inconclusive, by assuming that the party was willfully evading complete submission of requisite information/documents and was thereby trying to escape and evade their tax liability, demand of Rs. 3,29,212/- was issued on the differential value of Rs.21,94,745/- without going to further investigation.*

***6.4*** *I find that the main contention of the party in the case is that they are providing Business auxiliary service and Manpower Supply Service. During the year 2016-17 they had provided Business auxiliary services of Rs.40,67,157/- against which they have paid service tax which has been reflecting in their ST-3 returns filed for the relevant period. Regarding differential amount of Rs.21,94,745/- against which the instant demand has been raised, the party has submitted that the said amount of Rs.21,94,745/- pertains to Manpower Supply services provided by them during 2016-17 against which Service Tax was liable to be deposited by their client M/s ITC Limited under RCM as provided under notification No. 30/2012-Service Tax, dated 20.06.2012 amended vide notification No. 07/2015-Service Tax, dated 01.03.2015. The party has also submitted copies of documents mentioned at para 4.14 above in support of their defense.*

***6.5*** *My findings on issues to be determined are as follow;*

*(i) At the outset, it is stated that Show Cause Notice is based on third party information supplied by income tax department and no investigation or corroboration with the facts, has been referred to in the SCN. The SCN is based on presumption that the entire amount mentioned in the ITR of the party for the F.Y. 2016-17 pertains to taxable service charges received by them from their clients and is liable to service tax. Thus, I proceed to examine the case based on documents submitted by the party alongwith their submission.*

*(ii) I find that the party has declared receipt against sale of services amounting to Rs.62,561,902/-in the profit and loss account of their balance sheet of the F. Y. 2016-17 and total amount credited Rs.62,61,899/- 'In their 26-AS for the year 2016-17 which is tallied with the amount mentioned in the SCN. As per the profit and loss account, out of receipt of Rs.62,61,902/- the party has received Rs.40,67,157/- against Business Auxillary services while Rs.21,94,745/- received against manpower supply services against which the instant demand has been raised. Further, as per 26-AS, entire amount has been received by the party from M/s ITC Limited. Besides it, the party has also provided copy of invoices raised by them to M/s International Tobacco Company Limited (ITC Limited) for Man Power Supply services provided to them wherein no service tax was raised by the party. Thus, on the basis of information available in the 26-AS and profit and loss account of the party for the year 2016-17,I find that the amount of Rs.21,94,745/- against which the instant demand has been raised was received by the party from M/s ITC Limited against the Man Power Supply services provided to them.*

*(iii) Notification No. 30/2012-Service Tax, dated 20.06.2012 inter alia provides that in respect of taxable services provided or agreed to be provided by way of supply of manpower by any individual, HUF or partnership firm located in a taxable territory to a business entity registered as body corporate, located in a taxable territory (Para I (v) of the notification), the service tax will be paid on 100% value by the service receiver under RCM (SI. No. 8 of Table Annexed to Para II).*

*(iv) I find that in the Instant case during the year 2016-17, the party M/s Gurbachan Singh, a proprietorship concern has provided manpower supply services to M/s ITC Limited, a body corporate for an amount of Rs.21,94,745/-. Thus, in view of Notification No. 30/2012-Service. Tax, dated 20.06.2012 as discussed supra, the recipientM/s ITC Limited (a body corporate)of the said service was liable to pay service tax on the said amount of Rs.21,94,745/- under Reverse Charge Mechanism (RCM). Further, I find that the party has also produce copy of a letter/undertaking of M/s International Tobacco Company Limited certifying therein that they have pald service tax on the entire amount of Man Power Supply services received by them underReverse Charge Mechanism during April'2016 to June'2017 as per the applicable provisions of Service Tax Act, 1994.*

*(v) Thus, on the basis of aforementioned discussions and submissions/documents provided by the party, I conclude that the differential amount of Rs.21,94,745/- against which the instant demand has been raised actually*

*pertains to the Man Power Supply service charges in respect of which the service receiver namely M/s ITC Limited was llable to pay service tax under Reverse Charge Mechanism as provided under notification no. 30/2012-ST, dated 20.06.2012 as amended as discussed supra. Thus, In the Instant case the party was not liable to pay service tax.*

***6.6*** *Thus in view of above, I hold that the entire demand of Rs.3,29,212/- raised in the instant SCN on value of Rs.21,94,745/- is liable to be dropped and accordingly no Interest and penalty is liable to be imposed upon the party on the sald amount of dernand under section 75 and 78 of Finance Act, 1994 respectively.*

13. Learned Departmental Representative made the Bench to go through the work order once again and in the heading scope of work in Para 2 it was pointed out as under:-

*"2. All materials to be brought by you for incorporation in the work shall be strictly in accordance with the relevant clauses of technical specifications."*

14. Further, he also made the Bench to go through the heading total contract value of the Award letter and the same is reproduced as under for ready reference:-

*TOTAL CONTRACT VALUE*

*1. The total contract value for this work is Rs.49,14,384.00(Rupees Forty Nine Lacs Fourteen Thousand Three Hundred Eighty Four Only.) Service Tax extra based on your agreed rates for a period of 12 months (as per BOQ enclosed). This will include compliance of all statutory requirements as prescribed under various enactments.*

*2. Your rates are inclusive of all taxes (except Service Tax which shall be paid extra), duties and all other levies as may be applicable, T&P, Labour, Materials, Safety gadgets complete and supply of same to the site, and UPL shall entertain no claim, whatsoever on this account.*

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*8. SERVICE TAX: - Contractor should note that as per rule no. 6 of service tax 1994, the service tax shall be paid to the credit of the central Govt. by the 5th of the* *month immediately, following the calendar month in which payment are received, towards the value of the taxable services by the contractor.*

15. It is his submission that the work order awarded is not exclusively for supply of manpower as has been claimed by the Appellant-Assessee but is a composite contract and supply of manpower is one of the component. Accordingly, he submits that the Appellant in terms of the work order is very much liable to pay Service Tax and there is no infirmity in the orders of the learned Commissioner (Appeals) and accordingly the appeal filed by the Appellant being devoid of any merits may be dismissed.

16. Heard both the sides and perused the appeal records.

17. To appreciate the contentions herein, foremost, it would be appropriate to first go through the definition of 'Cargo Handling Service' defined under Section 65(23) of the Finance Act, 1994 and is taxable under Section 65(105)(zr) of the Act. The same is reproduced as under:-

*"65(23)- 'cargo handling service' means loading, unloading, packing or unpacking of cargo and includes cargo handling services provided for freight in special containers or for noncontainerised freight, services provided by a container freight terminal or any other freight terminal, for all modes of transport and cargo handling service incidental to freight, but does not include handling of export cargo or passenger baggage or mere transportation of goods."*

*"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."*

The perusal of definition of Section 65(23) of the Act makes it clear that the 'Cargo Handling Service' is an activity which requires:

(i) A cargo,

(ii) To be transported from freight terminal

(iii) The activity has to be taken up by an agency specifically involved in the activity of 'Cargo Handling Services'.

18. 'Cargo Handling Service' has not been defined in the Act but is defined in Circular No. B11/1/2002-TRU, dated 01-08-2002 as the services of transporting coupled with loading, unloading, packing, unpacking can be called as 'Cargo Handling Service' if those are done by the authorities as that of Container Corporation of India, Airport Authority of India, Inland Container Depot, Container Freight Stations etc. Apparently and admittedly the appellant herein is none of these kinds of companies. Hon'ble Supreme Court also while discussing the case of Sushil & Company **[2016 (42) STR 625 (SC)]** has appreciated the said circular in the following words:

> "Mr. Kavin Gulati, learned senior counsel appearing for the respondent-assessee, has drawn our attention to a judgment of the Delhi Bench of the Tribunal in "J. & J. Enterprises v. Commissioner of Central Excise, Raipur," reported in 2006 (3) S.T.R 655 = 2005 (186) E.L.T 189 (Tribunal). In this judgment, almost similar services provided by the assessee were held not to be 'Cargo Handling Services'. In arriving at such a conclusion, the Tribunal had referred to the clarificatory instructions, being F. No. B11/1/2002-TRU, dated 1-8-2002 and the relevant portion therein was extracted at Paragraphs 3 and 15. These paragraphs read as under:-
>
> > "3. The services which are liable to tax under this category are the services provided by cargo handling agencies who undertake the activity of packing, unpacking, loading and unloading of goods meant to be transported by any means of transportation namely truck, rail, ship or aircraft. Well known examples of cargo handing service are services provided in relation to cargo handling by the Container Corporation of India, Airport Authority of India, Inland Container Depot, Container Freight Stations. This is only an illustrative list. There are several other firms that are engaged in the business of cargo handling services.
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> > xx xx xx

> 15. Another doubt raised in relation to cargo handling services is that whether individuals undertaking the activity of loading or unloading of cargo would be leviable to service tax. For example, if someone hires labour/labourer for loading or unloading of goods in their individual capacity, whether he would be liable to service tax as a cargo handling agency. It is clarified that such activities will not come under the purview of service tax as a cargo handling agency."

19. The Hon'ble Supreme Court has accepted Hon'ble High Court interpretation to the Entry viz. 'Cargo Handling Service' wherein it was observed that there must be a cargo i.e. a packed or unpacked commodity accepted by a transporter or carrier for carrying the same from one destination to another. It is only after the commodity becomes a cargo, its loading and unloading at the freight terminal for being transported by any mode becomes a cargo handling service, if it is provided by an independent agency and the service provider must independently be involved in loading-unloading or packing-unpacking of the cargo. Also from the various decisions as relied upon by the Appellant, I observe that this issue has several times been considered by this Tribunal. The decision of the Hon'ble Supreme Court in the case of **Singh Transporters Vs. Commissioner of Central Excise, Raipur [2012 (27) STR 488]** squarely covers this issue. The issue involved therein was whether the coal transported from pitheads of the mines to the railway sidings would fall within the taxable service as defined under Section 65(105)(zzzy). Though the service in question in the said case was whether it was a mining service but the outcome is relevant for the present adjudication wherein it was held that the aforementioned activity is an activity as that of transportation of goods. The Hon'ble Apex Court in the said decision has held as follows:

> *"3. The issue involved in the present appeal is whether the goods i.e. coal transported by the respondent - Singh Transporters from the pit-heads to the railway sidings would fall within taxable service as defined under Section 65(105)*

*(zzzy) of the Service Tax Act of 1994 (for short "the Act") or as defined under Section 65(105)(zzp) of the Act.*

*xx xx xx*

*6. Be that as it may, even if the relied upon judgment in the case of Anjuna Carriers (supra) is of no consequence to the present case, we are of the view that the activity undertaken by the respondent i.e. transportation of coal from the pit-heads to the railway sidings within the mining areas is more appropriately classifiable under Section 65(105)(zzp) of the Act, namely, under the head "transport of goods by road service" and does not involve any service in relation to "mining of mineral, oil or gas" as provided by Section 65(105)(zzzy) of the Act.*

*7. The reliance placed on the definition of the term 'mines' under Section 2(j) of the Mines Act, 1952 does not assist the Revenue inasmuch as what would be indicated by the said definition is that a mine is not to be understood necessarily in respect of pit-heads of the mining area or the excavation or drilling underground, as may be, but also to the peripheral area on the surface. The said definition has no apparent nexus with the activity undertaken and the service rendered."*

The Kolkata Bench of the Tribunal in the decision of **N.C. Paul & Company [2020 (41) GSTL 494 (Tri-Kol)]** has held as follows :

*" the dominant activities under the contract are movement of mineral within the mining area and loading to Railway Wagon, which includes loading and unloading, are merely incidental while the activities undertaken are principally transportation of coal within the mining area, hence, the gross amount received for the same cannot be taxed under the category of Cargo Handling Services. Therefore, we are of the view that the Service Tax demand of Rs.2,47,60,534/- on activities of transportation with incidental loading and unloading including wagon loading is principally and dominantly for transportation of coal within the mines and hence, cannot be taxed under the category of Cargo Handling Service and accordingly, set aside."*

20. I observe that with effect from 01.07.2012, major changes were carried out in the Service tax provisions. Vide Finance Act, 2012 the concept of the Negative List was introduced. In pursuance to these changes classification of services was rendered immaterial. However, I note that in the

present SCN dated 21.10.2015, the Department has relied upon the provisions applicable prior to 01.07.2012.

21. Further, while confirming the Service Tax liability on the Appellant, no reference has been made to the new Charging Section i.e. Section 66B of the Act applicable from 01.07.2012 in the impugned Order.

22. I note that in the Larger Bench decision of the Tribunal rendered in the case of **M/s Atma Steels Pvt. Ltd. & Others v. CCE, Chandigarh & Others [1984 (17) E.L.T. 331 (T)]** it was held that once the provisions has been changed, then the existing provisions at the time of issue of SCN should be applicable and not the earlier provisions.

23. In the case of **M/s Mahakoshal Beverages Pvt. Ltd. Vs Commissioner of Cz. Ex., Belgaum [2007 (6) STR 148 (Tri-Bang)]** the Tribunal held that demand cannot be confirmed in accordance with deleted provisions.

> *"4. On a careful consideration, we are not agreeable with the contentions raised by the Commissioner in the written submissions and the learned JDR. The proviso to Section 73 of the Act was promulgated by Finance Act 2004 but adding proviso to Section 73 of the Central Excise Act, which is parimateria to Section 11A of Central Excise Act. The ingredients of the said proviso have not been invoked in the show cause notice to demand duty for larger period. The contention of the Revenue that the demands pertaining to period earlier to promulgation of the new Section 73 should be confirmed in terms of the deleted provisions of Section 73, is not sustainable. The Larger Bench judgment rendered in the case of Atma steel (supra) has clearly held that once a new provisions has been brought into existence, then at the time of issue of show cause notice the new provisions as is in existence should be complied. The show cause notice has been issued in the present case on 28-7-2005, therefore, the amended provisions in terms of Section 73 of the Finance Act 2004 ought to have been invoked. The ingredients of proviso to Section 73 have not been invoked, therefore, the demands are barred by time. Furthermore, as held in the Atma Steel case (supra), the demands for the period earlier to promulgation cannot be confirmed "*

23. Further, I note that the Original Authority has taken cognizance of the contentions raised by the Appellant and copies of the contracts submitted by the Appellant. He has also made note of the exemptions admissible to the Appellant. However, without taking all the submissions and admissibility into consideration, he has simply confirmed the demand that was raised on the basis of information received from Income Tax Department in Form 26AS. I note that it was held by this Tribunal in the case of **Sharma Fabricators & Erectors Pvt. Ltd.V/s CCE, Allahabad reported at 2017 (5) GSTL 96 (Tri.-All.)** that it was the responsibility of the executive to examine the records and examine the audit objection raised with reference to the records and facts of the case and take a view whether there is a sustainable case for issue of show cause notice and that charges in the SCN have to be on the basis of books of account and records maintained by the assessee and the other admissible evidence and the transactions recorded in the books of account cannot be held to be contrary to the facts. It was further held by this Tribunal in the case of **Kush Construction V/s CGST NACIN, Kanpur reported at 2019 (24) GSTL 606 (Tri.-All.)** that without examining the reasons for difference in the figures reflected in Form 26AS and ST-3 returns, Revenue cannot raise demand on the basis of such difference without establishing that the entire amount received by the Appellant as reflected in the said returns and Form 26AS being consideration for services provided and without examining whether the difference was because of any exemption or abatement.

24. I also note that charging Section 66B of Finance Act, 1994 provides for levy of service tax at a specified percentage on the value of service. Section 67 of Finance Act provides that where service tax is chargeable on any taxable service with reference to its value and such value shall be consideration in money charged by the service provider. Therefore, it is primarily important to determine the value on which service tax shall be

levied at a specified percentage and such value should be the value of taxable service. Clause (44) of Section 65B of Finance Act, 1994 has provided for definition of service and it has elaborately dealt with a list of activities which shall not be included in such definition. Further, Section 66D of Finance Act, 1994 has provided for negative list of services where the activities provided covered by such negative list do not qualify to be a taxable service. Therefore, it is clear that while determining the value of taxable service under Section 67 ibid, such aspect as to the activities which are covered by negative list and activities which are mentioned in the definition of service as those which are not covered by such definition become important. Therefore, I come to a conclusion that for arriving at amount of service tax not paid or not levied arriving at correct value of taxable service which has not suffered service tax needs to be determined as the first step. Further, there are services where entire or part of service tax is to be paid by service recipient. In addition, mega exemption Notification No. 25/2012-ST dated 20.06.2012 has provided exemption to various activities from the levy of service tax. Therefore, unless the data is examined with reference to all the above stated aspects, no one can come to a conclusion about the exact value which has not suffered service tax. Such exercise has not been undertaken in the present case.

25. For all the reasons stated above, I hold that the impugned order is not sustainable. The impugned order is set aside and the Appeal filed by the Appellant is allowed.

(Pronounced in open court on 12.02.2026)

**Sd/-**
**(P.K. CHOUDHARY)**
**MEMBER (JUDICIAL)**

*Nihal*