IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Service Tax Appeal No. 534 of 2012

(Arising out of Order-in-Appeal No. 102/2012 dated 21.5.2012 passed by the Commissioner of Customs, Central Excise and Service Tax (Appeals), Coimbatore)

M/s. Ultra Ready Mix Concrete Pvt. Ltd. **Appellant**
No. 25, Trichy Road
Kannampalayam, Sulur
Coimbatore – 641 402.

Vs.

Commissioner of GST & Central Excise **Respondent**
6/7, A.T.D. Street
Race Course Road
Coimbatore – 641 018.

AND

Service Tax Appeal No. 40296 of 2013

(Arising out of Order-in-Appeal No. 280/2012 dated 16.11.2012 passed by the Commissioner of Customs, Central Excise and Service Tax (Appeals), Coimbatore)

M/s. Ultra Ready Mix Concrete Pvt. Ltd. **Appellant**
No. 25, Trichy Road
Kannampalayam, Sulur
Coimbatore – 641 402.

Vs.

Commissioner of GST & Central Excise **Respondent**
6/7, A.T.D. Street
Race Course Road
Coimbatore – 641 018.

APPEARANCE:

Shri J. Shankar Raman, Advocate and
Shri M. Saravanan, Consultant for the Appellant
Shri Vikas Jhajharia, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri C.J. Mathew, Member (Technical)

Final Order Nos. **40232-40233 / 2020**

Date of Hearing :03.02.2020
Date of Pronouncement : 11.02.2020

Per Ms. Sulekha Beevi C.S.

Brief facts are that the appellants are engaged in manufacture and supply of ready-mix concrete to the customers at their site through transit mixers fitted on to special purpose vehicle. They purchased raw materials such as cement, river sand, fly ash, blue metal etc. and manufactured ready mix concrete to the requirement of the customers. The raw materials are supplied and transported to the appellant's premises by various goods transport agency and the freight is borne by the appellant. On scrutiny, it was noticed that the appellants have not paid service tax on the inward freight for transportation of raw materials into the appellant's premises. Show Cause Notice dated 15.3.2010 was issued proposing to demand the service tax on inward freight along with interest and also for imposing penalties. After due process of law, the adjudicating authority confirmed the demand, interest and imposed penalties. The same was upheld by the Commissioner (Appeals). Hence this appeal.

2. On behalf of the appellant, ld. counsel Shri J. Shankar Raman assisted by Shri M. Saravanan appeared and argued the matter. They submitted that the appellants are not liable to pay service tax on the inward freight collected by them. It is mainly stressed by the counsel that DGCEI on investigations conducted, during the relevant period had reached to the conclusion that the appellant is liable to pay service tax on the outward freight incurred for delivery of ready-mix concrete to the customers' premises. On being pointed out, the appellant took registration under GTA service and started discharging service tax. After completion of the investigation, a Show Cause

Notice dated 8.1.2008 was issued to the appellant proposing to demand the service tax on the outward freight charges collected by the appellant. Such proceedings culminated in Order-in-Original dated 25.9.2008 wherein demand on outward freight was confirmed. It is submitted by him that during the said proceedings, the appellant had furnished all relevant documents including the balance sheet. The department therefore was fully aware that the appellant had incurred inward freight also. The department, however, opted to initiate proceedings only on the outward freight. Since the department was fully aware of the fact that the appellant was incurring freight for the inward transportation of goods and the appellant having submitted the entire documents to the authorities, the Show Cause Notice presently issued alleging suppression of facts with intent to evade payment of service tax is without any basis. It is argued by the ld. counsel that the appellants having furnished all documents cannot be fastened with the intention to evade tax by willful suppression of facts or mis-statement.

3. It is also pleaded by the ld. counsel that the period involved is from 2005 when GTA service became subject to levy of service tax. The appellants having been advised to pay service tax on outward freight collected by them as a service provider was under the bonafide belief that the inward freight paid by them is not subject to levy of service. They were not aware of the fact that such inward freight charges are subject to levy of service tax under reverse charge mechanism. He prayed that the penalty may be set aside.

4. The ld. AR Shri Vikas Jhajharia appeared on behalf of the department and argued the matter. He adverted to para 4.6 and 4.7 of the impugned order and submitted that even though summonses were issued repeatedly to the appellant to furnish documents, they have not furnished break-up with regard to the inward freight as well as outward freight reflected in the financial statements. Only the freight collected by them was furnished before the department and the freight incurred by them for inward transportation of raw materials was not produced before the DGCEI. On the particulars then furnished by the appellant, DGCEI issued demand on outward freight charges and pumping charges collected by the appellant. Though an earlier Show Cause Notice dated 8.1.2008 was issued by the department, it is on an entirely different issue. In the earlier proceedings, the demand was in respect of service tax short paid on outward freight whereas in the present proceedings the demand is with regard to the inward freight on which the appellants have to pay service tax under reverse charge mechanism as a service recipient. He therefore prayed that the invocation of extended period is legal and proper.

5. Heard both sides.

6. The main argument put forward by the ld. counsel for appellant is on the ground of limitation. The Show Cause Notice dated 8.1.2008, in the earlier proceedings is with regard to demand of service tax on outward freight (freight collected from customers for transportation of ready-mix concrete to the premises of the customer) whereas in the present case the demand is on the freight

charges incurred by the appellant for inward transportation of raw materials. The appellant has to pay service tax on the inward freight charges under reverse charge mechanism as a service recipient. As rightly pointed out by ld. AR, in para 4.6 and 4.7 of the impugned order, it is observed by the Commissioner (Appeals), that even after repeated summonses the appellants have not furnished the break up with regard to the freight charges. They have only produced details for freight charges and pumping charges collected by them whereas they did not produce freight incurred. Vide letter dated 25.8.2006, the appellants were called upon to give month wise turnover for freight incurred, pumping charges etc. for the period from 1.1.2005 to 31.7.2006 and for the period from 16.6.2005 to 31.7.2006. The evidence placed before us shows that the appellant had furnished only details of the freight charges collected by them but had failed to produce the freight charges paid by them for transportation of raw materials into their premises. Thus they cannot take the shelter of the bar of limitation alleging that the department was already in the know-how of facts that the appellants were paying freight for the inward transportation of goods and have not discharged the service tax on such amounts. We therefore find no substance in the argument put forward by the ld.counsel for the appellant on the ground of limitation. This issue is found against the appellant.

7. However, taking into consideration that service tax in respect of GTA services came to be introduced in 2005 and also that the present liability is under reverse charge mechanism, we are of the opinion

that the appellants can be given benefit of section 80 of Finance Act to set aside the penalty. Ordered accordingly.

8. The impugned order is modified to the extent of setting aside the penalty imposed under section 78 without disturbing the confirmation of demand or interest thereof. The appeals are partly allowed in the above terms.

(Pronounced in open court on 11.02.2020)

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

(**C.J. MATHEW**)
Member (Technical)

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