CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 784 of 2009

[Arising out of Order-in-Appeal No. 239/2009 dated 18/06/2009 passed by CCE(Appeals), Mangalore]

Shri Prabhulingeshwar Sugars & Chemicals Ltd.,
Siddapur Post, Jamakhandi Taluk
BAGALKOT
KARNATAKA
581329

Appellant(s)

VERSUS

C.C.,C.E.& S.T-Belgaum
NO. 71...CLUB ROAD,
CENTRAL EXCISE BUILDING,
BELGAUM,
KARNATAKA
590001

Respondent(s)

Appearance:

Shri N. Anand, Advocate For the Appellant

Smt. C.V. Savitha, Superintendent(AR) for the Respondent

CORAM:
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER
HON'BLE MR. P DINESHA, JUDICIAL MEMBER

Final Order No: 20139 / 2022

Date of Hearing: 16/02/2022
Date of Decision: 30/03/2022

Per : P DINESHA

The facts leading to the present dispute, as could be gathered from the impugned Order-in-Appeal as well as the arguments addressed during the course of hearing, are that the appellant is a manufacturer of sugar and also registered as service receivers under Goods Transport Agency (GTA) service. A show-cause notice was issued covering the period 01/01/2005 to 31/05/2006 on the ground that the appellant though had paid freight, but had not paid the service tax of Rs.37,26,463/- for the transportation of sugarcane from the field to the factory; the appellant rebutted the proposed demand by contending that the same was in the first place time-barred, secondly the tractor with trailer which was used for transportation belonged to farmers, the same was not a commercial vehicle and that the farmers were not the Goods Transport Agency. In the adjudication, however, the adjudicating authority confirmed the demand along with applicable interest and penalties also, against which the appellant preferred an appeal before the First Appellate Authority and the First Appellate Authority, vide the impugned Order-in-Appeal, rejected the appellant's appeal insofar as demand was concerned but, however, granted relief only to the extent of penalties imposed under Sections 76 and 77 of the Finance Act, 1994, against which the present appeal has been filed before this forum.

2. Heard Shri N. Anand, learned advocate for the appellant and Smt. C.V. Savitha, learned Superintendent(AR) for the Revenue.

3. The contentions of the learned advocate are that the appellant had procured

sugarcane from farmers / agriculturists who have transported sugarcane from their fields to the factory of the appellant using their own tractors and the appellant had only reimbursed the cost of transportation. The appellant had not issued any consignment note and also that there was no transport agency services engaged or received by the appellant and hence, they would not fall under GTA. He would further submit that since it was the farmers who transported the sugarcane from their fields to the factory, there was no consignor or consignee and hence, issuing the consignment note would not arise and hence the scope of the definition in Section 65(105)(zzp) read with Section 65(50a)/(50b) *ibid.* would not apply. He has also relied on the following judicial pronouncements:-

i. Shreenath Mhaskaba Sakhar Karkhana Ltd. Vs. CCE [2017(3) GSTL 169 (Tri. Mum.)]
ii. Nandganj Sihori Sugar Co. Ltd. Vs. CCE [2014(34) STR 850 (Tri. Del.)]
iii. Bhima Sahakari Sakhar Karkhana Ltd. Vs. CCE [2016(41) STR 438 (Tri. Mum.)]
iv. Lakshminarayana Mining Co. Vs. CCE [2019(27) GSTL 745 (Tri. Bang.)]
v. CCE Vs. JWC Logistics Pvt. Ltd. [2019(22) GSTL 237 (Tri. Mum.)]
vi. Doddanavar Brothers Vs. CCE [2017-TIOL-103-CESTAT-BANG]
vii. Ninanidevi SSK Ltd. Vs. CCE [2017-TIOL-375-CESTAT-MUM]
viii. Shri Chhatrapati SSK Ltd. Vs. CCE [2016-TIOL-2483-CESTAT-MUM]
ix. Saswad Mali Sugar Factory Ltd. Vs. CCE [2017-TIOL-606-CESTAT-MUM]
x. CCE Vs. Kisan Sahkari Chini Mills Ltd. [2018-TIOL-966-CESTAT-DEL]

3. *Per contra*, Smt. C.V. Savitha, learned Superintendent(AR) while supporting the findings of the learned lower authorities, also relied the judgment of Hon'ble Allahabad High Court in the case of CCE, Lucknow Vs. Kisan Sahkari Chini Mills Ltd. [2019(29) GSTL 292 (All.)].

4. Having heard both sides and perused the orders / judgments relied on before us, we find that the appellant has contested both on merits as well as on invoking the larger period and that the Revenue has failed to justify the demand raised against the appellant.

5.1. In the case of Lakshminarayana Mining Co. (supra), the following issue was considered:-

> ***5.*** *The core issue, as concurred with by both sides, is the taxability of the consideration paid by the appellant for utilization of lorries for transportation of 'iron ore' from their mines to the port of export at New Mangalore. It is the claim of the Learned Counsel for the appellant that the trucks are hired by themselves and the 'iron ore' for export are loaded on to them for carrying to the port of export. He contends that there is no agency function involved as the goods are loaded on vehicles hired by them and, hence, there is no third party involved. He further contends, after taking us through the narrative of the history of taxation of 'goods transport' under Finance Act, 1994, that it was not*

the intent of the Government to tax 'goods transport operators' but that the tax leviability was to devolve on agencies that perform the function of acceptance of cargo for transport under consignment notes.

5.2. The learned Bench after considering other orders of various Benches, concluded as under:-

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.*

Moreover, we find that more or less similar views have been expressed by other Benches in the orders relied upon by the learned advocate.

5.3. In the decision rendered by Hon'ble High Court of Allahabad High Court in the case of Kisan Sahkari Chini Mills Ltd. (supra) which was relied upon by the learned AR, facts as noted by the Hon'ble High Court are as under:-

> *"… … …*
>
> *4. Facts in brief giving rise to present appeal are that appellants, M/s. Kisan Sahkari Chini Mills Ltd., having its unit at Sampurnanagar, District Lakhimpur Kheri, and Satha, District Aligarh (hereinafter referred to as the*

> *"assessee 1 and assessee 2" respectively and jointly as "assessees") are engaged in manufacture of cane sugar and molasses. They are procuring sugarcane from farmers who deliver same at "Cane Collection Centers" set up by assessees.* ***From "Cane Collection Centers", sugarcane is transferred to sugar mills by individual truck owners who charge for transportation of sugarcane by presenting bills, fortnightly.*** *The authorities of Central Excise took a view that assessees being recipient of transportation service, are required to discharge service tax liability hence initiated proceedings. Authorities took the view that assessees are "Cooperative Societies" and comes within the term "person liable to pay service tax" on "services of goods transport agency" availed by them for transportation of sugarcane and other material to factory premises.*
>
> *.. … …"*
>
> *(emphasis supplied by me, in bold)*

and the substantial question of law which was admitted, reads as under:-

> *"Whether the "person" specified under rule 2(1)(d)(v) of the Service Tax Rules, 1994 read with Section 65(50b) of Finance Act, 1994 are liable to pay "service tax" or not?"*

5.4. The Hon'ble High Court after analysing the relevant provisions, has observed as under:-

> *" **12.** Therefore, a Goods Transport Agency, i.e., a person who provided service in relation to transport of goods by road and issues consignment note (by whatever name called) when render such service to any cooperative society established by or under any law; or company formed or registered under the Companies Act, 1956; or any body corporate established by or under any law; (or other category or persons detailed in clause (v) of Rule 2(d), which we do not find applicable in the case in hand), would be liable to pay service tax.*
>
> ***13.** In the present case, transporters transferring sugarcane from Cane Collection Centers to sugar mills and presenting bills for such service, in our view, squarely satisfy the requirement of Rule 2(d)(v) read with Section 65(50b) of Finance Act, 1994. We reiterate that transporters in the present case are clearly covered by the definition of "Goods Transport Agency" hence assessees are liable to pay service tax being within the definition of "person liable to pay service tax" under Rule 2(d)(v). … … … …"*

5.5. The only factual difference between the decision of the Hon'ble Allahabad High Court and the case on hand are, as noted by the Hon'ble High Court, that the sugarcane was transferred to sugar mills by individual truck owners who would charge for such transportation, by presenting bills fortnightly, whereas, here in the case on hand, the agriculturists themselves are transporting the sugarcane to the factory of the appellant and hence, there was no service rendered "in relation to" transportation of goods by road in a goods carriage. This is because, there was actual transportation and not in relation to, as observed in the order of this Bench in Lakshminarayana Mining Co. (supra).

6. In view of the above, we are of the view that the impugned demand as sustained in the impugned Order-in-Appeal cannot sustain and hence, the impugned order is set aside and the appeal is allowed with consequential benefits, if any, as per law.

(Order pronounced in the

Open Court on **30/03/2022**)

(P. ANJANI KUMAR)
TECHNICAL MEMBER

(P DINESHA)
JUDICIAL MEMBER

Raja...