CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 50155 of 2021

[Arising out of Order-in-Appeal No. 253(CRM)CE/JDR/2020 dated 29.07.2020 passed by the Commissioner of Central Excise & Central Goods and Service Tax (Appeals), Jodhpur]

Commissioner of Central Excise
& CGST - Jodhpur …**Appellant**
G-105, New Industrial Area, Opp. Diesel Shed,
Basni, Jodhpur

VERSUS

M/s. Ambuja Cements Ltd. …**Respondent**
Unit: Rabriuyawas, P.O. Rabriuyawas,
Tehsil – Jaitaran, Pali-306709 (Rajasthan)

APPEARANCE:
Shri Rahul Kumar, Advocate for the Appellant
Shri Mahboob Ur Rehman, Authorized Representative for the Respondent

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 22.04.2026
DATE OF DECISION: 22.04.2026

FINAL ORDER NO. 51017/2026

DR. RACHNA GUPTA

The present appeal is filed by the department for assailing Order-in-Appeal No. 253/2020 dated 29.07.2020 vide which the order confirming the demand of service tax on the appellant under Reverse Charge Mechanism with respect of ocean freight paid for the goods imported has been set aside.

1.1 The facts, succinctly, are that the appellant is engaged in manufacture of cement and is also holding service tax registration for rendering several taxable services. The appellant is also claiming the Cenvat credit on inputs and input services under

Cenvat Credit Rules, 2004. During the course of audit of their record, it was observed that the appellant had imported spare parts etc. through foreign shipping lines under terms of import as FOB, CIF and CF during the period 01.06.2016 to 30.06.2017. Department alleged that the appellant being the service recipient while importing the goods under FOB, hence was required to pay service tax under Reverse Charge Mechanism of an amount of Rs.17,03,404/-. The said amount was proposed to be recovered vide Show Cause Notice No. 15/2018 dated 26.04.2019. The said proposal has been confirmed vide Order-in-Original No. 07/2019 dated 02.12.2019. The appeal against the said order has been allowed by Commissioner (Appeals). Being aggrieved, the department is before this Tribunal.

2. We have heard Shri Rahul Kumar, learned Advocate for the appellant and Shri Mahboor Ur Rehman, learned Authorized Representative for the department.

3. Learned Departmental Representative has submitted that the Commissionerate, while dropping the demand has relied upon two decisions in the case of **Mohit Mineral Pvt. Ltd. Vs. Union of India and another reported as 2020-VIL-36-GUJ** and **M/s SAL Steel Ltd. & Others(s) Vs. Union of India in Special Civil Application No. 20785/2018 dated 06.09.2019** . SLP against both the decisions were filed. Though the decision in the case of **Mohit Mineral Pvt. Ltd. (supra)** has been accepted by Hon'ble Supreme Court, however, the decision in the case of **M/s SAL Steel Ltd. (supra)** is still pending adjudication. Hence the adjudication of present appeal is prayed to be kept at abeyance.

3.1 However, while submitting on merits, it is mentioned that the activity of transportation of goods has been carried out by a vessel from a place outside India upto Customs Station, which is in India and service is partially provided in India. Further, Section 66B of the Finance Act, 1994 empowers the Central Government to collect Service Tax even if the place of provision of service in terms of Place of Provision of Services Rules, 2012, is in taxable territory even in cases where the service is partially performed in India. Further, in case of **All India Federation of Tax Practitioners Vs. Union of India [2007] 7 SCC 527**, the Hon'ble Supreme Court has declared that Service Tax is a destination based consumption tax and thus the relevance of the place where the services are rendered or consumed assumes critical importance for sustaining the levy of service tax. In this case of Transportation of Goods by a vessel from a place outside India upto Indian Port i.e., land mass of the country and the service being finally consumed at Indian Port, the appellant is liable to pay service tax under Reverse Charge Mechanism. The demand has wrongly been dropped. With these submissions, the appeal is prayed to be allowed.

4. While rebutting these submissions, learned counsel for the appellant has mentioned that the Hon'ble High Court of Gujrat in **M/s. SAL Steel Ltd. (surpa)** has held that the notifications making importer liable to pay service tax on transportation of goods by vessel from place outside customs clearance station in India are ultra vires to the charging sections. Thus, as on date there is no service tax liability on the importer under Reverse Charge Mechanism on the amount of ocean freight charges. It is submitted

that there is no stay announced by Hon'ble Supreme Court in the case of SLP filed against the said decision. With these submissions, the appeal is prayed to be dismissed.

5. Having heard both the parties and perusing the records, we observe and hold as follows:

5.1 Service Tax Rules, Rule 2(1)(d) thereof defines the expression 'person liable for paying service tax'. By virtue of the said rule, the person in charge of vessel in case of imports through shipping lines, is the person liable to pay service tax in situation covered under the said clause. Ordinarily, the shipping agent of the vessel who is also responsible for filing IGM happens to be the shipping agent i.e. person liable to pay service tax on ocean freight. However, two notifications dated 13.04.2017 were brought into force from April 23, 2017. By virtue of Notification No. 15/2017-ST, the Central Government has submitted certain explanations in the original Notification No. 30/2012-ST, dated June 20, 2012. Explanation V so substituted/inserted vide this Notification No. 15-2017-ST provides that the importer as defined under Section 2(26) of the Customs Act shall be the person liable to pay service tax in respect of services provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the Custom station of clearance in India. By virtue of Explanation V so inserted, it would mean that the importer of goods would be liable for paying service tax on ocean freight in case where the service of transportation of goods in a vessel was provided by the vessel owner/operator to the overseas supplier-seller in CIF transactions.

By Notification No. 16/2017-ST, clause (EEC) of rule 2(1)(d) of the Service Tax Rules has been substituted, and there also the importer as defined under Section 2(26) of the Customs Act is made liable to pay service tax on ocean freight in cases like CIF transactions. A new sub-rule, i.e., sub-rule (7CA) has also been inserted in Rule 6 of the Service Tax Rules by this notification, thereby providing that the value of the ocean freight may be calculated at the rate of 1.4 per cent. of the sum total of CIF for paying service tax thereon.

Thus, the effect of the amendments vide the other Notification No. 16/2017-ST is also the same, i.e., an importer like the petitioner is made the person liable to pay service tax on ocean freight in case of CIF transactions is rendered by the ship owner/operator to the overseas seller/supplier, and not to the local importer. Thus both the said notifications made amendments in aforesaid Rule 2 of Service Tax Rules and even in original Notification No. 30/2012-ST dated 20.06.2012. The fact of the said notification was that a person liable to pay service tax on ocean freight is now liable to pay service tax on the entire value of transportation charges, i.e., the whole of ocean freight without any abatement in value that the Central Government has otherwise allowed vide Sl. No. 10 of Notification No. 26/2012-ST.

5.2 The appellant herein since has imported on FOB/CIF basis but has denied the service tax liability o on ocean freight for the reason that he had not received the service of transportation of goods in a vessel from the owner/operator of such vessel. In the impugned order, the Commissioner (Appeals) has relied upon the **M/s. SAL Steel Ltd. (surpa)** observing the following findings therein:

> *"58. In view of the aforesaid discussion, the writ application succeeds and is hereby allowed. The Notification Nos. 15/2017-ST and 16/2017 making Rule 2(1)(d)(EEC) and Rule 6(7CA) of the Service Tax Rules and inserting Explanation-V to reverse charge Notification No.30/2012-ST is struck down as ultra vires Sections 64, 66B, 67 and 94 of the Finance Act, 1994; and consequently the proceedings initiated against the writ applicants by way of show cause notice and enquiries for collecting service tax from them as importers on sea transportations service in CIF contracts are hereby quashed and set aside with all consequential reliefs and benefits."*

The findings in the case of **M/s. Mohit Mineral Pvt. Ltd. (surpa)** as below have also been relied upon:

> *"254. In view of the aforesaid discussion, we have reached to the conclusion that no tax is leviable under the Integrated Goods and Service Tax Act, 2007, on the ocean freight for services provided by a person located in a non-taxable territory by way of transportation of goods by a vessel from a place outside India upto the customs station of clearance in India and the levy and collection of tax of such ocean freight under the impugned Notifications is not permissible in law.*
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> *255. In the result, this writ-application along with all other connected writ-applications is allowed. The impugned Notification No.8/2017 – Integrated Tax (Rate) dated 28th June 2017 and the Entry 10 of the Notification No.10/2017 – Integrated Tax (Rate) dated 28th June 2017 are declared as ultra vires the Integrated Goods and Services Tax Act, 2017, as they lack legislative competency. Both the Notifications are hereby declared to be unconstitutional. Civil Application, if any, stands disposed of."*

6. Since the impugned order as passed by Commissioner (Appeals) is based on two decisions of Hon'ble High Courts and that both the decision are holding good. In fact, the decision of **M/s. Mohit Mineral Pvt. Ltd. (supra)** has been affirmed by Hon'ble Supreme Court and the decision in **M/s. SAL Steel Ltd. (supra)** has not been stayed. Seen from the principles of judicial protocol, those decisions have to be followed. We find that Commissioner (Appeals) has committed no error while dropping the demand relying upon both the said decisions. With these observations, the order is upheld and the department's appeal is hereby dismissed.

[Dictated and pronounced in the open Court]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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

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