**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI**
**PRINCIPAL BENCH, COURT NO. III**

**Service Tax Appeal No. ST/51/2010-[DB]**
[Arising out of Order-In-Original No. 22/Commr./M-II-09 dated 24.09.2009 passed by CCE Meerut-II]

**For approval and signature:**
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

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| 1 | Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? | |
| 2 | Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | |
| 3 | Whether Their Lordships wish to see the fair copy of the Order? | |
| 4 | Whether Order is to be circulated to the Departmental authorities? | |

M/s. Kichha Sugar Co. Ltd. ...Appellant

Vs.

C.C.E. Meerut-I …Respondent

**Appearance:**
Mr. Bipin Garg (Advocate) for the Appellant
Mr. Govind Dixit, DR for the Respondent

**CORAM:**
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

Date of Hearing/ Decision.19.12.2016

**Final Order No. 56462 /2016**

**Per S. K. Mohanty**:

This appeal is directed against the order dated 24.09.2009 passed by the Commissioner of Customs, Central Excise and Service Tax, Meerut. In this case, service tax demand of Rs. 1,01,00,930/- is confirmed against the appellant along with penalty under different sections of

Finance Act, 1994 on the ground that during the period 01.01.2005 to 31.03.2008, the appellant did not pay the service tax on the GTA Services for transportation of the goods, under reverse charge mechanism.

2. Ld. Advocate appearing for the appellant submits that the appellant is engaged in the manufacture of sugar and the byproduct namely, molasses. During the disputed period, the appellant had paid to various transporters/ truck owners and trolley owners for services rendered by them for transportation of sugarcane from various cane purchasing centers to its factory premises. These petty transporters did not issue any consignment note or challan but submitted the bills on fortnightly or monthly basis on plain paper. He submits that since no consignment notes were issued by the petty transporters and those transporters are not the "goods transport agents," the service tax liability cannot be fastened against the appellant. To support such stand, the Ld. Advocate has relied on the decision of this Tribunal in the case of Nandganj Sihori Sugar CO. Ltd. vs CCE Lucknow reported in 2014 (34) S.T.R. 850 (Tri. –Del.).

3. On the other hand, the Ld. AR appearing for the Revenue submits that no documents were produced by the appellant before the jurisdictional Central Excise Authorities even though documents were specifically asked for by the Department. In this context, Ld. AR submits that since the appellant has paid transportation charges for transport of

goods, it was required to pay the service tax on such transportation charges.

4. Heard both the sides and perused the records.

5. We find that the activities of the appellant regarding transportation of goods by the appellant has been recorded by the Ld. Commissioner in the Adjudication Order however, no specific findings were recorded with regard to the submission of the appellant that the petty transporters were engaged for mere transportation of goods and no consignment notes to that effect were issued by them. However, a demand has been confirmed on the ground that for claiming 75% abatement as provided under Notification No. 32/2004, the appellant has not produced the documents before the original authority. The issue involved in this case relates to payment of service tax on the "goods transport agent service" and not confined to claiming of abatement. We are of the view that the goods transport service availed by the appellant is not conforming to the definition of GTA service for the purpose of payment of service tax by the appellant under reverse charge mechanism. We find that in an identical situation this Tribunal in the case of Nanganj Sihori Sugar Co. Ltd. (supra) has held that service tax demand cannot be confirmed under GTA service. The relevant paragraph in the said decision is extracted herein below:

> 6. In term of Section 65(105)(zzp), the taxable service means any service provided to a customer, by a Goods Transport Agency,

in relation to transport of goods by road in a goods carriage. "In terms of Section 65 (50a) ibid 'Goods Carriage' has the meaning assigned to it in clause 14 of Section 2 of the Motor Vehicle Act, 1988. In terms of Section 65 (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. The service tax has been demanded from the Appellants as service recipient under Rule 2(1)(d)(v) of the Service Tax Act 1994 read with Notification No. 35/2004(ST) dt. 03.12.04, on the payments made by them to transporters against the fortnightly bills being presented by them. While admittedly no consignment notes or GRs have been issued by the transports, according to the Department the Transporter's bills are in the nature of the consignment notes. Under Rule 4B of the Service Tax Rules, 1994, any Goods Transport Agency which provide service in relation to transport of goods by road in a goods carriage shall issue a consignment note to the customer. In term of Explanation to Rule 4B, 'Consignment Note' means - a document issued by Goods Transport Agency against the receipt of goods for the purpose of its transport by road in a goods carriage, which is serially numbered and contains the name of consignor and consignee, registration number of the goods carriage in which goods are transported, details of goods transported, details of the place of origin and destination, person liable for paying service tax whether consignor, consignee or Goods Transport Agency. Thus mere transportation of the goods in a Motor Vehicle is not the service provided by a Goods Transport Agency. A Goods Transport Agency in term of its definition under section 65(50b) provides service in relation to transportation of goods under a consignment note which should have the particulars as prescribed in explanation to Rule 4B. In the present case admittedly no consignment notes have been issued. The fortnightly bills cannot be treated as consignment notes, as a consignment note issued by Goods Transport Agency represent its liability to transport the consignment handed over to it to the destination and deliver the same to the consignee and merely a bill issued for transportation of goods cannot be treated as Consignment Note. The fact of non issue of consignment to M/s. Nandganj is admitted in the Show Cause Notice itself. In case of M/s. Bajpur though it is not mentioned in the Show Cause Notice, this plea has been made by the Appellant and the same has not been refuted. The transportation of goods by individual truck owners without issue of consignment note, GR's & billties etc. as prescribed in Rule 4B of the Service Tax Rules, would be simple transportation and not the service of Goods Transport Agency which involves not only undertaking the transportation of the goods handed over to it but also undertaking delivery of the goods to the consignee and also temporary storage of the goods till delivery. When the transports did not issue consignment notes or GRs or Challans or any documents containing the particular as prescribed in Explanation to Rule 4B of the Service Tax Rules, 1994, the Transporters cannot be called 'Goods Transport Agency' and, hence, in these cases, the service of transportation of sugarcane provided by the transporters would not be covered by Section 65(105)(zzp). In view of this we hold that there will be no service tax liability on the appellant sugarcane mills, as they have not received the service from a Goods Transport Agency. In view of this the impugned orders are not sustainable and the same are set aside. The appeals filed by M/s. Nandganj and M/s. Bajpur are allowed. As regards the Revenue's appeal, since it has been held that there is no service tax liability of the Appellants, there would be no merit in it and the same is dismissed.

6. In view of above, we do not find any merits in the impugned order and allow the appeal in favour of the appellant.

(Dictated and pronounced in the open court)

(**B. Ravichandran**) (**S. K. Mohanty**)
Member(Technical) Member (Judicial)

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