CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH- COURT NO. I

Service Tax Appeal No. 52470 of 2018

(Arising out of Order-in-Appeal No. 211(SRM)ST/JDR/2018 dated 22.02.2018 passed by the Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jodhpur (Raj).)

M/s Shri Nath Tiles Private Limited **...Appellant**
E-9, RICCO Industrial Area,
Chittorgarh (Rajasthan)-312001

Versus

The Commissioner of Central Excise & Central Goods and Service Tax, **...Respondent**
142-B, Hiran Magri Sector-11
Udaipur (Raj)-313001

APPEARANCE:
Ms. Jawaria Kainaat, Advocate for the Appellant
Shri S.K. Ray, Authorized Representative for the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING: June 28, 2024

FINAL ORDER NO. 55984/2024

JUSTICE DILIP GUPTA

M/s Shri Nath Tiles Private Limited[1] has sought the quashing of the order dated 22.02.2018 passed by the Commissioner (Appeals) by which the appeal that was filed by the appellant to assail the order dated 21.02.2017 passed by the Assistant Commissioner adjudicating six show cause notices for the period commencing from April 2005 to March 2015 has been upheld and the appeal has been dismissed. The Assistant Commissioner had by the aforesaid order confirmed the demand of service tax and ordered for recovery of the same with penalty and interest.

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1 The appellant

2. The appellant is engaged in the manufacture of marble slabs. It received marble blocks from various mines and so it engaged services of transporters and truck owners for the transportation of the marble blocks.

3. The department, however, believed that the appellant provided "goods and transport agency" services[2] and was, therefore, liable to pay service tax under the reverse charge mechanism. Accordingly, six show cause notices were issued to the appellant.

4. The Commissioner (Appeals) has upheld the order of the Assistant and the relevant observations are:

> " 7. In this case, I find that the Appellant are the consignee/consignor of the goods and being a consignee/consignor, paying freight charges to transporter of the goods. They are also covered under specified person in terms of Notification No 35/2004-ST dt 03.12.2004. I find that where the consignor or consignee of goods are specified person, the person liable to pay service tax shall be any person who pays or is liable to pay freight either himself or through his agent. On careful plain reading of the definition of person liable to pay service tax given under Rule 2(1)(d)(i)(B) of Service Tax Rules, 1994 read with aforesaid legal provisions, it revealed that being a body corporate the said claimants are liable to pay service tax on freight paid to individual transport operators under reverse charge mechanism. Regarding Consignment notes are concerned, the appellant's contention is that they are not required to pay service tax on Transportation of Goods by Road services as they have not taken services from a goods transport agency but from a truck owner/driver/individual transport owner who never issued any consignment note. I find that any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called is covered under GTA services. It means consignment notes can be issued in any name by any person who provides service in relation to transport of

2 GTA Services

> goods by road. Here, I find that the Adjudicating Authority has observed that the Appellant have engaged the services of individual transporter who transport the goods to/from the Appellant's factory/premises and collect the payment for such transportation done by them in cash and voucher is signed from them as a token of having received the transportation charges. Hence, the said document/vouchers are consignment notes, as the definition of consignment notes covers 'whatever name called'."

5. Ms. Jawaria Kainaat, learned counsel appearing for the appellant submitted that the Commissioner (Appeals) committed an error in confirming the demand of service tax for the reason that individual transporters/ truck owners are not covered under the definition of GTA Services and, in this connection, learned counsel placed reliance upon the decision of the Tribunal rendered in the case of the appellant for an earlier period in **M/s Shri Nath Tiles Pvt Ltd South Eastern Coalfields Limited** vs. **Commissioner, Central Excise and Central Excise and Service Tax**[3] as also to the decision of this Tribunal in **M/s. Vaishnav Marbles Private Limited** vs. **Commissioner of Central Excise and Central Goods and Service Tax**[4]**.** Learned counsel pointed out that thought the former case related to the period prior to 1.07.2012, but the latter case covers periods both prior to 01.07.2012 and post 01.07.2012.

6. Shri S.K. Ray, learned authorized representative appearing for the department, however, supported the impugned order and submitted that it does not call for any interference in this appeal.

7. The submissions advanced by learned counsel for the appellant and the learned authorized representative appearing for the department have been considered.

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3 2020-TIOL-1391-CESTAT-DEL

4 Service Tax Appeal No. 51215 of 2018 (DB) decided on 15.04.2024

8. A perusal of the decision rendered by the Division Bench in **Vaishnav Marbles** does support the contention advanced by learned counsel for the appellant. In the said decision also, the appellants were engaged in the manufacture of marble slabs and the marble blocks from various mines were transported by using the services of individual transporters and trucks owners. The period involved in the said decisions related to periods both prior to 01.07.2012 and post 01.07.2012. The Division Bench of the Tribunal in **Vaishnav Marbles** after taking note of various decisions including the decision in the case of the appellant itself rendered for the earlier period observed as follows in respect of the period prior to 01.07.2012:

> " 8. From the aforesaid judgments, the settled principle of law is that even if a person has provided goods transport service but has not issued the consignment note, service tax from that person cannot be recovered under the category of GTA. The case of the appellant is on the same footing as he availed the services of individual transporters and truck owners and in the absence of issuing the consignment note, the appellant cannot be made liable to pay service tax under the category of GTA."

9. The appellant had not issued the consignment note. The Commissioner (Appeals) committed an error in treating the vouchers as consignment notes.

10. In respect of the period post 01.07.2012, the Division Bench observed:

> 7. In a recent decision, the Ahmedabad Bench in **Chartered Logistics Ltd Vs. CCE**[5] dealt with the issue under consideration with reference to the post negative era and referring to the provisions of Section 66D (p)(i)A including in the negative list services by way of transportation of goods by road except the services of a

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goods transport agency and Section 65B(26) defining 'Goods Transport Agency' observed as under:

> **"6.5** Accordingly, a person can be said to be Goods Transport Agency, if the person provides services in relation to the transportation of goods by road and issues the consignment note. From the above legal position, it clear that not all the person who transport of goods by road are qualified as Goods Transport Agency. **To qualify as services of GTA, the GTA should issue necessarily a consignment note then only services provided by the GTA are taxable under <u>Finance Act, 1994.</u>** In the present matter it is admitted fact that in case of supply of transportation of goods services to M/s FCPL. Appellant have not issued any consignment notes. M/s FCPL issued consignment notes/LRs to consignee/consignor of goods. In such circumstance Appellant is not qualified under the Goods Transport Agency as per the above definition of GTA. **Services of transportation of goods by a person other than GTA are clearly exempt under <u>Section 66D (P)(i) (A)</u> of the Finance Act, 1994.** By observing the above legal position we find that the services of appellant is clearly excluded from the taxable services since it is covered in the "Negative List" Entry under Section 66D (p) (i) of the Finance Act, 1994."

11. Thus the order dated 22.02.2018 passed by the Commissioner (Appeals) cannot be sustained and is set aside. The appeal is, accordingly, allowed.

(Order dictated in the Open Court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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