CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 305 of 2011

(Arising out of Order-in-Original No. 18/2010 dated 26.10.2010 passed by the Commissioner of Central Excise, Commissionerate, Mangalore.)

Mangalore Electricity Supply Company Ltd.,
Corporate Office, Paradigm Plaza,
3rd floor, A B shetty Circle,
Pandeshwara,
Mangalore – 575 001.

Appellant(s)

VERSUS

Commissioner, Central Excise, Commissionerate,
Trade Centre,
Bunts Hostel Road,
Mangalore – 575 003.

Respondent(s)

With

Service Tax Appeal No. 780 of 2011

(Arising out of Order-in-Original No. 1/2011 dated 28.01.2011 passed by the Commissioner of Central Excise, Commissionerate, Mangalore.)

Mangalore Electricity Supply Company Ltd.,
Corporate Office, Paradigm Plaza,
3rd floor, A B shetty Circle,
Pandeshwara,
Mangalore – 575 001.

Appellant(s)

VERSUS

Commissioner, Central Excise, Commissionerate,
Trade Centre,
Bunts Hostel Road,
Mangalore – 575 003.

Respondent(s)

APPEARANCE:

Mr. Anil Kumar, Advocate for the Appellant

Mr. M.A. Jithendra, Assistant Commissioner (AR) for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS R BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 21636-21637 /2025

DATE OF HEARING: 16.12.2024
DATE OF DECISION: 16.12.2024

PER : DR. D.M. MISRA

These two appeals are filed against the respective Orders-in-Original passed by Commissioner of Central Excise, Mangalore, since common issues are involved, taken up together for hearing and disposal.

2. Briefly stated the facts of the case are that the appellants were issued with show-cause notices, *inter alia*, demanding service tax of Rs.42,76,703/- and Rs.3,18,625/- on GTA service received by them during the period 01.01.2005 to 31.03.2010 with interest and penalty. On adjudication, the demands have been confirmed. Hence, the present appeals.

3.1. At the outset, the learned advocate for the appellant has submitted that the appellant is a Government company fully owned by Government of Karnataka. The activities of the appellant are governed as per Indian Electricity Act, 2003 and Karnataka Electricity Regulatory Commission's guidelines for their day-to-day functions. During the said period, they have received goods viz. electric poles transported by the seller in their own vehicle without raising any consignment note. Merely because the amounts have been mentioned towards transportation charges in their books of accounts cannot itself be a ground for confirming the tax on the value of freight and insurance charges under the taxable category of GTA Service. In support, they have referred to the letters issued by the vendors wherein it is mentioned that the vendors had supplied the materials to the appellant on their own vehicles and one of the vendors viz. M/s. Jyothi Electricals, Mangalore vide letter dated 29.09.2009 had categorically submitted that they were supplying the goods to the appellant in their own vehicles and collected transportation cost as per purchase orders. The invoice copy furnished by M/s. Jyothi Electricals in respect of supply of PCC/PSC/RCC poles to appellant contains therein transportation charges separately from the appellant. Appellant had reimbursed the transportation charges to the vendors in procuring the goods from them. He has submitted that merely because the transportation cost are shown separately in the invoices could not make the buyer of the goods liable to service tax under reverse charge mechanism basis. In support, they have referred to the following judgments:-

i. ***Satyam Syntcotex Pvt. Ltd. Vs. CCE, Jaipur-II*** [2017(3) GSTL 189 (Tri. Del.)]
ii. ***Sudarshan Suiz Pvt. Ltd. Vs. CCE, Jaipur-II [2017(52) STR*** 314 (Tri. Del.)]
iii. Sumangalam Suitings (I) Ltd. Vs. CCE, Jaipur-II [2010(19) STR 809 (Tri. Del.)]
iv. ***R.K. Gupta Vs. CCE, Raipur*** [2018(6) TMI 1434-CSTAT, NEW DELHI]

3.2. Further, the learned advocate has submitted that the basic requirement for levy of service tax in the present case has not been satisfied inasmuch as no consignment note has been issued for transportation of the goods by the vendors to the appellant; hence confirmation of demand of service tax under GTA service is bad in law. In support, they have referred the following judgments:-

i. ***South Eastern Coalfields Ltd. Vs. CCE, Raipur*** [2017(47) STR 93 (Tri. Del.)]
ii. ***Tata Power Company Ltd. Vs. CCE&ST, Jamshedupur*** [2024(10) TMI 1062-CESTAT KOLKATA]
iii. ***Northern Coal Field Ltd. Vs. CCE, Allahabad*** [2018(10) GSTL 350 (Tri. Bang.)]

iv. ***Shri Prabhingeshwar Sugars & Chemicals Ltd. Vs. CCE*** [2022(64) GSTL 350 (Tri. Bang.)]
v. ***Nandganj Sihori Sugar Co. Ltd. Vs. CCE, Lucknow*** [2014(34) STR 850 (Tri. Del.)]

3.3. Learned advocate further has submitted that extended period of limitation cannot be invoked in the present case when the appellant had discharged VAT on the entire transaction and the transportation cost incurred by them had been duly recorded in their books of accounts.

4. Learned AR for the Revenue has reiterated the findings of the learned Commissioner.

5. Heard both sides and perused the records.

6. The short question involved in the present appeal for consideration is whether service tax is payable on the amount of transportation charges billed by the vendors of the goods to the appellant for supply of the goods using their own vehicles.

7. Undisputedly, the appellant had received goods delivered as per the condition of purchase order by the vendors at the premises of the appellant. The appellant is purchasing goods from vendors on the basis of free on road delivery, wherein the ownership and the possession of the property in goods is transferred to the appellant only when the same are delivered at the warehouse / delivery point. There is no involvement of any Goods Transport Agency but the vendors themselves delivered the goods at the warehouse / delivery point of the appellant. The definition of 'Goods Transport Agency' (GTA) as was in force during the relevant period reads as:

Section 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;*

Rule 2(d) "person responsible for collecting the service tax" *means -*

> *(i) in relation to a telephone connection -*
>
> > *(a) the Director General of Posts and Telegraphs, referred to in clause (6) of section 3 of the Indian Telegraph Act, 1885 (13 of 1885); or*
> >
> > *(b) the Chairman-cum-Managing Director, Mahanagar Telephone Nigam Ltd., Delhi, a company registered under the Companies Act, 1956 (1 of 1956); or*
> >
> > *(c) any other person who has been granted a licence by the Central Government under the first proviso to sub-section (1) of section 4 of the Indian Telegraph Act, 1885 (13 of 1885);*
>
> *(ii) In relation to general insurance business, the insurer or re-insurer, as the case may be, providing such service;*
>
> *(iii) in relation to insurance auxiliary service by an insurance agent, any person carrying on the general insurance business or the life insurance business, as the case may be, in India;*
>
> *(iv) in relation to any taxable service provided or to be provided by any person.*

8. Since no Goods Transport Agency is involved in the transportation of goods to the appellant and no consignment note has been issued for transportation of the goods by the vendors to the appellant, therefore, the demand of service tax from the appellant who reimbursed the transportation cost mentioned in the invoice of the vendors cannot be sustained. This view has been consistently held by the Tribunal in series of cases included the one ***R.K. Gupta Vs. CCE, Raipur*** [2018(6) TMI 1434- CESTAT NEW DELHI], wherein it is observed as follows:-

> *5.1.2 Section 65 (50b) explains Goods Transport Agency to mean any person who provides service in relation to transport of goods by road and issues consignment note by whatever name called. No doubt the words, person was "commercial concern" prior to 1st May, 2006 but this amendment is not meant to*

> *include any individual "person" who is transporting some goods for another individual. We draw our support from the definition itself were the word "agency' still continues. It clarifies that a person to render goods transport service should be an agency meant exclusively for providing goods transport service by whatever means and for the purpose, he should be issuing a consignment note. None of the criteria is met by the appellant in the present case. We are of the firm opinion that the order under challenge qua confirming GTA Service Tax liability is not sustainable. The argument of ld. DR that the charges of rate are shown separately in the invoice are of no relevance for the purpose in view of the apparent fact that the amount of money paid by the appellant was the price for the Gitti purchased by them, that too on FOR basis, for the said Gitti to be delivered from the site of purchase to the site of the appellant. Irrespective freight is shown separately in the invoice, the same cannot be considered as equivalent to the consignment note, which is the mandatory requirement of Section 65 (50b).*
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> *5.1.3 Applying the ratio of the case Nandganj Sihori Sugar Co. Ltd. vs. CCE, Lucknow – 2014 (34) STR 850 (Tri. Del.), we hold that the appellant M/s.R.K.Gupta was not rendering Goods Transport Agency Services and we hereby drop the impugned demand qua GTA services.*

9. In view of the aforesaid precedent, we do not see any merit in the said impugned orders. Consequently, the same are aside and the appeals are allowed with consequential relief, if any, as per law.

(Operative part of this Order was pronounced in Open Court on conclusion of the hearing.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R BHAGYA DEVI)
MEMBER (TECHNICAL)

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