CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH - COURT NO. III

Service Tax Appeal No.50274 of 2021 with
Service Tax Cross No.50368 of 2021

[Arising out of Order-in-Appeal No.202 (CRM)ST/JDR/2020 dated 05.05.2020 passed by the Commissioner (Appeals), Central Excise and CGST, Jodhpur.]

Commissioner of CGST & Central Excise, ...**APPELLANT**
142-B, Hiran Magri, Sector-11,
Udaipur, Rajasthan-313 001.

Versus

M/s. Prem Enterprises,
Near BPCL Petrol Pump, Nimbahera, ...**RESPONDENT**
Chittorgarh, Rajasthan-312 601.

Appearance:
Present for the Appellant : Shri Aejaz Ahmad, Authorised Representative.
Present for the Respondent: Ms. Nidhi Dhamija, Chartered Accountant and Shri Sumesh, Advocate

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Final Order No.50992 /2026

Date of Hearing/Decision:20.05.2026

BINU TAMTA:

1. The Revenue is in appeal challenging the impugned order [1] dropping the demand as the issue stands decided by the Tribunal that the appellant had been rendering "Goods Transport Service" and not "Supply of Tangible Goods Services" and therefore, the service tax has to be deposited under reverse charge mechanism by the service recipient and no liability arises on the appellant.

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[1] Order-in-Appeal No.202(CRM)ST/JDR/2020 dated 05.05.2020

2. The case of the Revenue is that M/s. Prem Enterprises[2] is a partnership firm who had deployed special purpose vehicles viz. Transit Mixers[3] for transportation of RMC and showing the said service activity as transportation of goods by road service (in short GTA); that consignment notes were issued by the assessee to M/s. Ultratech Cements Ltd.[4] so as to make it appear as if they were rendering the service of GTA operator, in respect of which Service Tax was payable on reverse-charge basis by the service recipient after availing abatement of 75% of entire transportation value. Transit Mixers were specialized mechanical equipment fitted to the truck chassis used for loading at the batching plant with the help of helpers. The said Textile Mixers were used only for supply/ transport of RMC and are not vehicles meant of transportation of general goods. They were registered with the transport authorities under the category of "heavy goods vehicle" fitted with construction equipment. Hence, it appeared that TMs were equipment's mounted on chassis of motor vehicle and same was used for transporting RMC from the manufacturing site to customer's site, therefore the said activity cannot be merely equated with transportation of goods. The nature of transactions between the assessee and their clients do not involve transfer of right to use TMs and therefore, the charges collected for providing TMs from their clients appear to be liable to Service Tax under the category of Section 66 E(f) of the Finance Act, 1994. The contract/ agreement between the assessee and the service recipient is not for sale of TMs within the meaning of the expression in Article 366(29-A) (d) of the Constitution of India, as the contract in question is a contract for supply of tangible goods services. Show

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[2] Assessee
[3] TM
[4] Service recipient

Cause Notice dated 18.04.2019 was issued demanding the Service Tax amounting to Rs.1,03,27,464/- on the taxable amount of Rs.8,35,55,539/- received during the period October, 2013 to March, 2015 along with interest under proviso to Section 73(1) read with Section 75 of the Finance Act, 1994[5] and also proposed penalty under Section 76, 77 & 78 of the Act. The Adjudicating Authority vide Order-in-Original dated 30.09.2019 has confirmed the demand amounting to Rs.1,03,27,464/- along with interest, imposed penalty of equivalent amount under Section 78 of the Finance Act, 1994 and also imposed penalty of Rs.10,000/- under Section 77 of the Finance Act, 1994.

3. The Commissioner (Appeals) vide Order-in-Appeal dated 05.05.2020 held that the assessee is not liable to pay service tax and set aside the Order-in-Original and allowed the appeal filed by the respondent.

4. During the course of argument, the learned Authorised Representative for the Department has very fairly conceded that the issue is no longer *res-integra* and has been decided in favour of the assessee by the Tribunal. The learned Counsel for the respondent has referred to the following decisions deciding the same issue:-

"(1) Gunesh Logistics Vs. CCE & ST, Jaipur-I[6]
(2) Gunesh Logistics Vs. CGST & CE, Jaipur[7]
(3) Birla Ready Mix Vs. CCE, Noida[8]
(4) Shripad Concrete Pvt. Ltd. Vs. CCE & ST, Surat-I.
(5) Narendra Road Lines Pvt. Ltd. VS. CC, C. Ex & CGSt, Agra[9]
(6) Commissioner of CGST and Central Excise, Mubmai Vs. Agarwal Packers

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[5] The Act
[6] 2020 (37) GSTL 193 (Tri.-Del.)
[7] 2025(26) CEntax 324 (Tri.-Del.)
[8] 2013 (30) STR 99 (Tri.-Del.)
[9] 2022 (64) GSTL 354 (Tri.-All.)

and Movers Ltd.[10]

5. We may refer to the observations made in the case of **Gunesh Logistics versus Commissioner of C. EX. Service Tax,Jaipur – I,** where the Bench considered the activity of transportation of Ready Mix Concrete (RMC) by using Transit Mixers of appellant by road, by issuing consignment notes containing all particulars as mentioned in Rule 4B of Service Tax Rules and the services were provided by the appellant to another for a consideration. It was held that the appellant was rendering GTS service by transporting RMC from one place to another as per the directions of the service recipient. The relevant paragraphs of the decision are as follows:-

> **"21.** This conclusion drawn by the Commissioner is a patently wrong understanding of the conditions of the work order. The appellant did not give on hire the vehicles. Even the subject matter of the "work order is for transportation of Ready Mix Concrete in vehicle/vehicles from our Jaipur 1TD Ready Mix Plant at Jaipur". The contract that has been awarded is also for transportation of Ready Mix Concrete from the plant of the appellant on the terms and conditions mentioned in the work order. Condition No. 1 of the work order is that the appellant shall load RMC in the vehicle and transport the same to the required destination and unload it at the customer's site. Merely because the work order requires the appellant to deploy a fleet of 6M3 capacity vehicles for transport of 9000 M3 of RMC every month does not mean that the appellant has given vehicles on hire. The work order only requires the appellant to ensure that it has available a fleet of vehicles adequate enough to transport a particular quantity of RMC every month. Even the transportation charges are under two heads. The first is payment of a certain amount for the quantity of RMC transported during a calendar month and a certain amount per km for the distance travelled for transportation of RMC during the month.
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> **22.** It is for this reason that the appellant had contended that the activity of transportation of RMC by road falls under the taxable service GTA. However, this contention of the appellant has not been accepted by the Commissioner for the reason that clause 12 of the work order deals with a minimum quantity of RMC to be transported per month per vehicle. According to the Commissioner, it cannot be said to be a case of transportation of goods by road by a goods transport agency "because in the case of transport of goods by road the service recipient books a vehicle for transportation of goods and pays freight for such booking for the transportation of goods". The Commissioner failed to appreciate that under the work order, the appellant was required to transport RMC for which purpose the appellant was required to load RMC in the vehicles of the appellant and transport the same to the

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[10] (2024) 23 Centax 63 (Tri.-Bomay)

required destination and unload it. The requirement under the work order that the appellant should have a fleet of vehicles, adequate enough to transport 9000 M3 RMC every month would not mean that the appellant had given the vehicle on hire. The Commissioner was required to examine all the conditions of the work order but the finding is based on an assumption that vehicle was hired for transportation of RMC.

23. The Commissioner also fell into an error in assuming that if a minimum load of 745 cum per month per vehicle is not loaded, then too the appellant would be entitled to payment on this minimum quantity to conclude that in this manner payment would also be made for goods that have not been transported and no consignment note would have been issued for the same.

28. Thus, the appellant has been rendering GTA service by transporting RMC from one place to another as per the directions of the service recipient. The finding to the contrary recorded in the impugned order by the Commissioner that the appellant was not performing GTA service but was performing STG service cannot be sustained. It is, therefore, not necessary to examine the other contentions raised by the learned counsel for the appellant. The impugned order dated 15th January, 2016 is accordingly set aside and the appeal is allowed."

6. The facts of the present case, the transaction involved and the service recipient all being same as in the aforesaid decision, the same is equally applicable herein. Following the judicial discipline we are of the view that the impugned order is absolutely just and legal and there is no reason to differ with the same. Consequently, the appeal filed by the Revenue is dismissed. The cross objections filed are disposed of accordingly.

[Operative portion of the order already pronounced in open court]

(BINU TAMTA)
MEMBER (JUDICIAL)

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

Ckp.