CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 1780 of 2010

(Arising out of Order-in-Appeal No. 10 to 12/2010 Service Tax dated 03.05.2010 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Cochin.)

Sivasakthi Engineering & Fabricators,
Poolampara, Walayar,
Post Palakkad – 678 624.
Appellant(s)

VERSUS

The Commissioner of Central Excise, Customs and Service Tax,
C.R. Building, Mananchira,
Post Calicut – 673 001.
Respondent(s)

APPEARANCE:

Shri. Aryaman Ghulati, Advocate for the Appellant

Shri K. Vishwanatha, Authorised Representative for the Respondent

CORAM: HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20417 / 2024

DATE OF HEARING: 07.03.2024
DATE OF DECISION: 20.05.2024

PER : R. BHAGYA DEVI

The appellant, M/s. Sivasakthi Engineering and Fabricators, aggrieved by the impugned Order-in-Appeal No. 10-12/2010 Service Tax dated 03.05.2010, have filed this appeal.

2. Briefly stated the facts of the case are that the appellants are manufacturers and suppliers of Pre-Stressed Concrete Poles (PSC Poles) for the Kerala State Electricity Board (KSEB). The transportation of the PSC Poles were made on the basis of purchase orders placed by KSEB. The appellant arranges the

transport of these poles to various destinations as directed by their consignee KSEB. The appellants were availing the facility of vehicles from another person and ensured that the goods were transported to the respective destinations, thus acting as an agent of the consignee (KSEB). The Commissioner (Appeals) referring to Section 65(50b), definition of 'Goods Transport Agency' held that the above service provided in relation to transportation of goods is a taxable service and they are liable to pay the Service Tax. Accordingly, upheld the demand of Service Tax with reduction of penalties.

3. The Learned Counsel referring to the definition of Section 65(50b), which reads as *"goods transport agency" means any commercial concern which provides service in relation to transport of goods by road and issues consignment note, by whatever name called",* submits that from 01.05.2006 ,the words 'commercial concern which' was substituted by the words 'any person who'. It is his claim that prior to 01.05.2006, services provided only by a commercial concern were taxable and post 01.05.2006, services provided by any person were liable to tax.

3.1 It is further submitted that the statutory provisions provide that both the conditions namely, transport of goods and the issue of consignment note must be satisfied. Rule 4B of Service Tax Rules, 1994 which was inserted from 01.01.2005, it is mandatory for every GTA to issue a consignment note. The consignment note is defined as:

> *"consignment note" means a document, issued by a goods transport agency against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered, and contains the names of the consignor and consignee, registration number of the goods carriage in which the goods are transported, details of the goods transported, details of the place of origin and destination, person liable for paying service tax whether consignor, consignee or the goods transport agency."*

3.2 Further, he submits that w.e.f. 16.05.2008, Section 65(105)(zzp) defined *"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*." In view of the above definitions, the learned counsel submits that mere transportation of goods does not make them liable to Service Tax as a GTA. He also submits that the issue is no more *res integra* and the same is covered by the decision of this Hon'ble Tribunal in the following cases:

- M/s. Nandganj Sihori Sugar Co. v. CCE 2014 (5) TMI 138 – CESTAT New Delhi;
- CCE v. Jaikumar Fulchand: 2016 (10) TMI 42 - CESTAT Mumbai;
- South Eastern Coal Fields v. CCE 2016 (8) TMI 677 – CESTAT New Delhi;
- Ultratech Cement Ltd. v. CCE 2017 (11) TMI 297 – CESTAT Mumbai;
- Om Telecom Logistics Service v. CST: 2018 (4) TMI 723 – CESTAT New Delhi;
- Dinshaws Diary Foods v. CCE 2018 (4) TMI 912 – CESTAT Mumbai;
- Carris Pipes and Tubes Pvt. Ltd. v. CCE 2018 (7) TMI 24 – CESTAT Chennai;
- Lakshminarayan Mining Co. v. CCT: 2019 (7) TMI 917 – CESTAT Bangalore;

4. The Authorized Representative (AR) relying on amended definition of 'Goods Transport Agency' as per Notification No.35/2004-ST dated 03.12.2004 'any person who pays or is liable to pay a freight either himself or through his agent for the transportation of such goods by road in a goods carriage', submits that since the appellant has arranged for transportation and collected the freight charges from the consignee, he is liable to pay Service Tax under GTA. He also relies on the following decision:

- Sree Balaji Transport vs. Commissioner of Cus. C.Ex. and ST, Tirupathi: 2015 (38) STR 651 (Tri.-Bang.)
- S.V.R. Electricals (P) Ltd. vs. Commissioner of Customs and C. Ex. Guntur: 2016 (43) STR 574 (Tri.-Hyd.)
- Coromandel Agro Products and Oils Ltd. Vs. Commissioner of C.EX. Guntur: 2014 (33) STR 660 (Tri.-Bang.)

- M.L. Agro Products Ltd. Vs. Commissioner of Cus. C.Ex. and ST, Guntur 2017 (6) GSTL 94 (Tri-Hyd.)

5. Countering the above judgements, the counsel submits that in the case of **Sree Balaji Transport** (supra) the facts were entirely different, and with regard to the other decisions relied upon by the Revenue, the learned Counsel submits that the later decisions have categorically held that in the absence of consignment note, the services cannot be considered as GTA service and therefore, there is no liability of Service Tax.

6. Heard both sides. The period of dispute in the present case is 01.01.2005 to 30.06.2007 and during this period, the amended version of GTA is applicable. From the records and the facts as discussed by the Commissioner in the impugned order, it is an undisputed fact that the appellant was hiring vehicles from a third party so as to arrange the transportation of the PSC Poles to various destinations of the consignee. The waybills were generated by the appellant and raised fortnightly statements for getting payment from KSEB and no consignment note as such was issued. As and when the PSC Poles had to be transported, trucks were hired from various truck owners for transporting the poles and the freight charges were collected from their consignee i.e., KSEB.

6.1 In case of **M/s. Nandganj Sihori Sugar Co. v. CCE** (supra), the Tribunal after considering the amended definitions of the GTA has held as follows:

> *"6. ……………..While admittedly no consignment notes or GRs have been issued by the transports, according to the Department the Transporter's bills are in the nature of the consignment notes. Under Rule 4B of the Service Tax Rules, 1994, "any Goods Transport Agency which provide service in relation to transport of goods by road in a goods carriage shall issue a consignment note to the customer. In term of Explanation to Rule 4B, 'Consignment Note' means - a document issued by Goods Transport Agency against the receipt of goods for the purpose of its transport by road in a goods carriage, which is serially numbered and contains the name of consignor and consignee, registration number of the goods carriage in which goods are transported, details of goods*

transported, details of the place of origin and destination, person liable for paying Service Tax whether consignor, consignee or Goods Transport Agency. Thus mere transportation of the goods in a Motor Vehicle is not the service provided by a Goods Transport Agency. A Goods Transport Agency in terms of its definition under Section 65(50b) provides service in relation to transportation of goods under a consignment note which should have the particulars as prescribed in explanation to Rule 4B. In the present case admittedly no consignment notes have been issued. The fortnightly bills cannot be treated as consignment notes, as a consignment note issued by Goods Transport Agency represent its liability to transport the consignment handed over to it to the destination and deliver the same to the consignee and merely a bill issued for transportation of goods cannot be treated as Consignment Note".

6.2 In the case of Lakshminarayana Mining Company (supra), this Tribunal held that:

"8. *The service that is taxable is –*

> *'in relation to transport of goods by road and not transportation of goods by road. It is submitted that it is only such of those services which are in relation to transport of goods by road which are taxable and not the actual transport of goods by roads itself.'*

and in Section 65(50b) of Finance Act, 1994 goods transport agency envisages rendering of service by a person in relation to transport of goods by road and issue of a consignment note by whatever name called.

9. *From the above, it is clear that the tax liability will arise only upon the goods transport agency i.e., one who undertakes responsibility, in full legal sense, for the cargo despatched by it and an individual truck operator who does not accept such responsibility, is merely performing the activity of transport of goods which is not the subject of the tax. It is, of course, necessary to point out, from the history of the tax on this service, that the blanket intent to tax the operators led to widespread agitation and, conscious of the problems of implementation, the Central Government, upon reintroduction of the levy, restricted it to agencies."*

6.3 In the present case, admittedly vehicles were being hired by the appellant through a contract for transportation of the goods does not make them a Goods Transport Agency. Admittedly, no consignment notes were generated but fortnightly waybills were submitted by the appellant to their consignee for collecting the transport charges. In view of the above discussions and the decisions relied upon by the appellant, I am of the view that they cannot be considered as 'Goods Transport Agency', therefore, not liable to service tax.

7. In the result, the impugned order is set aside and the appeal is allowed.

(Order pronounced in Open Court on 20.05.2024.)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

rv