

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. ST/S/2683-2684/2011 IN ST/1275/2011-1276/2011 - CU[DB]
ST/S/2685/2011 IN ST/1277/2011, ST/1525/2010

Date **20/03/2012**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
KISAN SAHKARI CHINI MILLS LTD., RAJPUR,
POORANPUR, NADEHI, DISTT- U.S.NAGAR.
KISAN SAHKARI CHINI MILLS LTD

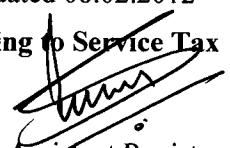
Appellant

Vs
Respondent

C.C.E. MEERUT II

STAY ORDER NO.ST/S/294-296/2012

I am directed to transmit herewith a certified copy of **Final order No.ST/A/240-243/ 2012 CU[DB]** dated 08.02.2012
passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**


Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. MEERUT II
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4. Bar association, CESTAT. New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publications Pvt Ltd.,1512-B, Bhishm Pitamah marg,Opp. ICICI Bank of Defence Colony, New Delhi-3
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,
Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road,
Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file
14. KISAN SAHKARI CHINI MILLS LTD.,
GARAULA, HASANPUR,
DIST. J.P. NAGAR, U.P.


Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-DB

**Service Tax Stay Application No.ST/S/2683-84/11 in
Service Tax Appeal No.ST/1275-76/11**

[Arising out of Order-in-Appeal No.139-140-ST/MRT-II/2011
dated 25.05.2011 passed by the Commissioner (Appeals),
Central Excise, Meerut-II]

Kisan Sahkari Chini Mills Ltd. ...Appellant

Vs.

CCE, Meerut-II ... Respondent

Present for the Appellant :Shri Mayank Garg, Advocate
Present for the Respondent:Shri.K.K. Jaiswal, SDR

**Service Tax Stay Application No.ST/S/2685/11 in
Service Tax Appeal No.ST/1277/11**

[Arising out of Order-in-Appeal No.144-145-ST/MRT-II/2011
dated 27.05.2011 passed by the Commissioner (Appeals),
Central Excise, Meerut-II]

Kisan Sahkari Chini Mills Ltd. ...Appellant

Vs.

CCE, Meerut-II ... Respondent

Present for the Appellant :Shri Mayank Garg, Advocate
Present for the Respondent:Shri.K.K. Jaiswal, SDR

Service Tax Appeal No.ST/1525/2010

[Arising out of Order-in-Appeal No.144-145-ST/MRT-II/2011
dated 27.05.2011 passed by the Commissioner (Appeals),
Central Excise, Meerut-II]

M/s.Kisan Sahkari Chini Mills Ltd. ...Appellant

Vs.

CCE, Meerut-II ... Respondent

Present for the Appellant : Shri Vikrant Kakaria, Advocate
Present for the Respondent: Shri K.P. Singh, SDR
Shri.K.K. Jaiswal, SDR

Coram: Hon'ble Mr.D.N.Panda, Judicial Member
Hon'ble Mr. Rakesh Kumar, Technical Member

Date of Hearing/Decision: 08.02.2012

Final **ORDER NO. ST/A/240-243/12^{Cur.} DATED: _____**
Stay order No. ST(S) 294-296/12 Cur.
PER: D.N.PANDA

The issue of levy of service tax on the Chini Mills holding that goods transport agency service was availed by the chini mill was common question in all the adjudications under appeal.

2. Ld. Counsel Shri Kakaria appearing in ST/1525/10 brings out that during the harvest season of sugar cane, sugar cane is collected from collection centres by the sugar mill and bring the same to its factory. At the centre, the farmers deliver sugar cane. As it is obligation of the farmers that they shall deliver the sugar cane, respective transport cost is deducted from their bill and that is paid. In such factual scenario when the sugar cane is transported from the collection centre to the factory, service of truck operators, Bullock Carts, Tractors are availed. When the payment of sugar cane is made to farmers, deduction is made from their bills towards transport cost etc. and farmer who bears the transport cost, the appellant does

not bear such cost in respect of their supplies. The sugar factories do not engage goods transport agency to provide them service for which individual truck owners provide service of transportation. They are not transport agencies. Since they are not transport agencies, the requirement of law that consignment note should be issued by transport agency is not required.

3. It was also submitted that had chini mills engaged GTA service providers to avail transport service, they would have certainly taken benefit of cenvat credit in respect of service tax paid for availing GTA service. In almost all cases, transport cost incurred by farmers to bring the collected sugar cane to factory does not exceed Rs.1500/- for which there shall be no levy following the spirit of Notification No.34/04. The adjudicating authority disregarded the requirement of Notification No.32/04 which grants abatement to the goods transport agency service. On these counts, the impugned order is assailed by Shri Kakaria praying for setting aside the demand in question.

4. In the other batch of appeal Nos.ST/1275-77 it was submitted by Shri Mayank, Id. Counsel that the issue is same as above. Adopting argument of Shri Kakaria, Shri Mayank says that when individual Truck owners provide service during the season they are not Goods Transport Agency (GTA). How

the individual service providers are not brought to tax has been stated by Hon'ble Finance Minister in his speech at the time of presenting budget of 2004-05. Relying on para 149 of the speech, Shri Mayank submits that there was no intention to levy service tax on truck owners or truck operators. That indicates that Legislature has not intended to bring individual truck owners who are not goods transport agencies to the fold of law. Law envisages that when goods transport agency is engaged there should be document to accompany the goods establishing relationship of consigner and consignee. But when the sugar cane is brought from collection centre to factory, it is brought by the sugar factory itself for which there is no relationship of consigner and consignee.

5. Opposing all the argument of both the Counsels in the batch of appeal and single appeal, Shri Jaiswal, Id. Representative for Revenue submits that there is a report from the jurisdictional authority that consignment note for each transport was issued and the freight involved exceeds Rs.1500/-. Shri K.P. Singh, Id. Representative for Revenue (in some of the cases) submits that Rule 2 (1) (d) (v) of service tax Rule 1994 does not expect the consignment note to be in a format but once the person ^{availing} ~~filling~~ GTA service comes under the law, his liability arises under the law.

6. Heard both sides and perused the record.

7. While passing interim orders we had noticed that the issue is of a recurring nature and many a times grievance of the assessee is that the farmers should not be taxed under the law since they are economically weaker. Therefore, pre-deposit in many cases have been waived and appeals are pending. We do not intend that the appeal should continue to be pending with interim orders revived from time to time, but *such* appeals should come to an end for which all the 4 appeals are taken up together, being agreed by both sides *some* of the issue involved is common and nothing alien.

8. We have noticed the fact from the batch of appeal and the single appeal that there was movement of sugar cane by transport from sugar cane collection centres to factory. Crux of the issue calling for a decision is whether such a transport is provided by goods transport agency and is liable to tax.

9. There is no dispute by either side about availing services of different modes of transport for movement of sugar cane from centre to the factory and those were trucks, tractors and bullock carts. Therefore, we are not able to agree with Shri Jaiswal, learned DR as to contents of the report that *came*

from the jurisdictional authority stating that consignment note for each truck was issued, which was never been confronted to any of the assesseees prior to this date. Since the fact is on the very narrow campus, we looked into the law leading these facts. It is not disputed that goods transport agency service falls under the taxing entry **65 (105) (zzp)** of Finance Act 1994 which reads as under:-

^(22b)
 65(105) "taxable service" means any service provided or to be provided -

~~(22b)~~ to a customer, by a goods transport agency, in relation to transport of goods by road in a goods carriage;

10. Reading of the taxing entry calls for understanding the meaning of the term "goods transport agency". Such a meaning given by section **65 (50b)** of the said Act reads as under:-

(50b) "goods transport agency" means any commercial concern which provides service in relation to transport of goods by road and issues consignment note, by whatever name called;

11. While above two statutory provisions exists in law, Revenue came with Notification No.**32/2004-ST** to grant abatement in respect of goods transport agency service. Similarly, the Notification No.34/04 was issued to relieve the

small tax payers by two different modes from the Jaws of the law. One such situation is where the gross amount charged on consignment transported in a goods carriage does not exceed Rs.1500/-, in that circumstance there shall be no levy. The second circumstance is that where the gross amount charged on an individual consignment transported in a goods carriage does not exceed Rs.750/- that is also exempted from levy. The Notifications being part of the Legislations itself, that governs the field. We also looked into the Rules in this regard. Rule **4B** has given meaning as to what is consignment note in view of appearance of that terms in section 65 (50b) of the Finance Act, 1994, Rule **4B** of the Service Tax Rules, 1994 reads as under:-

RULE [4B. Issue of consignment note. – Any goods transport agency which provides service in relation to transport of goods by road in a goods carriage shall issue a consignment note to the customer:

Provided that where any taxable service in relation to transport of goods by road in a goods carriage is wholly exempted under section 93 of the Act, the goods transport agency shall not be required to issue the consignment note.

Explanation. – For the purposes of this rule and the second proviso to rule 4A, "consignment note" means a document, issued by a goods transport agency

against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered, and contains the names of the consignor and consignee, registration number of the goods carriage in which the goods are transported, details of the goods transported, details of the place of origin and destination, person liable for paying, service tax whether consignor, consignee or the goods transport agency.]

12. Combined reading of the statutory provision with the Notification aforesaid throw light that when service is provided to a customer by a goods transport agency in relation to transport of goods by road in a goods carriage that shall be liable to service tax. Of course the liability may be borne either by the consignor or by the consignee of the goods. ^{Section} **65** **(50b)** requires goods transport agency to be a commercial concern and if that concern provides service in relation to transport of goods by road and issues consignment notes by whatever name called, such an agency is brought under the fold of law. The term "consignment notes" having been defined by Rule **4B** it is to be read together with section **65 (50b)** of Finance Act 1994. According to Rule **4B**, goods transport agency which should necessarily satisfy the requirement of section **65 (50b)** if that agency provide service in relation to transport of goods by road in goods carriage and shall issue consignment note to the customer. Issuance of such

consignment note is dispensed in terms of section 93 where the service is provided under that section. The explanation to the rule brings out what should be contents to the consignment notes. There are certain particulars which need to be stated in the consignment notes. The explanation requires that the consignment note is to be issued by goods transport agency against the receipt of the goods for the purpose of transport. The consignment note so issued is to be serially numbered and should contain names of the consigner and consignee. So also consignment note should contain registration number of the goods carriage, in which the goods are transported. It has also to provide details of goods and details of place of origin and destination. When we read meaning of consignment note with the taxing entry under section **65 (105) (zzp)** of the aforesaid Act, ^{it is} inconceivable to bring the bullock carts transporting sugar cane to the fold of law, since law requires the transport made by goods carriage should only be brought to tax. This can be said following the mandate of rule **4B** because registration number of goods carriage is a necessary requirement to be stated in the consignment notes. Therefore, the appellants are correct to say that if the sugar cane is transported by bullock cart, there shall be no levy at all.

13. We are satisfied that if goods carriage transporter is commercially engaged in economic activity of transport it only comes within the meaning of commercial concern. Therefore, adjudication should always categorically bring out the mode of transport whether was provided by a commercial concern without making the adjudication fatal. So also when the cases are made by the Revenue it is necessary to state whether the consignment note carry the goods carriage number. If that is not ascertained, the mode of transport shall not be said to be by a goods carriage also.

14. We agree with Shri K.P. Singh Id. Representative for the Revenue to a limited extent ^{on} his submission that consignment note need not be in a format. It may be acceptable subject to the condition that the particulars appearing in the explanation under rule 4B ^{are} contained in that document. In whatever name a document ^{is} called, ^{if that has} prescribed particulars ^{under} the explanation, that assumes the character of the consignment note. To bring a goods carriage to the ambit of tax it is necessary to have evidence showing that the commercial concern which provided service had engaged ^a carrier as is identifiable from consignment note. The evidence should also suggest that there was a consigner and consignee relationship and entire consignment has travelled on road.

15. So far as the exemption aspect is concerned which is provided by two different notifications the small transporters certainly shall get the benefit ^{of} Notification No.34/04-ST dated 3.12.04. Whenever the gross amount charged on consignments transported in a goods carriage does not exceed Rs.1500/- that is exempted. Similarly, when the gross amount charged on an individual consignment transported in a goods carriage does not exceed Rs.750/- that shall also be exempted. Interpreting the Notifications, it can be said that the sugar cane transported through goods carriage from sugar cane centre to the factory either may ^{be in} different consignments or may be in one consignment. The assesseees are required to explain their proper defence because legislature did not intend the small transporter to be brought under the fold of law. Appreciating the argument in the bar that individual transporters are not meant to be brought to the ambit of law the Budget Speech of Hon'ble Finance Minister makes that clear. This is also further supported by use of ^{the} term "commercial concern" which implies that a concern engaged in the economic activity of transportation in commercial fashion shall only be brought to the fold of law.

16. It is explained by Shri Kakaria learned Counsel that after 1/5/06 law does not require merely a commercial concern to

be brought to the fold of law but any person providing transport of goods service by road are answerable to law.

17. If the aforesaid aspects are take into consideration and the matters are adjudicated afresh on the touch stone of the legislative provision in section **65, Rule 4B** and above two Notifications, that shall give rise to a proper order made in accordance with law. Any deviation thereto shall not get legal sanction.

18. Both the Counsels submitted that the notifications being beneficial in nature and touches poor farmers, it cannot be said that there was malafide to suppress the facts and figures because the mode of transport of sugar cane in sugar industry is well known to the society. Therefore, there should not be levy of penalty in all the appeals.

19. We do appreciate that at the infancy stage difficulties have been experienced at both end. While the GTA service came into force w.e.f 01.01.2005 and after 9 years two notifications aforesaid were issued, that throws light that the persons and concerns governed by the confused scenario need to be leniently dealt under law. It is left open to adjudicating authority to decide the issue of penalty afresh taking the law

laid down by the Apex Court in Rajasthan Spinning Mills Ltd. case.

20. In view of the aforesaid discussions made and legal aspects brought out, we are not inclined to decide each and every case in the bunch of appeal. Therefore, to resolve grievance of both, it would be proper to remit back all the appeals to the Adjudicating Authority according to the guidelines given aforesaid. Since we have come to the conclusion that the appeal No.ST/1275-77 requires remand, we dispose requirement of pre-deposit in those cases.

21. Consequently, stay applications registered at ST/S/2683-85/11 get disposed alongwith appeal No.ST/1275-77/11 and ST/1525/10 ^{is} disposed in above manner ^{by remand} to grant fair opportunity to all the appellants ^{by the Adjudicating Authority} and decide the issue before him as has been brought out in the show cause notice by reasoned and speaking order.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

Anita