

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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 944 of 2009

(Arising out of Order-in-Original No. 16/2009 dated 01/09/2009 passed by the
Commissioner of Central Excise and Customs, Belgaum)

Doddanavar Brother (EOU Division), Hiremagi Ramtal, Post: Amingad, Taluk: Hungund, Bagalkot Karnataka	Appellant
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VERSUS

Commissioner of Central Excise, Customs and Service Tax, Belgaum No. 71, Club Road, Central Excise Building, Belgaum - 590 001 Karnataka	Respondent
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WITH

Service Tax Appeal No. 945 of 2009

(Arising out of Order-in-Original No. 17/2009 dated 01/09/2009 passed by the
Commissioner of Central Excise, Customs and Service Tax, Belgaum)

Doddanavar Brother (EOU Division), Hiremagi Ramtal , Post: Amingad, Taluk: Hungund, Bagalkot Karnataka	Appellant
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Commissioner of Central Excise, Customs and Service Tax, Belgaum No. 71, Club Road, Central Excise Building, Belgaum - 590 001 Karnataka	Respondent
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APPEARANCE:

Mr. Ashok A. Deshpande, Advocate

For the Appellants

Mr. P. Gopakumar, Additional
Commissioner (AR)

For the Respondent

CORAM:**HON'BLE MR. ASHOK JINDAL, JUDICIAL MEMBER****HON'BLE MR. C. J. MATHEW, TECHNICAL MEMBER****Final Order Nos. 20082 - 20083 / 2022**

Date of Hearing: 03/03/2022

Date of Decision: 03/03/2022

Per : ASHOK JINDAL

The appellant has filed these appeals against the impugned orders demanding service tax under the category of 'Goods Transport Agency Services'.

2. The brief facts of the case are that the appellant is a partnership firm and engaged in mining activities. The appellant has been availing the services of Goods Transport for transport of iron ore by road in a goods carrier. The Revenue is of the view that appellant has availed the services of transport of goods but have not paid service tax being recipient of the service, therefore for the period 20/02/2005 to March 2006, two show-cause notices were issued to demand service tax under the category of 'Goods Transport Agency Service'. The matter was adjudicated and demand of service tax was confirmed. Against the said orders, appellant is before us.

3. The learned counsel for the appellant submits that in their own case for the earlier period reported in **2020-TIOL-103-CESTAT-BANG.**, this Tribunal has dropped the demand following the decision in the case of **Lakshminarayana Mining Company** reported in **2019-TIOL-1833-CESTAT-BANG.** Therefore, impugned orders are to be set aside.

4. On the other hand the learned AR supported the impugned orders.

5. Heard the parties. Considering the fact that in the appellant's own case for the earlier period this Tribunal has observed as under:

"6. After considering the submissions of both the parties and perusal of the material on record, we find that the appellants have availed the transport services for transporting their minerals from transport owners/operators. Further, we find that in the present case, the Revenue has not been able to establish that the consignment note was issued by Goods Transport Agency. Though, the Commissioner (A) in the impugned order has mentioned that consignment note was issued. Here it is pertinent to provide definition of 'Goods Transport Agency' as provided in Section 65(50b) and of the 'taxable service' as provided in Section 65(105)(zzp):

....."(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;].....

(105) (zzp) "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;

6.1. If we see the definition of "Goods Transport Agency", it clearly shows that the services must be provided by a person in relation to transport of goods by road and issues consignment note, "by whatever name called" whereas in the present case, we find that no consignment note was issued. Further, we find that this Tribunal in identical facts has held in the case of Lakshminarayana Mining Co. cited supra wherein the Tribunal in Para 7 to 12 has held as under:

7. Having heard the rival submissions, we take note that this issue has come up before the Tribunal time and again. In a catena of decisions such as Commissioner of Central Excise, Guntur vs. Kanaka Durga Agro Oil Products Pvt. Ltd. [2009 (15) STR 399 (Tri.-Bang.)] =[2009-TIOL-1123-CESTAT-BANG](#) followed in Shreenath Mhaskoba Sakhar Karkhana Ltd vs. Commissioner of Central Excise, Pune –III [2017 (3) GSTL 199 (Tri.-Mumbai)] and in Commissioner of Central Excise and Service Tax, Aurangabad vs. Jaikumar Fulchand Ajmera [2017 (48) STR 52 (Tri.-Mumbai)] =[2016-TIOL-2566-CESTAT-MUM](#) the issue stands settled with detailed orders. In re Jaikumar Fulchand Ajmera, it was held that:

"4. Our decision In Re: Kanaka Durga Oil Products Ltd. has excluded the individual truck owner from the purview of the tax in Section 65(105)(zzp) of Finance Act, 1994. We have perused the definition of "goods transport agency" in Section 65 (50b) of Finance Act, 1994 and find that an essential characteristic of provider of the service is the issuance of a consignment note. Revenue has resorted to a circular logic by claiming that Rule 4B of Service Tax Rules, 2004 requires the goods transport agency to issue a consignment note. This, according to us, is a specious line of reasoning as the provider of "goods transport agency" service being determined by issuance of consignment note under the statute, it is not within the ambit of a subordinate legislation to create the class of taxable persons by imposing a condition that would, perforce, bring such persons within the tax net. The intent and purpose of Rule 4B has been misinterpreted by the reviewing

authority.

5. The goods transported by the District Supply Officer are for a public service which involves a distribution chain. The distributors are mere designated outlets for the public distribution system and, till the transfer of title of the goods to the intended beneficiaries of the system, the goods are in the possession of the District Supply Officer; consequently, during the transportation stage, the respondent does not acquire any lien on the goods which is implicit in the issue of a consignment note. Therefore, no stretch of imagination can document issued by District Supply Officer conveying the goods transported be construed as a consignment note to render the respondent to be a 'goods transport agency.' The demand of tax therefore, fails."

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.

10. It is clear from the records that the invoices that have been relied upon by the adjudicating authority includes addition of service tax component as well as subtraction of the same. It was, therefore, not relevant to the findings in the adjudication order that these were indication of acceptance of tax liability. Furthermore, the reference to goods consignment number in the 'trip sheet' does not constitute the issue of 'goods consignment note' which is essential pre-requisite for taxation of the service.

11. In the light of the above, it would appear that the activity performed for the appellant by transporters falls outside the ambit of section 65(105) (zzp) of Finance Act, 1994 and is not taxable in their hands.

12. For the above reason, we set aside the impugned order and allow the appeal."

6.2 Further, in the case of Bhima Sahakari Sakhar Karkhana Ltd. cited supra, the Tribunal in Para 7 & 8 has held as under:

"7. On deeper perusal of the records, we find that appellant has been taking a stand that the amounts paid by them as inward freight was paid to owners of individual trucks and not to Goods Transport Agency. It is seen from the records this stand of the appellant is not controverted by Revenue in any way as also the stand that no consignment note is issued by truck owners. We agree to the submission made by the learned Counsel that the issue is now squarely covered by the recent judgment of the Tribunal in the case Nandganj Sihori Sugar Co. Ltd. (supra). We respectfully reproduce the relevant paragraph.

"6. In terms of Section 65(105)(zzp), the taxable service means "any service provided to a customer, by a Goods Transport Agency, in relation to transport of goods by road in a goods carriage. "In terms of Section 65 (50a) *ibid* 'Goods Carriage' has the meaning assigned to it in clause (14) of Section 2 of the Motor Vehicles Act, 1988. In terms of

Section 65 (50b), '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. The Service Tax has been demanded from the Appellants as service recipient under Rule 2(l) (d) (v) of the Service Tax Act, 1994 read with Notification No.35/2004-S.T.,dated 3-12-2004, on the payments made by them to transporters against the fortnightly bills being presented by them. 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 provides 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. The fact of non-issue of consignment to M/s. Nandganj is admitted in the show cause notice itself. In case of M/s. Bajpur though it is not mentioned in the show cause notice, this plea has been made by the Appellant and the same has not been refuted. The transportation of goods by individual truck owners without issue of

consignment note, GR's abilities, etc. as prescribed in Rule 4B of the Service Tax Rules, would be simple transportation and not the service of Goods Transport Agency which involves not only undertaking the transportation of the goods handed over to it but also undertaking delivery of the goods to the consignee and also temporary storage of the goods till delivery. When the transporters did not issue consignment notes or GRs or Challans or any documents containing the particulars as prescribed in Explanation to Rule 4B of the Service Tax Rules, 1994, the Transporters cannot be called "Goods Transport Agency" and, hence, in these cases, the service of transportation of sugarcane provided by the transporters would not be covered by Section 65(105)(zzp). In view of this we hold that there will be no Service Tax liability on the appellant sugarcane mills, as they have not received the service from a Goods Transport Agency. In view of this the impugned orders are not sustainable and the same are set aside. The appeals filed by M/s. Nandganj and M/s. Bajpur are allowed. As regards the Revenue's appeal, since it has been held that there is no Service Tax liability of the Appellants, there would be no merit in it and the same is dismissed."

8. In view of the facts and circumstances of this case and the authoritative pronouncement of the Tribunal, we hold that the impugned order is unsustainable and liable to be set aside and we do so.

6.3. Further, in the case of South Eastern Coalfields Ltd. cited supra, the Division Bench of this Tribunal, after considering the definition of 'Goods Transport Agency' as provided in Section 65(50b) and after considering the various decisions given by the Tribunal, has allowed the appeal of the assessee by holding that the tax liability under 'Goods Transport Agency' service cannot be sustained. It is pertinent to refer Para 7, 8 & 9 of the judgment which is reproduced herein below:

"7. The matter has come up for decisions on earlier occasions by the Tribunal in Nandganj Sihori Sugar Co. Ltd. and Others v. C.C.E, Lucknow - 2014 (34) S.T.R. 850 (Tri.-Del.), it was held that the Goods Transport Agency in terms of its definition under Section 65(50b) provides services in relation to transportation of goods and issues consignment note which should have particulars as prescribed in Explanation to Rule 4B.

8. In cases where admittedly no consignment notes have been issued, the said transporter cannot be called Goods Transport Agency. In Birla Ready-mix – 2013 (30) S.T.R. 99 (Tri.-Del.)=[2012-TIOL-2200-CESTAT-DEL](#), it was held that the provisions of the Act has to prevail and the definition at Section 65(50b) has to be understood independent of Rule 4B of the Service Tax Rules, 1994 to decide whether the person concerned is a goods transport agency.

9. In Northern Coalfields Limited v. C.C.E., Bhopal vide Final Order No. 53313/2015, dated 29-10-2015, an identical situation was examined by the Tribunal. There also, the payment slips were generated by the service recipient containing relevant particulars like truck number, weight, etc., for monitoring and paying contractors for their service. No consignment notes were issued by the transporter. The Tribunal held that as no consignment note as generally understood or delineated in Rule 4B was issued by the transporter to the appellant in the transaction the tax liability under GTA does not arise.

6.4. Further, we find that the other decisions relied upon by the appellant are also covering the issue in favour of the appellant. As far as limitation is concerned, we find that the extended period has wrongly been invoked in the present case because the appellant has not suppressed the material fact from the Department as the Department was aware of all the information and moreover, the issue was highly contentious and there were contrary decisions during the relevant time and the appellant had a bona fide belief that they are

not liable to pay Service Tax as they have engaged the truck operators for carrying their goods by road. Further, we find that the case law relied upon by the Departmental Representative are not squarely applicable to the facts of the present case and are distinguishable on facts and decisions relied upon by the DR does not elaborately discuss the issue of consignment note which is essential for falling under the definition of 'Goods Transport Agency'.

7. In view of the ratio of decisions of the various cases cited supra, we are of the considered view that the impugned order is not sustainable in law and therefore, we set aside the same by allowing the appeal of the appellant on merit as well as on limitation.”

as the issue has already been decided in appellant’s own case for the earlier period in favour of the appellant, therefore, we hold that demand of service tax is not sustainable against the appellant.

6. Accordingly, the impugned orders are set aside and the appeals are allowed with consequential relief, if any.

(Operative portion of the order was pronounced
in the open court on **03/03/2022**)

(ASHOK JINDAL)
JUDICIAL MEMBER

(C. J. MATHEW)
TECHNICAL MEMBER

