

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

REGIONAL BENCH - COURT NO.II

Service Tax Appeal No.70128 of 2026

(Arising out of Order-in-Appeal No.342/ST/Alld/2024 dated 25/06/2024 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Allahabad)

M/s Mukesh Kumar Thekedar,
(Nagla Mathiya, Odenya, Mandal, Mainpuri)

.....Appellant

VERSUS

**Commissioner of Central Excise &
CGST, Kanpur**

....Respondent

(117/7 Saravoday Nagar, Kanpur-208005)

APPEARANCE:

Shri Madhukar Anand, Consultant for the Appellant

Shri Santosh Kumar, Authorised Representative for the Respondent

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

FINAL ORDER NO.70141/2026

DATE OF HEARING : 05 May, 2026

DATE OF DECISION : 05 May, 2026

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.342/ST/Alld/2024 dated 25/06/2024 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Allahabad. By the impugned order, Commissioner (Appeals) has dismissed the Order-in-Original No.70/ST/Adj/AC/Circle-I/Audit/Kanpur/2023 dated 31.10.2023 wherein following has been held:-

"ORDER

i. I confirm the demand of Service Tax amounting to Rs.40,57,763/- (Rupées Forty Lakhs Fifty- Seven Thousand Seven Hundred Sixty-Three Only) inclusive of Education

Cess and S&H Education Cess, under Section proviso to Section 73(1) of Finance Act 1994 read with Section 174 of CGST Act, 2017 as discussed above and order for recovery of the same from the Noticee.

ii. I further order for recovery of interest on the amount mention in Para-6(i) above, at the appropriate rate for the relevant period till the payment of said tax, from the Noticee under Section 75 of the Finance Act, 1994 read with Section 174 of CGST Act, 2017 as discussed above.

iii. I impose a penalty of Rs.40,57,763/- (Rupees Forty Lakhs Fifty-Seven Thousand Seven Hundred Sixty-Three Only) upon the Noticee under section 78 of the Finance Act, 1994, as discussed above. Further I give an option to the party to pay 25% penalty of the demand confirmed in Para -6(i) above, as provided in the Section 78-of the Act, if Service Tax and Interest as confirmed above is paid within a period of 30 days of the date of receipt of this order. Further the benefit of reduced penalty shall be available only, if the amount of such reduced penalty is also paid within 30 days.

iv. I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand only) upon Noticee under Section 77(1)(a) of the Finance Act, 1994 read with Section 174 of CGST Act, 2017 as discussed above.

v. I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand only) upon Noticee under Section 77(1)(c) of the Finance Act, 1994 read with Section 174 of CGST Act. 2017 as discussed above.

vi. I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand only) upon Noticee under Section 77(1)(d) of the Finance Act, 1994 read with Section 174 of CGST Act, 2017 as discussed above.

vii. I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand only) upon Noticee under Section 77(2) of the Finance Act, 1994 read with Section 174 of CGST Act, 2017 as discussed above.

viii. I impose a penalty of Rs. 20,000/- [Rupees Twenty Thousand Only] upon Noticee, under Section 70 of the Finance Act, 1994 read with Rule 7(C) of ibid and read with Section 174 of CGST Act, 2017 as discussed above."

2.1 Appellant is engaged in activity which as per the revenue were covered by the definition of taxable services as per Section 65B (44) of the Finance Act, 1994 read with Section 66B. Appellant did not obtain any registration as per Section 69 ibid.

2.2 On the basis of information received from the Income Tax Department under third party data exchange policy, it was observed that the appellant had received huge sums as per TDS/ITR during the Financial Year 2016-17 and had not discharged any service tax on the same.

2.3 Inquiry/investigation was initiated and the appellant vide letter dated 23.06.2021 were asked to provide relevant documents such as form ST-2, details of nature of work/services provided, ST-3 Returns, Bills/Invoice/Job-work bills issued towards services provided, Form-26-AS, Balance Sheet along with Profit & Loss A/c, Income Tax returns along with computation/calculation of Income, Reconciliation of amount received under different sections of income tax, [excluding Sec 194A] in Form-26AS vis-a-vis taxable value of services reflected in ST-3 returns along with reasons for difference, if any Reconciliation of amount reflected under the head of Revenue from Operations in Balance-see Computation of Income vis-a-vis taxable value of services reflected in ST-3 returns along with reasons for difference, if any and any other relevant related documents in respect of service provided for the period from 2016-17 to 2017-18 (upto June 17).

2.4 Appellant responded vide letter dated 25.07.2021 informing that they were providing services as transport agency for transport of food grains and pulses for Regional Senior Accounts Officer Food, Aligarh and Agra. The services so provided were exempt as per Notification No.25/2012 dated 20.06.2012, they were also provided certain documents such as

copy of Form 26AS, Balance Sheet and Profit & Loss account for the F.Y. 2016-17 and 2017-18 along with the said letter. Other documents as called for by the revenue were not coming forth.

2.5 In absence of requisite documents, revenue authorities were proceeded to compute the service tax short paid, and the tax liability was calculated as detailed in table below:-

Period	Amount Received			Taxable Value (Highest of 2,3,4)	Service Tax	
	Letter dated 25.07.2021	26 AS	CBDT Data		@ %	Payable
1	2	3	4	5	6	7
2016-17	27051752	27051752	27051752	27051752	15	4057763

2.6 As appellant had not provided the documents, nor filed any ST-3 returns during 2016-17 while providing taxable services without obtaining registration from the department, it was alleged that appellant has willfully suppressed the facts of providing taxable services and the consideration received against such services from the department with intend to evade payment of service tax.

2.7 Show cause noticed dated 19.10.2021 was issued to the appellant, asking them to show cause as to why:-

- "(i) An amount of Rs 2,70,51,752/-(Rupees Two Crore Seventy Lakhs Fifty-One Seven Hundred Fifty-One Only), received by therein during the Financial Years 2016-17 and 2017-18 (Upto June'17) should not be treated as the value of taxable services and accordingly Service Tax amounting to Rs.40,57,763/- (Rupees Forty Lakhs Fifty-Seven Thousand Seven Hundred Sixty Three Only) as detailed in Table "A" above including Swachchh Bharat Cess & Krishi Kalyan Cess should not be demanded and recovered from them under proviso to Sects 73(1) of the Finance Act, 1994 as amended read with Section 174 of the GGST Act, 2017;*
- (ii) Interest at the appropriate rate should not be charged and recovered from the 'Noticee' in respect of amount of service tax mentioned at S.N. 2.1, (i), above, under*

Section 75 of the 'Act' read with Section 174 of CGST Act, 2017,

(iii) Penalty should not be imposed upon them in respect of amount of service tax mentioned at S.N.2.1 (1), above, under Section 78 of the 'Act' read with Section 174 of CGST Act, 2017.

(iv) Penalty under Section 77(1)(a), 77(1) (c), 77(1)(d) and 77(2) of Finance Act, 1994 read with Section 174 of CGST Act, 2017 should not be imposed upon them for their various acts of omission and commission as discussed above;

(v) the late fee amount, under Section 70 of Finance Act, 1994 read with Rule 7(C) of ibid and read with Section 174 of CGST Act, 2017, should not be recovered from them for their various sets of omission and commission as discussed above,"

2.8 The said show cause notice was adjudicated as per the Order-in-Original dated 31.10.2023 referred in para 1 above.

2.9 Aggrieved appellant have filed appeal before Commissioner (Appeals) which has been dismissed as per the impugned order.

2.10 Aggrieved appellant have filed this appeal.

3.1 I have heard Shri Madhukar Aanand, learned Counsel appearing for the appellant and Shri Santosh Kumar learned Authorised Representative appearing for the revenue.

3.2 Arguing for the appellant learned Counsel submits that-

- Appellant has received the entire amount indicating the same in Form 26AS i.e. Rs.2,70,51,762/- against transportation of foods, grains under PDS from service recipient-Regional Account Officer (Food), Aligarh and Account Officer Food and Civil Supplies, Agra Region, copy of work order dated 03.10.2016 appointing appellant for handling and transportation of Food Grains under PDS along with copy of agreement were also provided.

- From the registration certificate of the vehicles used, it is evident that appellant is the owner of the vehicles used for transportation of the goods and he is providing such services as Goods Transport Operator which are covered by the negative list of services as per Section 66D (p)(i). Hence, he was not required to pay any service tax in respect of these services.
- Further, the services provided by the appellant are in respect of transportation of Food Grains and other agricultural produced, these services are also exempt from payment of service tax under entry No.21 of Notification No.25/2012-ST dated 20.06.2012.
- Even if services on loading/unloading, packing etc. are to be considered as support services then also the same were fall within the negative list as per Section 66D(p)(v).
- As the appellant has provided the services which are either covered under negative list or exempt from payment of service tax he has not evaded payment of any service tax and the demand made by invoking extended period of limitation cannot be sustained. Reliance placed on the following decisions:-
 - M/s Dharmraj Singh Vs CCE, Allahabad 2024 (2) TMI 501-CESTAT-Allahabad;
 - M/s Ramco Cements Ltd. 2023 (9) TMI 1257-CESTAT-Chennai;
 - CCE Vs Jai Kumar Fulchand Ajmera 2016 (10) TMI 42 CESTAT-Mumbai;
 - M/s Gade Transport Vs CCE, Aurangabad 2018 (6) TMI 1010-CESTAT-Mumbai;
- Appeal be allowed.

3.3 Authorized Representative reiterates the findings recorded in the orders of the lower authorities.

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

4.2 For upholding Order-in-Original, impugned order records as follows:-

"4.4 On going through the details of impugned order and averments made in the appeal, it is observed that the main issue involved in the instant case is to ascertain as to whether the activity of the appellant falls under Negative list of services provided in Section 66D(p)(i) of the Act or exempted under S. No.21(a) of Notification No.25/2012-ST dated 20.06.2012 or not?

4.4.1 It is observed that the appellant has claimed that they have provided transportation of rice and wheat on own trucks for Regional Food Controller, Agra and provided non-taxable services as per Section 66D(p)(i) of the Act and received amount of Rs.2,70,51,752/- during 2016-17. On perusal of provisions of Section 66D(p)(i) of the Act, it is observed that it provides negative list of services as under:

"Section 66D(p): services by way of transportation of goods-

(i) by road except the services of

(A) a goods transportation agency; or

It is observed that provision is in respect of transportation of goods by road except the services of a goods transportation agency. Therefore, the provisions of negative list of services are applicable for the services of transportation of goods by road which have not been provided by GTA. Further, to ascertain the eligibility of exemption under these provisions, it is firstly important to ascertain that services of transportation by road have not been provided by GTA.

4.4.2 In order to ascertain the factual status of the activities undertaken by the appellant, relevant documents pertaining to the activities done by them are required to be examined. The appellant has provided copy of agreement

No. 297/Swi./Rai. Pariwahan/2016-17 dated 28.05.2017, 2901/Swi./Rai. Pariwahan/ 2016-17 dated 25.03.2017, 2925/Swi./Rai.Pariwahan/2016-17 dated 25.03.2017, 2930/Swi. /Rai.Pariwahan/2016-17 dated 25.03.2017, 2970/Swi./Rai.Pariwahan/2016-17 dated 28.03.2017, 2926/Swi./Rai.Pariwahan/2016-17 dated 25.03.2017 with Regional Food Controller, Agra Region, Agra and Copy of registration of Transport Department for thirteen vehicles owned by the appellant.

4.4.3 On perusal of the agreements, it is observed that these agreement pertains to work of handling including transport Government food grains, Sugar Gunny Bags etc.. Further on perusal of details of the agreements, it is observed that it contains provisions as under:

(i) The details of No. of trucks submitted by the contractor shall be supported by the original/certified copy of the registration certificate.

(ii) The handling & Transport contractor or his authorized agent will be responsible for making adequate arrangements for sufficient labours and transport vehicles I order to complete the work assigned to him. The staff at the centre will have authority to employ other labours and transport vehicles if the handling and transport contractor fails to provide the requisite labours and transport vehicles.

(iii) The contractor or his authorized agent will be responsible for careful handling of Govt. stock during the custody in his hands. The transport contractor shall be liable to compensate to Govt. for such losses, damage or shortages of the food grain, sugar or any other stocks during the course of handling and transport.

(iv) The contractor or his authorized agent shall keep himself in touch with the centre incharge contractor daily for the information of arrivals, placement of wagons and

regarding receipts and dispatches of food grains and other work at the centre.

(v) In case of consignment loaded into wagons if any loss is discovered at the destination as a result of negligence or willful act of the contractor or his representative, it shall be made good by him.

(vi) In case of handling work for receipt and dispatch at Railway Station, the handling contractor will also pay Rly. Freight on consignments and also deposit earnest money for indenting wagons required.

(vii) The Handling & Transport contractor can submit bills fortnightly for the work done to the SMI/MI Incharge of the centre duly complete in all respects with work slips issued by the centre incharge. It will be duty of contractor to obtain the work slips on same day when the work is done.

(viii) The handling & Transport contractor will make his own arrangement for weighing scales and weights.

(ix) Taking out bags from godowns or Khatties will include lifting the bags from the place of stacking.

(x) Rate given in the contract will be applicable for the net weight per bag filled with grain, sugar weighing 65 kg to 01 Qtis. For bags weighing less than 65 Kgs payment will be made half of accepted rates.

4.4.4 It is observed that from the provisions of the agreement that the appellant was engaged as handling & Transport contractor and the appellant was not merely to provide vehicles but was also responsible for other activities related to handling of goods like employing labours for proper loading/unloading of food grain, sugar or any other stocks, keep himself in touch with the centre incharge daily for the information of arrivals, placement of wagons and regarding receipts and dispatches of food grains, handling work for receipt and dispatch at Railway Station, own arrangement for weighing scales and weights,

taking out bags from godowns or Khatties including lifting the bags from the place of stacking etc. and were responsible for any loss/damage to the goods handled and transported by them.

4.4.5 It is observed that the appellant was required to deploy vehicles and other activities as per agreement like employing labours for handling of goods, placement of wagons and receipts and dispatches of food grains and were responsible for any loss/damage of goods transported was upon the appellant. Therefore, their claim that they have operated as transport operator only by providing vehicles and not provided any other services related to transportation, is not proper as the appellant was required to perform other works related to handling of goods and also to make arrangements for handling of the goods for transportation by railway wagons.

4.4.6 Further, the appellant has submitted that they have transported wheat and Rice on their own trucks and no consignment note is issued by them. In support of their owned vehicles, the appellant has submitted copies of Registration Papers of 13 vehicles on their name. Also the appellant submitted a copy of Bill No.164 dated 15.07.2016 containing details of 04 vehicles for transportation from Firozabad to Araon. However, on perusal of the details of vehicles owned by the appellant and the vehicles mentioned in the Bill, it is found as under:

<i>S. No.</i>	<i>Vehicles Registered in the name of Appellant</i>	<i>Vehicles used for Transportation</i>
<i>1</i>	<i>UP75M/6106</i>	<i>UP84K-9465, UP82N-9969 and NL02D-5525, UP83T-4515</i>
<i>2</i>	<i>UP75M/6108</i>	
<i>3</i>	<i>UP84T/0113</i>	
<i>4</i>	<i>UP82J/9844</i>	
<i>5</i>	<i>UP798/9937</i>	
<i>6</i>	<i>UP84T/0151</i>	
<i>7</i>	<i>UP75M/0937</i>	
<i>8</i>	<i>UP83K/9465</i>	
<i>9</i>	<i>UP75M/3455</i>	

10	UP75M/1338	
11	UP75M/3859	
12	UP83T/4515	
13	UP82J/9851	

On going through the vehicles used by the appellant for transportation as per Bill provided, it is seen that three vehicles namely UP84K-9465, UP82N-9969 and NL02D-5525 are not mentioned in the list of vehicles owned by the appellant. Thus, it is seen that the appellant has provided services not only on their own vehicles but also used other vehicles also. Therefore, contention of the appellant that they have provided services on their own vehicles is found contradictory on the basis of documents provided by them at this stage. Hence, the services rendered by the appellant cannot be considered to be falling under the purview of the Section 66D(p) of the Act and the benefit sought by the appellant for providing non-taxable services is not admissible to them.

4.4.7 Also it is observed from the submission made in the appeal that they have not issued consignment notes. Since the basic condition of issuance of consignment note in terms of Rule 4B of the Service Tax Rules, 1994 do not appears to be fulfilled by the appellant and their services rendered by the appellant do not qualify to be GTA services.

4.4.8 Further, as observed from the details of the agreement that various allied activities have been undertaken by the appellant like employing labours for handling of goods, placement of wagons and receipts and dispatches of food grains, in order to ascertain the exact nature of activities, the appellant was asked vide email dated 07.06.2024 to provide the following documents:

1. Invoices/Bills raised for different activities as under:

(i) Handling charges,

(ii) Transportation Charges,

(iii) Charges claimed for arranging Railway Wagons.

(iv) Any other activity pertaining to agreement with Regional Food Controllers

2. Ledger A/c for different activities undertaken as Handling and Transport contractor.

However, the appellant did not provide any details as required vide the email. Therefore, further ascertainment of nature of activities of the appellant was based on the available details in the agreement submitted by them. The activities mentioned in the agreement reveals that the scope of the works done by the appellant involves not only transportation of goods by road but also other incidental activities of handling of the goods like making adequate arrangements for sufficient labours and transport vehicles, information of arrivals of goods, placement of wagons and regarding receipts and dispatches of food grains and other works at the centre, arrangement for weighing scales and weights, taking out bags from godowns or Khatties including lifting the bags from the place of stacking etc.. Furthermore, it has been mentioned in the agreement that the rate given in the contract is applicable for the net weight per bag filled with grain, sugar and there is no separation of rates for handling activities and transportation of the goods. Thus, different allied activities undertaken by the appellant are compositely related to cargo handling services and the same is taxable in nature in terms of Section 65B(51) of the Act.

4.4.9 In view of the above examination and analysis, it is observed that the appellant has received Rs.2,70,51,752/- which has been found taxable in nature and therefore service tax amount of Rs.40,57,763/- is leviable upon it for the period 2016-17 and 2017-18(upto June'17) under Section 68 of the Act. However, the appellant has failed to deposit the same within the stipulated period of time limit,

therefore they are also liable for payment of applicable interest under Section 75 of the Act."

4.3 I find that lower authorities heavily relied upon the facts that no consignment notes were produced for transportation of the goods. It is settled position in law that consignment notes are issued when the services provided are to be considered under the category of Goods Transport Agency Services, infact the Goods Transport Agency Services have been defined to be the services provided a person showing the consignment note. In case of transportation of the goods by owning trucks or similar vehicle, the services get classified as Goods Transport Operator Services and the same are covered by the negative list of the services as per Section 66D(p)(i). The finding recorded in the impugned order to the effect that appellant was using the vehicles which were not registered in his name, goes contrary to the terms of agreement between the appellant and Regional Food Controller, Agra which provide as under:

"4. The details of number of trucks submitted by the contractor at the time of agreement shall be supported by the original/ certified copy of the registration certificate (RC) which shall be kept as security by the department till the duration of the agreement/ contract which would be returned after the term of expiry/ termination of agreement/ contract.

7. The handling & transport Contractor will not sublet, assign or part with his contract.

12. The handling & Transport contractor or his authorized agent will be responsible for making adequate arrangements for sufficient, labours and transport vehicles in order to complete the work assigned to hi as quickly as possible according to the requirements of the staff deputed for this purpose at the centre, if Govt. is put to any loss due to Contractor's failure to do so he will have to make the loss good.

15. The contractor will also be responsible for any loss or damage done to Government stocks by his staff or the labour of truck owners or drivers etc., engaged by him for the work upto the stage of delivery."

From the perusal of the above conditions as per the agreements it is evident that the appellant was required to use only trucks for transportation of food grains, registration number of which along with registration certificate was produced by him to the concerned authorities as security at the time of agreement. Further he could not have sub-contracted, the part of contract to anybody else. It is not even shown in a single case that the appellant had issued a consignment note for the transportation of these food grains as per these agreement. Thus the finding recorded by the Commissioner (Appeal) to the effect that appellant had not used his trucks is having no basis as per the fact. It may be true that some of the trucks would not have been registered in the name of the appellant but were in effective possession and control of the appellant, for the reason that he has provided the details of registration along with registration certificates/ copy of registration certificates as security to be kept with the concerned government authorities. As no consignment notes were being issued by the appellant against transport of the food grains, and appellant was receiving the payments against the services of handling and transportation of these goods as per the above agreement, not on the basis of kms but on the basis of quintals transported, I do not find any merits in findings recorded in the impugned order classifying the services under category of Good Transport Agency Services.

4.4 In the case of M/s Dharmraj Singh Vs CCE, Allahabad (supra) following has been held:-

"4.3 Undisputedly, in the present case appellant was not issuing any consignment note which is an essential requirement for classification of their services under the category of GTA. This fact about not issuance of consignment note is not disputed by the revenue that

being so the services provided by the appellant cannot be classifiable under the category of GTA services for making the demand of service tax. Adjudicating authority in the impugned referred to certain documents which though were not consignment note etc., to hold that these documents are consignment notes. Commissioner (Appeals) order dated 12.12.2014 referred by the Counsel has dropped the demand by observing as follows:-

"The moot point to decide is whether appellant is liable to pay Service Tax in respect of transportation provided by him. I find that appellant has contested that he is merely a transporter and does not fall in the category of Goods Transport Agency (GTA) and that transportation per se is not taxable unless same has been provided by a Goods Transport Agency. In a latest judgment of CESTAT, New Delhi in the case of Nadarganj Sihori Sugar Co. Vs Commissioner of Central Excise, Lucknow[2014(46) GST/47 taxman.com 92], it was held that mere transportation of goods in a motor vehicle does not amount to Goods Transport Agency (GTA) services-GTA must provide service of transportation of goods under a consignment note, which should have particulars as prescribed in explanation to rule 4B- Consignment note issued by GTA represents its liability to: (a) transport consignment handed over to it to destination, (b) undertake delivery of same to consignee, and (c) temporarily store it till delivery-Merely a bill issued for transportation of goods cannot be treated as consignment note-Therefore, transportation of goods by individual truck owners under fortnightly bills without issue of consignment note, GR's & billties etc. as prescribed in rule 4B would be simple transportation and not service of GTA.

This appeal is squarely covered by the above mentioned decision and hence the appellant has no liability at all to pay the Service Tax.

Moreover, the adjudicating authority in Para 5.1.4 of the impugned order has discussed Rule 2(1)(d) of the Service tax Rules, 1994 and was of the opinion that "in terms of said rule, if the consignee or consigner is any corporate established by or under any law, is liable to pay tax. But it is a matter of fact and the party has the onus to establish the said factual position by producing evidences/ document, in order to get the benefit of said legal provision. But the party has not produced any such evidence. As such, I find that the party is liable to pay tax and not FCI due to non-submission of documents/evidence." Thus, the adjudicating authority was convinced that if the appellant had given documentary evidence showing FCI to be any corporate body established by or under any law, then the liability to pay Service Tax would have been on FCI and not the appellant. The only thing that adjudicating authority was not sure was whether Food Corporation of India is a corporation or not, as the appellant had not given any evidence/document for the same. The word Corporation is itself inbuilt in Food Corporation of India and also content downloaded from Wikipedia (which is easily accessible on internet) clearly shows Food Corporation of India as a Government owned corporation, leaving no doubt that FCI falls under the category of Rule 2(1) (d) of the Service Tax rules, 1994 and for this no documentary evidence was required. Hon'ble Tribunal, Delhi in the case of Amrita Mouldings Pvt. Ltd. Vs Commissioner of Central Excise, Ghaziabad (reported in 2013(30) S.T.R. 420) held that:

'In respect of GTA service when the consignor or consignee fall in the categories mentioned in Rule 2(1) (d)(v) of the Service Tax Rules, 1994 and Notification No. 35/2004-S.T., the person liable to pay service tax is the one who is liable to pay freight either himself or through his agent----".

Similar view was taken by Hon'ble Tribunal, Bangalore in the case of SICGIL India Ltd. Vs Commissioner of Central Excise, Cus. & S.T., Visakhapatnam (reported in 2010(19) S.T.R. 747), wherein it was held that " It is very clear in terms of Rule 2(1) (d) (v) that the liability to pay Service Tax is cost(sic) (cast) on the person who pays the freight.". Also Hon'ble Tribunal, Bangalore in the case of MSPL Ltd. Vs Commissioner of Central Excise, Belgaum (reported in 2009(13) S.T.R. 554) had the same opinion."

4.4 In case of The Ramco Cements Limited [Final Order No. 40853 / 2023 dated 27.09.2023] Chennai Bench has held as follows:-

*11.1 In the case of M/s. K.M.B. Granites Pvt. Ltd. v. Commissioner of C.Ex., Salem [2010 (19) S.T.R. 437 (Tri. – Chennai)] this Bench had an occasion to consider an almost similar issue of liability to Service Tax on services of GTA vis-à-vis Rule 2(1)(d)(v) *ibid*. After hearing both sides, this Bench has held as under: -*

"3. Heard both sides. It has been consistently contested by the assesseees that services were not being provided to them by the Goods Transport Agency but by individual truck owners/lorry owners. Before the lower appellate authority they have also provided written submissions in support of their above submission. It has been held by the Tribunal in the case of Lakshminarayana Mining Co. v. CST,

Bangalore - 2009 (16) S.T.R. 691 (Tri.-Bang.) and in the case of CCE, Guntur v. Kanaka Durga Agro Oil Products Pvt. Ltd. - 2009 (15) S.T.R. 399 (Tri.-Bang.) that transport undertaken by individuals owning and operating lorry and trucks is not subject to service tax as in these cases services has not been provided by Goods Transport Agency Service. Following the ratio of the above decisions, I hold that the appellants are not liable to Service tax and imposition of penalty. I, therefore, set aside the impugned orders and allow these appeals."

11.2 It appears that the Revenue filed an appeal before the Hon'ble jurisdictional High Court of Madras against the above order and the Hon'ble High Court vide its Order reported in 2013 (32) S.T.R. J205 (Mad.) has dismissed the appeal, thereby upholding the order of this Bench.

11.3 Further, we find that the other orders relied upon by the Ld. Consultant clearly confirm the view that the essential requirement is the issuance of consignment note in order to be covered under the definition of GTA and in the absence of the same, the transporters/contractors rendering transport services in mines cannot be said to be GTA and therefore, their service cannot be made amenable to the levy of Service Tax under the category of 'transportation of goods by road' service.

12. The above consistent view expressed by various co-ordinate benches of the CESTAT, judicial discipline demands to follow the said view of the co-ordinate Benches. This is also for the reason that in one of the cases, even the Hon'ble jurisdictional High Court has upheld the order of this Bench. Following therefore the same view, we hold that the demand of

Service Tax confirmed in the impugned order cannot sustain.

4.5 In view of the above, we find no merits in the impugned order and set aside the same."

4.5 During the course of argument learned Authorized Representative refers page 68 reproduced below:-

Annex-5 68

कार्यालय- सम्भागीय खाद्य नियंत्रक, आगरा सम्भाग, आगरा ।
 पत्रांक 1511 / स्वी0 / री0परि0 / री0हैण्ड / नियु0 / 2016-17 दिनांक 03 सितम्बर, 2016
 आदेश

राष्ट्रीय खाद्य सुरक्षा अधिनियम के अन्तर्गत आगरा सम्भाग के केन्द्रों पर खाद्यान्न का संचरण उत्तराई, धराई एवं डोर स्टेप डिलीवरी आदि कार्य हेतु दिनांक 19.09.2016 को कार्यालय में प्राप्त निविदाओं के सम्बन्ध में नियुक्त टेण्डर कमिटी की रिपोर्ट दिनांक 26.09.2016 के क्रम में न्यूनतम निविदादाता से निगोशिएशन के आधार पर वर्ष 2016-17 की शेष अवधि (विशेष परिस्थितियों में अनुबन्ध की शर्त सख्या-31 के अन्तर्गत यह अवधि आगामी तीन माह के बढ़ाये जाने के प्रतिफल सहित) तक के लिए निम्नविवरण के अनुसार दरों पर ठेकेदार नियुक्त किया जाता है। यह आदेश तत्काल प्रभाव से प्रभावी होगा तथा सम्बन्धित ठेकेदार को आयुक्त, खाद्य तथा रसद विभाग, उत्तर प्रदेश, लखनऊ के पत्रांक 2547/मु0वि0अ0/है0परि0/2015 दिनांक 02.06.2016 एवं पत्रांक 3906/आ0पू0रा0-डो0स्टे0डिली0-153/2009 दिनांक 25.07.2016 के द्वारा निर्गत आदेश के अनुसार डोर स्टेप डिलीवरी का कार्य (डोर स्टेप डिलीवरी लागू होने की स्थिति में) करना होगा।

क्र० सं०	जनपद का नाम	केन्द्र का नाम	न्यूनतम निविदादाता का नाम	नैगोशिएशन के उपरान्त डोर स्टेप डिलीवरी लागू नहीं होने की स्थिति में परिवहन एवं हैण्डलिंग कार्य की दर	नैगोशिएशन के उपरान्त डोर स्टेप डिलीवरी लागू होने पर दर (प्रति कु०)	परिवहन कार्य की दर	हैण्डलिंग कार्य की दर	डोर स्टेप डिलीवरी कार्य की दर (उत्तराई, धराई सहित)	योग
1	फिरोजाबाद	फिरोजाबाद	मै० मुकेश कुमार ठेकेदार, मैनपुरी	वर्ष 2015-16 की स्वीकृत दरों पर परिवहन कार्य (जिलाधिकारी दर से 15 प्रतिशत अधिक पर) एवं नियमित हैण्डलिंग, स्थानीय परिवहन कार्य (शिड्यूल दर से 220 प्रतिशत अधिक पर)	32-61 (प्रति कु०)	7-71 (प्रति कु०)	20 (प्रति कु०)	60-32 (प्रति कु०)	

उपरोक्त नियुक्त ठेकेदार सम्बन्धित केन्द्र/ब्लॉक पर अविलम्ब योगदान रिपोर्ट प्रेषित करते हुए, निर्धारित स्टाम्प पेपर पर अनुबन्ध एवं जमानत की कार्यवाही सम्बन्धित केन्द्र प्रभारी एवं जिला खाद्य विपणन अधिकारी, फिरोजाबाद के माध्यम से इस आदेश के जारी होने के 07 दिन के अन्तर्गत पूर्ण कराकर इस कार्यालय को उपलब्ध कराएंगे। यदि उक्त कार्यवाही निर्धारित अवधि के अन्दर पूर्ण नहीं की जाती है, तो यह समझा जायेगा कि वे कार्य करने की इच्छुक नहीं हैं और उनका ठेका निरस्त करते हुए टेण्डर के साथ ली गयी धरोहर धनराशि को सरकार के पक्ष में जमा करते हुए अन्य ठेकेदार को नियुक्ति कर ली जायेगी। इसके अतिरिक्त अन्य कार्यवाही भी की जा सकती है।

अनुबन्ध एवं जमानत की कार्यवाही को निम्न प्रकार पूर्ण किया जाना है:-

1- आयुक्त, खाद्य तथा रसद विभाग, उत्तर प्रदेश, लखनऊ के पत्रांक 2320/मु0वि0अ0/है0परि0/1/2006 दिनांक 13.06.2007 के अनुसार सम्बन्धित ठेकेदार को परिवहन एवं हैण्डलिंग कार्य हेतु अलग-अलग जमानत धनराशि के रूप में अनुमानित कार्य का 10 प्रतिशत की दर से राष्ट्रीयकृत बैंक की गारन्टी/एफ0डी0आर0/राष्ट्रीय बचत पत्र जो सम्भागीय खाद्य नियंत्रक, आगरा के पदनाम से बन्धक होगी, जमा करना होगा।

क्रमशः 02 पर

On the basis of the above, he argued that service tax has been demanded from the appellant by classifying the services under Cargo Handling Services as the appellant was also undertaking work of handling and door step delivery-road handling of cargo. I

do not find any merits in the said argument for the simple reason that even the impugned order do not make any such bifurcation with regards to transportation and handling charges. Impugned order of the lower authority has taken the entire consideration and demanded service tax, Order-in-Original do not specify the category of service and the impugned order demands service tax on the entire value under the category of Cargo Handling Services, the fallacy of above part is self evident for the same. In case of Sushil & Company [2016 (42) STR 625 (SC)] Hon'ble Supreme Court has held as follows:

5. Coming to the issue as to whether the contract in question, whereby labour is supplied by the respondent to M/s. Birla Corporation Ltd., could be treated as 'Cargo Handling Service' within the meaning of Entry 23 of Section 65 of the Act. This Entry reads as under :-

" 'Cargo Handling Service' means loading, unloading, packing or unpacking of cargo and includes cargo handling services provided for freight in special containers or for no containerized freight, services provided by a containers freight terminal, for all mode of transport and cargo handling service incident to freight, but does not include handling of export cargo or passenger baggage or mere transportation of goods."

6. The High Court, on the interpretation of the aforesaid Entry, has observed that two conditions for considering any service to be 'Cargo Handling Service' need to be satisfied, namely; (1) 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; (2)

the service provider must independently be involved in loading-unloading or packing-unpacking of the cargo.

7. The aforesaid meaning given by the High Court while interpreting Entry 23 of Section 65 is perfectly in order and justified. On that basis, we have to see whether the twin conditions mentioned therein are satisfied in the present case or not.

8. We find from the record that in the instant case, as per the contract entered into between the respondent and the customer, namely, M/s. Birla Corporation Ltd., the respondent was to supply manpower for working at the packing plant as per the customer's requirement. The contractor-respondent was to ensure that manpower deployed on the work given by customer's officers is executed properly, diligently, uninterruptedly and to the satisfaction of the customer in the factory premises of its works.

9. It is significant to note that no part of loading or unloading was assigned to the workers of the respondent-assessee upto transportation of the cement bags out of the factory. This work was, in fact, been performed by the automatic machines. It is through these automatic machines, the cement bags were loaded, unloaded, packed or unpacked and this included Cargo Handling Services provided for freight in special containers or for non-containerized 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.

10. On the reading of the aforesaid contract, coupled with the statement of Mr. Kailash Sharma, an officer of the respondent-Company, the High Court has rightly concluded that the aforesaid services would not fall within the definition of 'Cargo Handling Services'.

11. 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 handling 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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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 liable 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.”

The aforesaid clarification given by the Department itself negates the case of the Department insofar as the facts of this case are concerned.

In view of the above, I do not find any merits in this argument also.

4.6 Even otherwise, I find that services of loading/unloading, handling of agricultural products has been kept under negative list as per Section 66D(p)(v) of the Finance Act, 1994 and is exempt from payment of service tax as per Sl. No.21 of Notification No.25/2012-ST dated 20.06.2012.

4.7 Thus, I do not find any merits in the demand made by invoking the extended period of limitation in the present case.

4.8 Impugned order is set aside alongwith interest and penalties imposed on the appellant.

5.1 Appeal is allowed.

(Dictated and pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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