CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL CHENNAI

REGIONAL BENCH - COURT No. I

Service Tax Appeal No. 41678 of 2015

(Arising out of Order-in-Appeal No.81/2015 -ST dated 30.04.2015
passed by Commissioner of Central Excise (Appeals-I), Salem

M/s. Erode Lorry Owners Association, **....Appellant**
2/95N, Bhavani Main Road,
Erode – 638 004.

Versus

Commissioner of CGST & CE, **....Respondent**
No.1, Foulks Compound, Anai Medu,
Salem – 636 001.

APPEARANCE :

Shri. J. Shankararaman, Advocate for the Appellant
Shri. N. Satyanaryanan, Authorised Representative for the Respondent

CORAM :

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V. MEMBER (JUDICIAL)

FINAL ORDER No.40199/2025

DATE OF HEARING: 17.01.2025
DATE OF DECISION: 12.02.2025

Per AJAYAN T.V.

The appellants have assailed the impugned Order in Appeal No.81/2015-ST dated 30.04.2015 (OIA in short) whereby the appellate authority has upheld the Order in Original No.88/2014-ST(AC/Erode-I) dated 16.12.2014 (OIO in short) of the adjudicating authority confirming the demand of service tax made for the period 01-04-2013 to 31-03-2014, under Section 73(2) of the Finance Act, 1994 (Act in short) along with appropriate interest under Section 75 of the Act and equivalent penalty imposed under Section 78 of the Act.

2. The facts in brief are that the appellants are a lorry owners association providing various services such as "renting of immovable property services" and "supply of tangible goods services". Upon perusing their Balance Sheet for the years 2008-09 to 2012-13, the Department was of the opinion that the appellants have shown amounts as income received under various heads therein, and such income appears to have been on account of various services rendered by them upon which they have not discharged their service tax liability. Therefore, the Department had issued a show cause notice proposing demand of service tax on their liabilities for the years 2008-09 to 2012-13, in respect of membership fees/subscription under club or association service, Tanker/lorry rent received under supply of tangible goods service and lorry stand parking rent/building rent under renting of immovable property service, with interest thereon and proposing imposition of penalties under various provisions of law. The adjudication of the SCN resulted in confirmation of demands which was carried in appeal to the appellate authority and during the pendency of the appeal before the appellate authority, the impugned Statement of Demand (SOD in short) for the period April 2013 to March 2014 came to be issued demanding service tax on supply of tangible goods services and renting of immovable property services. After due process of law, the adjudicating authority confirmed the demands proposed in the SOD vide the impugned OIO No.88/2014-ST(AC/Erode-I) dated 16.12.2014, against which the appeal preferred by the appellants came to be rejected by the appellate authority vide the impugned OIA No.81/2015-ST dated 30.04.2015. Aggrieved by the impugned OIA which upheld the impugned OIO, the appellants have preferred this appeal.

3. The learned counsel, Shri. J. Shankararaman appeared and argued for the appellants. The learned counsel submitted that the appeal has been preferred disputing the taxability of the receipt of transportation charges from M/s. Hindustan Petroleum Corporation Ltd (HPCL in short) that is being sought to be taxed under Supply of Tangible Goods Service. It is submitted that the appellant entered into an agreement for transportation of petroleum goods by road for freight paid per kilometre per kilo litre basis. This service falls under the category of GTA service and the consignor, viz., HPCL pays service tax on reverse charge basis. The appellants also issue consignment notes which were placed before the lower appellate authority. It is the submission of the learned counsel that the said activity having been taxed under reverse charge as GTA services cannot then be taxed yet again under the category of supply of tangible goods service and that would tantamount to taxing the same activity twice under two different services. Such a proposal of taxation as presently conceived by the Department would then negate the relief granted by the Government under GTA to the transporters. It is his further submission that if the demand under supply of tangible goods is set aside, then for the amounts received under renting of immovable property service, the appellants would be well within the exemption limit and would therefore not be liable to pay service tax on the said activities. The learned counsel would submit that this Tribunal has allowed the appeal preferred by the appellants for the earlier period vide Final Order No.40368/2019 dated 21.02.2019 and that for the subsequent period the Adjudicating Authority, viz., the Assistant Commissioner had dropped the proceedings vide order dated 09.08.2013.

The counsel submits that the appeal preferred may be allowed by setting aside the demand and penalty imposed.

4. The learned authorised representative, Shri. N. Satyanarayanan, reiterated the findings of the appellate authority.

5. We have heard both sides and perused the records. The only issue that arises for consideration is whether the activities of the appellant while engaged for transportation of petroleum products by road by the consignor HPCL can be subjected to levy of service tax as supply of tangible goods service.

6. We find that the issue stands decided in the appellants' favour by the decision of this Tribunal by the Final Order No.40368/2019 dated 21.02.2019 in M/s. Erode Lorry Owners Association Vs. The Commissioner of GST & Central Excise, Salem Commissionerate. The relevant paragraph of the said decision is reproduced below:

> *" 7. Coming to the tax liability on Supply of Tangible Goods, from the agreement and other facts on record it is evident that the contract was for transportation of petroleum products on which service tax under GTA has been discharged by M/s. HPCL themselves. The nature and type of agreement between the two parties also service to indicate that there is no Supply of Tangible Goods involved in this matter. This being so, the demand made under this category also cannot be sustained and requires to be set aside. So ordered."*

7. It is also seen that the Final Order No.40368/2019 dated 21.02.2019 has, vide a table therein, detailed the amounts received by the appellants under the renting category and found them to be very much under threshold limit in each of the years from 2008-09 to 2012-13 and in the light of the demands set aside in the said order found that there cannot be any further demand under renting since the total amount received would be within the threshold limit. Finding thus, the demand under renting was also set aside.

8. It is seen that for the subsequent period the Departmental authority itself has dropped the demand raised against the appellant under supply of tangible goods service and renting of immovable property service relying on the aforecited decision of the Tribunal in the appellants' case. Since the lis on this issue inter se the parties have attained finality as the decision of this Tribunal aforementioned is not shown to have been set aside or appealed against, following the aforementioned decision in the appellants' own case, we hold that the impugned order in appeal upholding the demand confirmed by the adjudicating authority under supply of tangible goods service is unsustainable and is liable to be set aside. Ordered accordingly. We also find from the annexure to the statement of demand No.34/2014 dated 16-10-2014 that for the year 2013-14, the amount received by the appellants on lorry stand parking rent and the amount received on building rent put together and sought to be taxed under renting of immovable property services is very much under the threshold limit for the said year as specified under the Notification 33/2012-ST dated 20-06-2012. Given our findings supra that the demand under supply of tangible goods is set aside, we hold that the demand on the appellant under renting of immovable properties would also not survive given that the total amount received for the relevant period would be within the

threshold limit. Thus, the finding of the appellate authority upholding the order in original of the adjudicating authority which includes the demand made on the appellant under renting of immovable property service, is liable to be set aside on this count too. So ordered.

9. In sum, the impugned Order in Appeal is set aside. The appeal is allowed *in toto* with consequential relief, if any, as per law.

(Order pronounced in the open court on 12.02.2025)

(AJAYAN T.V.)
MEMBER (JUDICIAL)

(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

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