# CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL
# PRINCIPAL BENCH, NEW DELHI

**COURT No. III**

**Service Tax Appeal No. 51182 of 2018**

(Arising out of Order-in-Appeal No.BHO-EXCUS-001-661-17-18 dated 31.01.2018 passed by the Commissioner of (Appeals), CGST, Customs & Central Excise, GST Bhavan, Bhopal, MP)

**G S N CONSTRUCTION**
HIG-6, Bandhavgarh Colony,
SATNA, Madhya Pradesh-462015

**Appellant**

Vs.

**Commissioner of CGST, Central Excise,**
**& Customs, Bhopal**
Deputy Commissioner, CGST, Customs &
Central Excise Division, Satna (MP)

**Respondent**

**APPEARANCE:**
Mr. Prashant Shukla, Advocate for the Appellant
Mr. Rajeev Kapoor, Authorised Representative for the Respondent

**CORAM:**

**HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)**
**HON'BLE MR. P.V.SUBBA RAO, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 51711 /2023**

**Date of Hearing/Decision: 19.12.2023**

**P.V. SUBBA RAO**

M/s. G.S.N. Construction, Satna[1] filed this appeal to assail the Order-in-Appeal dated 31.01.2018[2] passed by the Commissioner (Appeals), Bhopal whereby he upheld the Order-in-Original dated 13.10.2017 passed by the Deputy Commissioner and rejected the appeal of the appellant.

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**1 appellant**
**2 Impugned order**

2 The appellant is engaged in providing construction services, other than residential complex and holds service tax registration for providing taxable services. The appellant was registered for providing both "construction services" and "work contract services". A show cause notice dated 23.09.2015 was issued to the appellant seeking to recover of an amount of Rs.3,52,158/- as service tax (including education cess) under section 73 of the Finance Act, 1994[3] along with interest under section 75. Penalty was also proposed to be imposed under section 78. The allegation in the show cause notice is that the appellant had provided "cargo handling services" to M/s Satna Cement Works, Satna during the period from April, 2010 to March, 2014. It is the case of the appellant that the services rendered by it do not fall under the category of "cargo handling service" because it had only engaged in shifting materials from one part of the factory to another using tractors. According to the appellant, this service amounts to material handling within the factory and transportation and is not cargo handling service.

3. Learned counsel also relied upon the decision of Supreme Court in the case of Signode India Ltd. vs. Commissioner of Central Excise & Customs-II[4] in which Hon'ble Supreme Court held as follows:

> "8. A careful reading of Section 65(23) of the Act, which defines Cargo Handling Service would go to show that though the word packing is included therein, the same is referable to the word "Cargo" whereas in Section 65(76b) "Packing Activity" is defined to mean "Packaging of Goods".

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**3 Finance Act**
**4 2017 (50) STR 3 (SC)**

9. The distinction between the two expressions, namely, "cargo" and "goods" in the two different provisions of the Act becomes evident if cargo is understood to denote goods which are ready for transportation whereas packaging of goods is a stage prior i.e. before they became cargo and in fact on completion of such packaging the goods become cargo. The position becomes more clear if the dictionary meaning of the word "cargo" is taken into account, as set out below :

As per Black' Law Dictionary, the word "cargo" means "Goods transported by a vessel, airplane, or vehicle; According to Oxford Dictionary of English, "cargo" means goods carried on a ship, aircraft, or motor vehicle and as per Webster's Comprehensive Dictionary, "cargo" is Goods and merchandise taken on board a vessel.

10. Admittedly, the appellant has nothing to do with the transportation of goods which it packs within the factory unit of the principal manufacturer prior to the goods leaving the factory.

11. There is yet another aspect of the case which would require a mention. In a Circular bearing F. No. B.11/1/2002-TRU, dated 1-8-2002 issued by the Central Board of Excise and Customs, services liable to tax under the category of "cargo handling services", has been clarified to mean services provided by cargo handling agencies which is, in effect what Section 105(zr) provides for.

12. Clause 3 of the circular is in the following terms :

"3. The services which are liable to tax under this category are the services provided by cargo handling agencies who undertake the activity of packing, unpacking, loading and unloading of goods meant to be transported by any means of transportation namely truck, rail, ship or aircraft. Well known examples of cargo handling service or services provided in relation to cargo handling by the Container Corporation of India, Airport Authority of India, Inland Container Depot, Container Freight Stations. This is only an illustrative list. There are several other firms that are engaged in the business of cargo handling services."

Clause 3, extracted above, makes the position abundantly clear that even the department had understood services provided by Cargo handling agencies undertaking the activities of packing, unpacking, loading and unloading of goods meant to be transported by any means of transportation, namely truck, rail, ship or aircraft as services liable to tax as "cargo handling services".

13. Clause 3.2 of the circular makes it clear that mere transportation of goods is not covered in the category of cargo handling. Clause 15 of the circular also makes it

> clear that an individual undertaking the activity of loading or unloading the cargo would not be liable to pay service tax on such activity as being an activity undertaken by a cargo handling agency."

4. Learned Counsel submits that cargo handling and materials handling are two different terms. While they were handling goods and transporting them from one place another within factory, they were not handling cargo at all. It is his submission that the cargo handling service requires the consignment to be cargo in the first place i.e., it should be a consignment which is transported from one place another in ship or truck, vessel, etc. which is not their case. Cargo handling services deal with only handling of cargo, i.e., loading and unloading of the goods which are meant to be transported from one place to another via road, rail, etc. No service tax under cargo handling service that has been charged from the appellant because it had not handled any cargo.

5. Learned authorized representative for the Revenue reiterated the findings in the impugned order.

6. We have considered the submissions of both sides and perused the records.

7. We find that the period of dispute in this case is from April, 2010 to March,2014, and show cause notice was issued invoking only the provisions pertaining to pre negative list era under section 65 (105) (zr) of Finance Act, 1994 which clause ceased to exist after 01.07.2012.

8. We find that the demand has been raised and confirmed only under section 65 (105) (zr) under the head "cargo handling service". For the period after 01.07.2012, the demand cannot be sustained for the reason that this provision did not exist after 01.07.2012. It is also matter of record that the appellant has only removed the goods within factory of M/s.Satna Cement Works. Such movement does not qualify cargo handling service as per law laid down by Hon'ble Supreme Court in the case of **Signode India Ltd**. Therefore the demand cannot be sustained for the period before 01.07.2012 either. Since the demand cannot be sustained, consequential interest under section 75 and penalty under section 78 also cannot be sustained. We therefore find that the impugned order cannot be sustained.

9. The appeal is allowed and the impugned order is set aside with consequential relief to the appellant.

(Order dictated in the open court)

**(SOMESH ARORA)**
**MEMBER (JUDICIAL)**

**(P.V.SUBBA RAO)**
**MEMBER (TECHNICAL)**

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