**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH,
COURT NO. I

SERVICE TAX APPEAL NO. 50096 OF 2018

[Arising out of the Order-in-Original (De-novo) No.49-50/Commr/ST/JBP/2017 dated 14.9.2017 passed by Commissioner of Central GST, Central Excise and Customs, Jabalpur.]

M/s. Karamjeet Singh & Co. Ltd. **...Appellant**
Shradha House, Kingsway,
Nagpur – 440 001.

Versus

**Commissioner of Central Goods
and Service Tax, Customs and Excise** **....Respondent**
GST Bhawan, Mission Chowk, Napher Town,
Jabalpur (Madhya Pradesh) – 582 001.

APPEARANCE:

Shri Jeevesh Mehta , Advocate for the appellant
Ms. Jaya Kumari, authorised representative for the department

CORAM:
HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 55612/2024

DATE OF HEARING : 11.12.2023
DATE OF DECISION: 22.04.2024

P.V. SUBBA RAO

M/s. Karamjeet Singh & Co. Ltd.[1] filed this appeal to assail the order-in-original (denovo)[2] dated 14.9.2017 passed by the Commissioner, Jabalpur in pursuance of the final order dated 2.3.2017 passed by this Tribunal remanding the matter.

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1 the appellant
2 the impugned order

2. The appellant provides service of transporting coal to M/s. Western Coalfields Ltd.[3] and it's responsibilities include loading and unloading of the coal which it transports. During audit of WCL, the contracts awarded to the appellant were examined and the department felt that since the appellant also loads coal (using tippers/dumpers) and after transporting, unloads them, its service falls under the head 'cargo handling service'.

3. Accordingly, a Show Cause Notice[4] dated 8.4.2011 was issued covering the period 16.8.2002 to 31.12.2008 invoking extended period of limitation and demanding service tax of Rs. 64,48,863/- along with interest. It was also proposed to impose penalties under section 76, 77 and 78 of the Finance Act, 1994[5]. The Deputy Commissioner passed order dated 21.11.2012 confirming the proposals in this SCN.

4. Another SCN dated 16.10.2009 had already been issued by the Deputy Commissioner covering the period January to March 2009 demanding service tax under the head 'cargo handling service' within the normal period of limitation demanding service tax of Rs. 4,03,937/- along with interest. It was proposed to impose penalty under section 76 in this SCN but not under section 78. The Deputy Commissioner passed

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3 WCL
4 SCN
5 Finance Act

order-in-original[6] dated 18.4.2012 confirming the demand in this SCN.

5. The Commissioner (Appeals) passed order-in-appeal[7] dated 17.12.2013 upholding both the above OIOs. On appeal by the appellant, this Tribunal remanded the matter by final order dated 2.3.2017. In pursuance of this order, the Commissioner passed the impugned order dated 14.9.2017.

Submissions on behalf of Appellant

6. Learned counsel for the appellant made the following submissions.

(a) The classification of the activity of the appellant under "cargo handling service" is incorrect. The responsibility of the appellant is transporting the goods from one location to another. Loading and unloading are incidental to this service.

(b) The appellant was rendering this service within the mining area and the service tax under 'goods transport agency' service has been paid by WCL on reverse charge basis.

(c) The SCN dated 8.4.2011 is time barred and hence void. The department was already aware of the activity of the appellant and had issued SCN dated 16.10.2009 within the normal period of limitation.

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6 OIO
7 OIA

(d) Since the appellant is not liable to pay service tax, interest also cannot be charged.

(e) Penalties imposed on the appellant deserve to be set aside.

Submissions on behalf of Revenue

7. Ms. Jaya Kumari, learned authorised representative for the Revenue supports the impugned order and asserts that it is correct and calls for no interference.

Findings

8. We have considered the submissions on both sides and perused the records.

9. The undisputed facts of the case are that the appellant was rendering service to WCL and this service included transporting coal from one location to another and for this purpose, the appellant also had to load and unload the coal. The appellant and WCL treated this as "goods transport agency" service and on the service, WCL had already paid service tax on reverse charge basis (as was applicable to GTA services during the relevant period).

10. The appellant filed its returns and the Deputy Commissioner issued SCN dated 16.10.2009 covering the period January to March 2009 demanding service tax under the head 'cargo handling service' within the normal period of limitation. Thus, the Divisional Deputy Commissioner was fully

aware of the activity of the appellant and had already taken a tentative view that the service deserves to be classified as “cargo handling service” and issued the SCN.

11. Thereafter, the audit took the same view as the Deputy Commissioner. In other words, the audit did not discover anything new but effectively concurred with the views of the Deputy Commissioner. Based on the audit’s observations, the Commissioner issued the SCN dated 8.4.2011 covering the period 16.8.2002 to 31.12.2008 invoking extended period of limitation. It is a well settled legal position that once the issue is within the knowledge of the department, it cannot allege that the assessee suppressed any facts with intent. Therefore, the SCN dated 8.4.2011 covering the period 16.8.2002 to 31.12.2008 is completely time barred and cannot be sustained.

12. The SCN dated 16.10.2009 needs to be examined on merits. The service rendered by the appellant was transporting coal from one location to another and also the loading and unloading for the purpose. The appellant’s case is that transportation is the service and loading and unloading are incidental to it. Service tax had already been paid by the service recipient on reverse charge basis on goods transportation service. The department’s case, on the other hand, is that loading an unloading is the main contract and this qualifies as cargo handling service and the appellant has to pay service tax.

13. Section 65A of the Finance Act deals with classification of services and it reads as follows:

> **65A. Classification of taxable services**
>
> (1) For the purposes of this Chapter, classification of taxable services shall be determined according to the terms of the sub-clauses of clause (104) of section 65;
>
> (2) When for any reason, a taxable service is, prima facie, classifiable under two or more sub-clauses of clause (104) of Section 65, classification shall be effected as follows;
>
> > (a) the sub-clause which provides the most specific description shall be preferred to sub-clauses providing a more general description;
> >
> > **(b) composite services consisting of a combination of different services which cannot be classified in the manner specified in clause (a), shall be classified as if they consisted of a service which gives them their essential character, in so far as this criterion is applicable;**
> >
> > (c) when a service cannot be classified in the manner specified in clause (a) or clause (b), it shall be classified under the sub-clause which occurs first among the sub-clauses which equally merit consideration;
>
> (3) The provisions of this section shall not apply with effect from such date as the Central Government may, by notification, appoint.

14. The service rendered by the appellant is also a composite one covering not only transporting goods but also their loading and unloading. The contention of the appellant is that the essential character of the contract is of transportation and loading and unloading are incidental. The case of the department is that the essential character of the service is loading and unloading.

15. When WCL required a service provider to move the coal from one location to another and for this purpose, engaged the service of the appellant, the essential part of the contract is of transportation. Loading and unloading are incidental to it. Loading and unloading *per se* are of no use except when they are in conjunction with the transportation. The intention of the WCL is to transport coal and in the process, it also gets loaded on to the truck and unloaded at the destination.

16. The Department's argument that the main activity is of loading and unloading cannot be accepted. An example will clarify the situation better. If 'A' wants to shift his residence and hires a transport company for the purpose, the service provider ensures that the goods are packed, loaded, transported to the new residence, unloaded and possibly unpacked at the new residence. While the activities such as packing, loading, unloading and unpacking may take substantial time and may even take longer than the actual transportation, the main purpose of the contract is to transport the goods from the old to the new residence which is the essential character of the service and packing, loading, unloading and unpacking are mere incidental activities to the main function of transportation.

17. WCL has already paid service tax on reverse charge basis on the transportation of coal under reverse charge. Therefore, the demand of service tax on the same service

again from the appellant classifying it as "cargo handling service' cannot be sustained.

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

(Order pronounced in open court on 22/04/2024.)

(JUSTICE DILIP GUPTA)
PRESIDENT

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

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