IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

Appeal No. ST/00044/2011

(Arising out of Order-in-Appeal No. 97/2010- ST dated 26.10.2010 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore)

M/s. Carris Pipes and Tubes Pvt. Ltd. : Appellant

Vs.

Commissioner of Central Excise, Coimbatore III Division : Respondent

Appearance:-

Shri Thomas Tony, Consultant
for the Appellant

Shri B. Balamurugan, AC (AR)
for the Respondent

CORAM:

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing/Decision:**25.06.2018**

Final Order No. 41890 / 2018

Per Bench,

Brief facts are that the appellants are engaged in the manufacture of water storage tanks. It was noticed that they had incurred freight charges for transport of their goods, but had not paid the service tax. Show Cause Notice was issued proposing to demand service tax along with interest and also for imposing penalties. After due process of law, the original authority confirmed the demand along with interest and also imposed penalty under Section 76, 77 and 78 of the Finance Act, 1994. In appeal, the Commissioner (Appeals) upheld the same. Hence, this appeal.

2. On behalf of the appellant, the learned Consultant, Shri Thomas Tony, submitted that the appellant had availed services of individual truck owners and these truck owners had not issued any consignment notes. The period involved being from 01.05.2006 to 10.08.2009, the services availed by the appellant would not fall within the definition of Goods Transport Agency. He submitted that as per Section 65(50b), Goods Transport Agency means any person who provides service in relation to transport of goods by road and issues consignment notes, by whatever name called. In the present case, the appellant had utilized the services of local truck owners who did not have the practice of issuing consignment notes. The Department has relied upon vouchers for payment of freight charges. These vouchers are not issued by the truck owners and are prepared by the appellant for the purpose of paying the freight charges only. This document does not contain the details of the goods carried or is not a document evidencing the receipt of goods by the consignee. In essence, the document is not a consignment note. The appellant had consistently contended that the services availed by them for the relevant period would not attract goods transport agency

services. He relied upon the decision in the case of *South Eastern Coalfields Ltd. Vs. Commissioner of C. Ex., Raipur – 2017 (47) S.T.R. 93 (Tri.-Del.)*

3. The learned AR, Shri B. Balamurugan, supported the findings in the impugned order. He adverted to para 18 and 19 of the adjudication order and submitted that documents called "lorry running details" were produced by the appellants which contain details of vehicle, trip, etc. This was signed by the transporter and can be construed as a consignment note. These cash vouchers, printed by the appellant, contain the name and address of the appellant as well as the detail of vehicle and the trip. The consignment note has been defined as a document issued against the receipt of goods for the purpose of transport of goods by road in a goods carriage. Thus, these documents are consignment notes and even though the appellant has availed the services of individual truck owners, they fit into the definition of Goods Transport Agency services as consignment notes have been issued.

4. Heard both sides.

5. The main contention put forward by the appellant is that they had availed the services of individual transporters/truck owners. Appellants had prepared vouchers to evidence the payment of freight charges to

these transporters. On perusal of the documents, we find that it does not contain any detail with respect to the goods consigned. These vouchers were nothing but documents for monitoring the payment of freight charges to the transporter and can, in no way, be construed as a consignment note. It does not, therefore, evidence the receipt of goods by the consignee, but merely the details of the vehicle, trip and the freight charges paid. The same cannot be called a consignment note as under Section 65(50b) of the Finance Act, 1994. A similar issue was considered by the Tribunal in *South Eastern Coalfields Ltd.* (*supra*). The Tribunal observed as under:

> *"6. The admitted facts are that the appellants engaged various transporters/contractors for moving coal from pithead to railway sidings. These contractors do not issue 'consignment note' to the appellant. The appellant had issued slips with a view to keep the track of the goods for onwards transportation. We have perused one such slip which is issued at the loading point. The serial numbered form contained certain details like weight, date, etc. The admitted fact is that the consignor and consignee are one and the same and transporter of goods is not issuing any consignment note. In such a situation, the original authority quoting "letter and spirit of the statute" observed that by not issuing consignment note the transporter had violated the provision of Rule 4B of the Service Tax Rules, 1994. We find that the reasoning followed by ld. Commissioner is devoid of merit. It is relevant to examine the concerned legal provisions :*
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> ***Section 65(105)(zzp) of the Act defines the taxable service as under :***
> *(zzp) to any person, by a goods transport agency, in relation to transport of goods by road in a goods carriage;*
> ***Section 65(50b) of the Act defines 'goods transport agency' as under:***
> *(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;*

*It is clear that to be called "goods transport agency" a person should fulfil two conditions, namely, he should provide service in relation to transport of goods by road and issue consignment note, by whatever name called. In the present case, admittedly, no consignment note was issued by the goods transporter. The original authority held that the slip/challans issued for monitoring purposes by the appellant (receiver of service) will satisfy such conditions and tax liability can be upheld. We are unable to understand or appreciate such reasoning. The original authority is creating an amalgamation of service provider and recipient to fit in the definition of **Goods Transport Agency**. In other words, the transport of coal is done by the transport contractor which satisfied the first condition but no consignment note being issued. The slip issued by the appellant as recipient of service is taken with such activity of transport to bring in tax liability. We find that such attempt is beyond the scope of law and without merit.*

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.), 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. Similarly, in *Ultra Tech Cement Ltd. Vs. Commissioner of C. Ex., Kolhapur - 2018 (10) G.S.T.L. 80 (Tri.-Mumbai)*, the Tribunal held that slips, challans, etc., issued to monitor the payment of freight or transportation of goods, cannot be considered as consignment note.

7. From the above discussions, as well as following the ratio laid in the case of *South Eastern Coalfields Ltd*. (*supra*) , we are of the considered opinion that the demand cannot sustain and requires to be set aside, which we hereby do.

8. The appeal is allowed with consequential reliefs, if any.

(Operative part of the order was
pronounced in open court)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S.)
Member (Judicial)

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