CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>NEW DELHI</u>

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PRINCIPAL BENCH – COURT NO. 4

SERVICE TAX APPEAL NO. 51450 OF 2018

[Arising out of Order-in-Original No. 03/Commr/STJBP/2018 dated 09.03.2018 passed by the Commissioner of Central Goods, Service Tax, Central Excise and Customs, Jabalpur]

Deendayal Tilwani : **Appellant (s)**
101, A.P.R. Colony, Katanta, Behind
Little World School, Jabalpur

Vs

Commissioner of Central Goods : **Respondent (s)**
Service Tax and Central Excise, Jabalpur

<u>APPEARANCE:</u>
Shri Bharat Bhushan, Advocate for the Appellant
Shri Sanjeev Kumar Ray, Authorised Representative for the Respondent

CORAM :
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MRS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

ORDER No. A/54533/2024

Date of Hearing:03.01.2024

Date of Decision:04.03.2024

Per : DR. RACHNA GUPTA

M/s Din Dyal Tilwani, is a partnership concern engaged in the activity of transportation of goods by road and in providing Business Support Service to various clients like, Vehicle Factory Jabalpur, Railway, Bharat Earth Movers Limited, Bharat Electronics Limited and Gun Carriage Factory Jabalpur. Based on the information with the department regarding unearthing of service tax evasion, dissemination, verification and monitoring of third party data-systemic arrangement for the period 2013-14, the appellants were enquired. The appellant replied that as per the terms and conditions of the
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tender notice issued by the clients of the appellants (as mentioned above) it has been agreed that if any service tax is applicable on the said transportation service, the same is to be paid by the said factories/appellant's client. Vide a subsequent letter dated 22.03.2017 the appellants conveyed that they are engaged in transportation of sleeper from specified sleeper plant to railway sides for Indian Railways and the said services are covered under negative list. The copies of balance sheet and profit and loss account of Financial Year 2013-14 to 2015-16 were provided.

2. However, from the reply and the documents submitted, Department formed an opinion that it is not the case of transportation of the goods, but a case of shifting of stallion vehicles manufactured by Vehicle Factory, Jabalpur to the designated ordinance depots which is sufficient to show that the appellant is providing support service to the business of said Vehicle Factory, Jabalpur. The plea of services to fall under negative list was not considered for want of the copy of work orders issued (in favour of the appellant) by their clients. The documents were showing the payment of transportation of charges as well as the legal fees by the appellant, however, service tax liability was still not discharged.

2. With these observations, Department issued a show cause notice No. 13040 dated 07.11.2017 proposing the recovery of service tax amounting to Rs. 37,11,8851/- towards the value of taxable service provided from the period 2012-13 to 2017-18 (upto June 2017), proportionate interest and appropriate penalties were also proposed vide the said show cause notice. The proposal has been

confirmed vide Order-in-Original No. 03/2018 dated 09.03.2018. Being aggrieved, the appellant is before this Tribunal.

3. We have heard Shri Bharat Bhushan, Advocate for the appellant and Shri S.K. Rahman, Authorized Representative for the Department.

4. Learned Counsel for the appellant has mentioned that the appellant is engaged in transporting defence and railway equipment from the factory of Vehicle Factory Jabalpur, Railway, Bharat Earth Movers Limited, Bharat Electronics Limited and Gun Carriage Factory Jabalpur including self propelled defence vehicles. The other material were being transported by hiring trucks from individual truck owners from factory to the destination or upto the Railway station for onward transport by Railway and from Railway Station to the destination. It is mentioned that a clarification was sought by the Central Excise Department about the service tax liability of transportation of newly manufactured vehicles from Vehicle Factory, Jabalpur vide letter dated 15.05.2017. The vehicle factory conveyed that as per Mega Exemption Notification No. 25/2012-ST dated 20.06.2012 service by way of transportation by Rail or Vessel from one place to another of defence or Military equipments is not liable to service tax. The appellant is acknowledged by vehicle factory, Jabalpur to be the only vendor for transporting the manufactured vehicles to various ordinance depots based on the work orders awarded to the appellants through various tenders. Hence, the findings in the order under challenge are not sustainable, the Adjudicating Authority has failed to take the note of Mega Exemption Notification. The order is accordingly prayed to the set-aside and the appeal is prayed to be allowed.

5. While rebutting these submissions, the Learned Authorized Representative has mentioned that the Adjudicating Authority has rightly considered the definition of 'Business Entities' and 'persons' as defined under Section 65 (B) (17) and 65 (B) (37) respectively of the Finance Act. In view thereof, the Government organisations/the client of the appellant are rightly held to be covered and thus all rightly held liable to pay service tax. There is no infirmity in the said order. Impressing upon the findings in Para 35 of the Order, the order under challenge is prayed to be upheld.

6. Having heard the rival contentions, we observe that the appellant herein is held to have provided Business Support Service to Vehicle Factory Jabalpur, Railway, Bharat Earth Movers Limited, Bharat Electronics Limited and Gun Carriage Factory Jabalpur instead of holding it to be transportation service, we observe from the record that the activities done by the appellant are as follows:-

(i). For Gun carriage factory Proof Firing newly developed Gun has been transported. It is important to mention here that the Proof Firing newly developed Gun was transported by loading it on other vehicle i.e. goods carriage.

(ii) For Indian Railways P Ways, PSC Sleepers, & Other railway material were transported by loading them on other vehicles.

(iii) For BEL, radars fitted on vehicles were transported to various army depots.

(iv) For Vehicle Factory Jabalpur, Stallion & LPTA truck itself was transported to various Army Depots and MPV i.e.

mine protected vehicle was transported to various army depots by loading it on truck trailors.

7. Foremost, we look into the definition of 'Business Support Service' which reads as follows:-

> "As per the Section 65B (49) of the Finance act 1994 "Support Service" means infrastructural, operational, administrative, logistic, marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction or works contract, renting of immovable property, security, testing and analysis;"

The bare perusal makes it clear that the activity of transferring the manufactured vehicles, the Railways Slippers, the Defence Articles after loading those in trucks form the place of manufacture to the required destination do not fall in any of the activities as mentioned in the above definition. It is also apparent on record that the appellants for the said transportation were taking trucks on hire from the individual truck owner as different goods transport agencies. We further observe that the entire period covered in the present appeal is post 01.07.2012 when the negative list regime had come into existence and Section 66 (B) was incorporated in the Finance Act, 1994. It is reproduced as below:-

> "66B. Charge of service tax on and after Finance Act, 2012. There shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent, on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed."

The perusal makes it clear that all services except those specified in negative list given in Section 66D of the newly introduced provisions are taxable. Section 66D of the Finance Act reads as follows:-

> "66D. Negative list of services. The negative list shall comprise of the following services, namely:-
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> (p) services by way of transportation of goods-
> (i) by road except the services of
> (A) a goods transportation agency; or
> (b) a courier agency:
> (ii) by an aircraft or a vessel from a place outside India up to the customs station of clearance in India; or
> (iii) by inland waterways;"

It becomes crystal clear that the activity of transportation of goods by road is specifically included in negative list except such transportation is done by goods transport agency and a courier agency.

8. As already observed above, the appellant was taking trucks of individual owners, admittedly the appellant itself is not a goods transport agency and no consignment note was issued by the appellant. Facts on record also clarifies that the appellant is not engaged in door to door transportation, hence, is not a courier agency. Resultantly, it becomes clear that the service rendered by the appellant is simply the service by way of transportation of goods which is covered under Sub-clause B of Section 66D of Finance Act (as already noted above). Thus, we hold that the appellant is wrongly held liable for payment of service tax on the said activity.

9. Coming to the tax liability with respect to legal consultancy services under reverse charge mechanism, we observe it to be an admitted fact that the amount booked under the head 'legal expenses' was not paid to any advocate and affidavit to this effect has also been submitted by the appellant. The adjudicating authority neither has considered the said affidavit nor has appreciated any other evidence on record which may show that the legal expenses were paid to the

lawyer. The onus was definitely on Revenue to show that the appellant had received services of Advocate so as to make them liable to pay service tax under reverse charge. In absence thereof, the confirmation on this count is also not sustainable.

10. Once the appellant is held to have no service tax liability, the question of having any intent to evade the same does not at all arise. Resultantly, we hold that even penalty has also wrongly imposed on the appellant.

11. Consequent to above discussion, the order under challenge is hereby set-aside and the appeal is allowed.

(Pronounced in the open Court on 04.03.2024)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

G.Y.