CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH Court II

Service Tax Appeal No. 53294 of 2018-SM

[Arising out of Order-in-Appeal No. BHO-EXCUS-001-775-17-18 dated 28.2.2018, passed by the Commissioner (Appeals), CGST, Customs & Central Excise, Bhopal]

Mukesh Kumar Jaiswal ... **Appellant**

Versus

Commissioner (Appeals) ... **Respondent**
CGST, Customs & Central Excise,
48, Administrative Area, Arera Hills,
Bhopal M.P 462011.

APPEARANCE:

None for the appellant.
Shri P Juneja, Authorised Representative for the Department

CORAM:

HON'BLE ANIL CHOUDHARY, MEMBER (JUDICIAL)

DATE OF HEARING : 07.04.2021
DATE OF DECISION : 26.07. 2021

FINAL ORDER No. 51679 /2021

PER ANIL CHOUDHARY

The issue involved in this appeal is whether the services rendered by the appellant being transporter of timber/firewood for forest Department of Government of Madhya Pradesh, is taxable as G.T.A.

2. The brief facts are that pursuant to tender for haulage of timber and other forest products, the appellant was given the job of transportation of timber and other various products which also included loading and unloading charges. The appellant received an amount of Rs.33,94,556/- during the period 2013-14 to 2015-2016 on (after abatement) which it appeared to Revenue that Service Tax of Rs.1,11,667/- was chargeable. Accordingly, show cause

notice dated 28.9.2017 was issued along with proposal to impose penalty. The proposed demand was confirmed on contest along with equal amount of penalty under section 78 and other penalty of Rs.10,000/- under section 77(1)(a) and late fee of Rs.1,20,000/- under Section 70 read with Rule 7C of Service Tax Rules.

3. Being aggrieved, the appellant had appealed before the Commissioner (Appeals), who was pleased to uphold the demand of Service Tax observing that the cartage Challan issued by the Forest Department for transportation from inside the forest to the depot is in the nature of consignment note, and the appellant is also responsible to account for any shortage in the course of transportation. As the carting Challan is equivalent to consignment note and accordingly the appellant qualifies for the GTA and is thus liable to pay service tax. The Commissioner (Appeals) observed that forest official has issued a carting Challan and the acknowledgement from the driver have been obtained. For haulage payment or transportation charges by forest department, as would be accompanied with Challan.

4. The appellant have filed the written submissions praying for decision on merits as their case is similar to the precedent decision of this Tribunal in the case of Sher Khan vs. CGST, Bhopal being Final Order No. 51633/2019 dated 19.11.2019 wherein in the similar facts and circumstances, this Tribunal held in favour of the assessee holding that cartage Challan is not equivalent to the consignment note.

5. Learned Departmental Representative relies on the impugned order.

6. Having considered the rival contentions, I find that the carting Challan in this case is only for internal control of forest department. Such carting Challan is not equivalent to a consignment note which is issued by the transporter. The consignment note is a negotiable instrument and the transporter is bound to deliver the goods to

bonafide holder of title, as mentioned in the consignment note. Such element of 'consignment note' are absent in the 'carting Challan'. Thus, I hold that carting Challan is not equivalent to consignment note. Accordingly, the appellant has not rendered the services as per the definition of GTA under the Finance Act.

7. Accordingly, this appeal is allowed, the impugned order is set aside. The appellant is entitled to consequential benefits, in accordance with law.

[Pronounced in the open Court on 26.07. 2021]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

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