CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. I

Service Tax Appeal Nos. 41632 to 41634 of 2015
(Arising out of Order-in-Original Nos.37-39/2014-15 dated 27.03.2015
passed by Commissioner of Service Tax -I, Chennai)

M/s. Seaport Logistics Pvt. Ltd., **.... Appellant**
Deen Estate, No.85 (old no.42) First Floor,
Moore Street,
Chennai – 600 001.

Versus

Commissioner of GST & CE, **....Respondent**
Chennai North Commissionerate,
No.26/1, Mahathma Gandhi Road,
Nungambakkam, Chennai – 600 034.

APPEARANCE :

Shri. G. Natarajan, Advocate for the Appellant
Shri. M. Selvakumar, 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.40188-40190/2025

DATE OF HEARING: 17.01.2025
DATE OF DECISION :07.02.2025

Per AJAYAN T.V.

The above appeals assail common impugned orders in original (OIOs in short) and were heard together and are disposed of by this common order. The adjudicating authority, upon adjudicating a show cause notice (SCN in short)77/2013 dated 30.09.2013 issued for the period April 2008 to March 2012, inter-alia, confirmed a demand of service tax of Rs.2,78,94,926/- as payable under proviso to Section 73(1) of the Finance Act, 1994 read with Section 73(2) of the Act ibid, imposed a penalty of Rs.2,78,94,926/- under Section 78 of the Act ibid, imposed a penalty of Rs.5000/- under Section 77 of the Act and demanded an amount of Rs.14,200/- for the delay in filing ST-3 returns. The Adjudicating Authority with respect to the statement of demand (SOD in short) No.27/2014 dated 19.03.2014 for the period April 2012 to June 2012 and SCN No.225/2014 dated 09.09.2014 for the period July 2012 to March 2013, inter-alia, confirmed demands of Service tax of Rs.4,70,339/- and Rs.54,37,054 respectively as payable under Section 73(1) of the Act ibid, imposed penalty as stipulated in Section 76 of the Act ibid in respect of the demands pertaining to the aforementioned SOD dated 19.03.2014 and SCN dated 09.09.2014 and imposed a penalty of Rs.5000/- under Section 77 of the Act. The Adjudicating Authority has also demanded interest in terms of Section 75 of the Act ibid on the aforementioned amounts demanded from the appellant, and further appropriated an amount of Rs.38,239/- paid as well as an amount of Rs.14049/- paid towards the demand confirmed and interest due in respect of the SCN No.77/2013 dated 30.09.2013.

2. Facts, to the extent they are relevant for determining the disputes herein are that, the appellant M/s. Seaport Logistics Pvt Ltd, registered for payment of service tax under the categories of CHA Services, Port Services, Business Auxiliary Service and Goods Transport Service, and engaged in providing various logistics and clearance related services at the ports of Chennai, Tuticorin and Vizag, were called upon to provided information relating to their services by the officers of Directorate of Central Excise Intelligence, who also recorded statements from the

personnel of the appellant. Thereafter, demands of service tax on various counts were made as per the aforementioned SCNs and SOD, along with interest and proposing penalties. The appellant filed their replies conceding certain demands while contesting others. After due process of law, the Respondent passed the impugned Orders in Original and aggrieved by the same, the appellants having preferred the appeals are before this Tribunal.

3. Learned Counsel Shri. G. Natarajan appeared on behalf of the appellant and submitted that in the present appeal the appellant is principally contesting only the demand of service tax on GTA service made on them of Rs.2,78,05,431/- for the period April 2008 to March 2012, Rs.4,70,339/- for the period April 2012 to June 2012 and Rs.54,37,054/- for the period July 2012 to March 2013 and the demand of Rs.48,252/- pertaining to the period April 2008 to March 2012 made on account of reconciliation of bad debts as well as the various penalties imposed.

4. The learned counsel submitted that the demand of Rs.48,252/- confirmed pertains to values not received by the appellant and written off as bad debts during the Financial year 2010-11 and that they have enclosed a chartered accountant's certificate confirming the same at pages 93 to 100 of the appeal paper book. It is submitted that during the relevant period service tax was payable on realisation basis.

5. The learned counsel submits that the demand of service tax on Goods transport services made on the appellant is unsustainable. It is submitted that the appellant had provided goods transport services to companies established under the companies act and during the entire period of demand the service tax liability is payable by the service recipients under reverse charge if the consignor or consignee is a company established under the Companies Act. That in spite of the evidences submitted, the demand has been confirmed on grounds which are mere observations/opinions sans any legal basis. It is submitted that the reason stated by the adjudicating authority is that Coastal Energy Ltd and Fossil Logistics Pvt Ltd to whom the appellant had provided GTA services have not replied to DGCEI's letter dated 05.09.2013. The learned counsel submits that they have given the required certificate to DGCEI on 05.09.2013 as has been recorded in para 5.11 of the OIO and yet for the reason that these companies had not responded to the further queries from DGCEI cannot be a reason to confirm the demand on the appellant when the appellant has proved that reverse charge is applicable in this case. It is submitted that the adjudicating authority's observation that these companies have paid service tax as per their returns as service providers cannot lead to any presumption as they are not GTAs and mere wrong selection in the drop-down box of the return cannot lead to such a presumption. That the observations regarding work orders made are also irrelevant and cannot cast any liability on the appellant and the finding that the invoices issued by them cannot be considered consignment note would then be as if no consignment notes are issued and then the appellant cannot be considered as a GTA as per the

definition as transportation services provided by other than a GTA are not liable to levy of service tax both prior to and after 01.07.2012. The Learned Counsel submitted that all that the appellant has to show is that the charge is not attracted and that it has been paid by the companies to whom services were rendered on reverse charge and the appellant cannot be called upon to prove whether the companies had actually discharged the liability cast upon them.

6. Learned Authorized Representative Shri. M. Selvakumar appeared for the Respondent and reiterated the findings of the adjudicating authority emphasizing on the fact that the companies whom the appellant claims have discharged the service tax liability on reverse charge have not responded to the queries of DGCEI.

7. We have heard both sides and perused the appeal records.

8. The principal dispute is the demand to pay service tax for providing GTA service that has been made on the appellant. In as much as the period involved is from April 2008 to March 2013 it would be apposite to examine the position in law prevalent during the period.

9. During the period prior to 01-07-2012, while Section 68(1) obligated the service provider to pay tax, Section 68(2) stipulated that the Central Government can notify services in respect of which service tax is payable by any other person. It is seen that vide notification No.36/2004 ST dated 31.12.2004 issued in exercise of the powers under

Section 68(2), then Central Government notified certain services for the purpose of the said sub-section and included the services in relation to transport of goods by road in a goods carriage, where the consignor or consignee of the goods is: -

(a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);

(b) any company established by or under the Companies Act, 1956 (1 of 1956);

(c)any corporation established by or under any law;

(d) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India;

(e) any co-operative society established by or under any law;

(f) any dealer of excisable goods, who is registered under the Central Excise Act, 1944(1 of 1944) or the rules made thereunder; or

(g) anybody corporate established, or a partnership firm registered, by or under any law;

10. Concomitantly, Rule 2(1)(d)(v) of the Service Tax Rules, 1994 stipulated the person who is liable to pay service tax in such cases and provided as under:

"Person liable for paying the service tax means,
In relation to taxable service provided by a goods transport agency, where the consignor or consignee of goods is,-

(a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);

(b) any company established by or under the Companies Act, 1956 (1 of 1956);

(c)any corporation established by or under any law;

(d) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India;

(e) any co-operative society established by or under any law;

(f) any dealer of excisable goods, who is registered under the Central Excise Act, 1944(1 of 1944) or the rules made thereunder; or

(g) anybody corporate established, or a partnership firm registered, by or under any law;

Any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage;"

11. Thus, while notifying the services in relation to transport of goods by road in a goods carriage to the entities identified, whether they are a consignor or consignee, as the services on which service tax is payable by any other person, simultaneously it was provided in Rule 2(1)(d)(v) that in respect of the same set of entities identified, whether they are a consignor or consignee, the person who is liable to pay freight is the person liable to pay service tax. In other words, once the taxable service provided by a service provider rendering the services of goods transport agency is so provided to the specified entities, the onus to discharge the service tax is shifted from the service provider to such entities or their agent who pays or is liable to pay the freight. It is seen that CBEC instructions issued contemporaneously vide letter F.No.341/18/2004 dated 17.12.2004 while reiterating the above position in law, also mandated that if service tax due on transportation of a consignment has been paid or is payable by a person liable to pay service tax, service tax should not be charged for the same amount from any other person, to avoid double taxation.

12. Consequent to the changes introduced in the Finance Act, 1994 since 01.07.2012, Notification No.30/2012-ST came to be issued

notifying the services where service tax has to be paid by the service recipient, the conditions therefor and the extent of service tax that is to be paid in respect of the taxable services stated therein. The said notification while identifying the taxable services as that provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is the entities/categories who were stipulated for the period prior to 01.07.2012, while specifying the extent of service tax payable by the person who provides the service and the person who receives the service, stipulated in the table therein that in respect of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, the percentage of service tax payable by the person providing the service is Nil and the percentage of service tax payable by the person receiving the service is 100%.

13. Thus, for the period under dispute, both, prior to 01.07.2012 and thereafter, if the appellant is able to establish that the entities to whom the appellant provided services of GTA would fall amongst the entities/categories specified and are those who pay or are liable to pay the freight, as per the prevailing provisions noticed supra, then the appellant as a service provider of GTA is under no obligation to pay service tax as the onus to discharge the service tax payment has shifted to the respective consignor or consignee who is liable to pay the freight and are the recipient of the services of GTA provided by the appellant.

14. Now it remains to be seen whether the appellant has evidenced that its clients/customers would fall under the specified entities who would then be liable irrespective of whether they are a consignor or consignee as long as they are the ones who pay or are liable to pay freight. We find that the adjudicating authority has recorded in the impugned OIO that it is the appellant's stand that they are providing services to companies who are registered under the Companies Act, 1956. It is also seen from the appellants' replies to the SCNs that it is also their stand that they have clearly stated in their invoices that the service tax liability will be paid by either consignor or consignee and had enclosed sample invoices for the adjudicating authority's verification along with complete parties list and service amount for reference. While the adjudicating authority acknowledges that the documentary evidences adduced by the appellant have been perused, these contentions of the appellant have not been disputed or contested by the adjudicating authority. From the legal provisions noted supra, it is therefore evident that such companies, private or limited would get covered under the specified entities/categories stated in the notifications for the respective periods either as a company or as a body corporate. In fact, the adjudicating authority has while listing the evidences adduced by the appellant in para 5.10 noted that the appellant has submitted copies of letter from M/s. Coastal Energy Ltd and M/s. Fossil Logistics Pvt Ltd stating that they had remitted service tax as a recipient of service under Goods Transport Agency on all the bills received from M/s. Sea Port Logistics Pvt Ltd, the appellant herein. It is also recorded by the adjudicating authority that he had perused the documentary evidences

submitted by the appellant and that the appellant during the investigation of the case had stated that M/s. Coastal Energy Ltd and M/s. Fossil Logistics Pvt ltd are paying service tax in respect of GTA services availed by them. The adjudicating authority has also recorded that the appellants have submitted copies of letters dated 04.07.2012 addressed to DGCEI by both parties enclosing the General Ledger Account of M/s. Seaport Logistics Pvt Ltd (the appellant herein) for the period 2008-09 to 2010-11, copies of invoices of the appellant and that from the letters it is seen that DGCEI has received the letters on 06.07.2012. In fact, it is seen from the letter addressed to the adjudicating authority submitting the aforesaid evidence, the appellant had also enclosed letters dated 30-11-2012 of Coastal Energy private limited and fossil logistics private limited stating that they have remitted the service tax as recipient of service under GTA during the period 2009-2012.

15. In the light of the above records, we are of the view that the adjudicating authority has erred in confirming the demand of service tax on GTA services made on the appellant for the reason that coastal energy private limited and fossil logistics private limited had not responded to the subsequent letters of DGCEI sent to them on 05-09-2013. It was incorrect on the part of the adjudicating authority to take up cudgels on behalf of the investigating agency DGCEI, who are amply empowered under statute to collect evidence in case they deem it so necessary, by way of issuance of summons under Section 14 of the Central Excise Act, 1944 of which they would be undoubtedly aware of. It was, in any event for DGCEI to take up the matter with the concerned parties and that

ought not have weighed against the appellant in the adjudicating authority's appreciation of the matter. Thus, in the light of the categorical assertion by the clients/customers of the appellant that they had discharged the service tax liability in respect of the GTA services provided by the appellant and received by them, any incorrect indication in the returns of these customers/clients can't be a ground to require the appellant to discharge service tax on GTA service. We also find that the discussion on the work orders produced by the appellant is vague and without any conclusion. In any event, when the adjudicating authority itself has found that the work orders do not pertain to the relevant period, then embarking on any discussion on them itself was a superfluous exercise. As regards the finding of the adjudicating authority on lack of details required as per Rule 4B that ought to figure in a consignment note in the invoices issued by the appellant, in the absence of stating what were the details that have been found deficient or absent, we are unable to appreciate the import of such finding, except that the invoices were lacking certain details that ought to have been there in a consignment note, which in our view is a venial breach. In any event indisputably the appellant has been rendering the GTA services for which it is registered. Equally, we do not appreciate the appellant's contention that such a finding tantamount to stating that appellant has not issued a consignment note and that therefore the appellant cannot at all be considered as a GTA. This argument of the appellant is a misconceived attempt at *reduction ad absurdum*, for the simple reason that the finding does not lend itself to the interpretation that no consignment notes have been issued, as is sought to be canvassed by the appellant. All that it indicates, at best, is that the invoices issued by the appellant were wanting in details that are otherwise required in a consignment note. It would have been prudent on the part of the appellant to have sought condonation of such a venial mistake, than to resort to such specious contention.

16. Be that as it may, it is incontrovertible that the appellant's stand that its customers are liable to discharge the service tax on the services of GTA provided by the appellant stands validated by the customers of the appellant, who themselves have addressed DGCEI directly and communicated that they have discharged the service tax liability in respect of the services that the appellant has rendered. In case of any deficiency noticed in the returns of the said customers or had the Department harboured any doubts about their averment in this regard, it was incumbent upon the Department to have independently proceeded against them. When the statute nowhere provides that the onus to discharge the liability to service tax that was cast upon the customers of the appellant would revert onto the appellant in any manner, upon furnishing a copy of their ledger account of transportation bills party wise for the relevant period along with the list detailing such service recipients, a bland statement that they do not tally, shorn of any details as to what are the discrepancies noticed, cannot be reason enough to continue to demand further proof from the appellant when the obligation to pay service tax itself for the GTA services rendered by the appellant was on such service recipients in the first place. It is also a pertinent factor that the law neither mandates the appellant to prove that the service recipient has discharged its liability to pay service tax on the GTA services received,

nor does it mandate, as observed supra, that in the event of such service recipient not discharging its liability to pay service tax, such liability would then shift back on to the appellant.

17. Therefore, the adjudicating authority grossly erred in confirming the demand of service tax on GTA services on the appellant on the ground that the appellant has not proved that the service tax has been paid by the recipients. When the position in law as emanating from the discussions above is that the onus of discharging the service tax on GTA services received itself, was on the customers of the appellant, then such a confirmation of demand as has been made in the instant case, cannot be sustained and the demand on GTA services to the extent of the amounts stated as disputed in this appeal by the counsel for the appellant, from the demand confirmed by the adjudicating authority is set aside.

18. In so far as the demand of Rs.48,252/- on the amount shown as reconciliation of bad debts for the period when service tax was leviable on receipt basis is concerned, we find that the appellant has produced a chartered accountant's certificate certifying that the amounts were indeed written off as bad debts and finding no valid objection raised as to the acceptance of the same or any reason to disbelieve the same, we are of the view that such certification by an independent professional lends credence to the appellant's contentions in this regard and consider it sufficient to drop the demand.

19. In view of our discussions and the facts and circumstances of this case, we are of the view that the penalties imposed on the appellant under Section 78 and Section 76 do not sustain. We do not find any grounds urged in the appeal or any specific contention advanced by the counsel against the demand of Rs.14,200/- for the delay in filing of returns as well as the total penalty of Rs.10000/- under section 77 imposed on the appellant and we are therefore of the view that in the facts and circumstances of this case these need to be left without interference. In sum, the impugned orders in original stands modified to the extent of setting aside the amount of service tax on GTA services which has been contested in the appeal, as well as the setting aside of penalties imposed under Section 78 and Section 76 of the Finance Act, 1994, without disturbing the demands dropped, appropriations made towards demand and interest, penalties imposed under Section 77 of the Finance Act, 1994 and the demand of Rs.14,200/- made towards delay in filing ST-3 returns. Appeals stand disposed off on the above terms.

(Order pronounced in the open court on 07.02.2025)

(AJAYAN T.V.)
MEMBER (JUDICIAL)

(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

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