IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III

DATE OF HEARING : 05/04/2017.
DATE OF DECISION : 05/04/2017.

Service Tax Appeal No. 1305 of 2011

[Arising out of the Order-in-Original No. 12/2011/ST/JPR-II-Commissioner dated 31.05.2011/01.06.2011 passed by The Commissioner, Central Excise, Jaipur – II.]

CCE, Jaipur – II Appellant

Versus

M/s Rajasthan State Mines & Minerals Respondent

Appearance

Shri Sanjay Jain, Authorized Representative (DR) – for the appellant.

Ms. Rinki Arora, Advocate – for the Respondent.

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

Final Order No. 52771/2017 Dated : 05/04/2017

Per. B. Ravichandran :-

The Revenue is in appeal against order dated 01/06/2011 of Commissioner of Central Excise, Jaipur – II. The respondents are engaged in mining activities and received services of "Goods Transport Agency" (GTA). In terms of Rule 2 (1) (d) (v) of Service Tax Rules, 1994, the respondent is made liable to pay service tax on reverse charge basis on GTA services. They have been discharging service tax under the said category. However, in respect of the transport of goods in lorries of capacity of upto 10 M.T. the freight charges was below Rs. 1,500/-. The respondent did not pay service tax on such consignments, claiming exemption under Notification 34/2004-ST dated 03/12/2004. Proceedings were initiated to demand service tax on GTA services, where the freight paid did not exceed Rs. 1,500/- per consignment. The Commissioner on adjudication of the demand notice, held that the respondent is eligible for exemption under the said notification. He held that the expression "consignments" used in Clause (i) of the notification would mean "consignment" also. Relying on the provisions of General Clauses Act, 1897 he held that the respondent is eligible for exemption.

2. Aggrieved by the above order, the Revenue is in appeal. The learned AR elaborated the grounds of appeal and submitted that the Commissioner erred in applying the provisions of General Clauses Act and there is no requirement for such interpretation. A plain reading of the exemption notification itself is sufficient to understand and to apply, the scope of exemption. The Revenue also relied on the decision of the Tribunal in **Bellary Iron & Ores Pvt. Ltd. vs. CCE, Belgaum** reported in **2010 (18) S.T.R. 406 (Tri. – Bang.)**. In essence, the submission of the Revenue is that Clause (i) and (ii) of the notification will apply to different situations. In the facts of the present case when the respondent is transporting goods in bulk, in a single lorry paying above Rs. 750/- for freight, provisions of clause (ii) are attracted and there

is no application for clause (i) here. Clause (i) will apply only when multiple consignments are transporter in a goods carriage and the gross amount charge on all such consignments does not exceed Rs. 1,500/-.

3. The learned Counsel for the respondent submitted that the reasoning followed by the Commissioner is proper and correct. She also relied on Notification 25/2012-ST dated 20/06/2012 (Sl. No. 21). It is submitted that the said notification talks about transportation of goods and amount charged for transportation of goods on a consignment, transporter in a single goods carriage. It is submitted that the present notification makes the position clear that the same scope should be applied for all earlier period covered by Notification 34/2004-ST.

4. We have heard both the sides and perused the appeal records. The facts of the case are not in dispute. The respondent engaged various goods carriage vehicles for transport of goods, for which they are paying freight charges. The dispute in the present case is in respect such transports where, for the whole transport carriage, the freight paid exceeds Rs. 750/- but does not exceed Rs. 1,500/-. The respondent claimed exemption under Notification 34/2004-ST, which reads as below :-

> **"Service tax exemption to consignments transported by road when gross amount charged is upto Rs. 1,500/- or when gross amount charged for an individual consignment is upto Rs. 750/- (w.e.f. 1-1-2005)**

> In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service provided by a goods transport agency to a customer, in relation to transport of goods by road in a goods carriage, from the whole of service tax leviable thereon under section 66 of the said Act, where, -
>
> (i) the gross amount charged on consignments transported in a goods carriage does not exceed rupees one thousand five hundred; or
>
> (ii) the gross amount charged on an individual consignment transported in a goods carriage does not exceed rupees seven hundred fifty.
>
> *Explanation.* - For the purposes of this notification, "an individual consignment" means all goods transported by a goods transport agency by road in a goods carriage for a consignee.
>
> 2. This notification shall come into force on the first day of January, 2005".

5. The Commissioner interpreted the said notification to the effect that when the goods carriage carried only a single consignment clause (i) can be made applicable, to allow exemption. In other words, he interpreted the "consignments" as to include a single "consignment" also. He drew support from provisions of General Clauses Act. We are not able to appreciate the logic and reasoning adopted by the learned Commissioner.

The gross amount charged on an individual consignment transported in a goods carriage is specifically mentioned in Clause (ii) of the notification. In the present case, the individual consignment transported in a single lorry had freight amount exceeding Rs. 750/-, thereby clearly attracting provisions of Clause (ii). Clause (i) will apply where the gross amount charged on consignments transporter in a goods carriage does not exceed Rs. 1,500/-. In other words, clause (i) deals with gross amount charged/paid in respect of multiple consignments. In the present case, admittedly, there is no multiple consignments. We find no need to take a single consignment, with no other consignment in the same lorry, to be covered under the category of clause (i). Such interpretation will be against the plain reading and also will make the operation of the notification difficult in different situations, of individual consignments having freight of below Rs. 750/-/above Rs. 750/- and also above Rs. 1,500/-. Different situations are contemplated and the facts of the case are to be applied to examine the availability of exemption under the said notification.

6. In this connection, we also rely on decision of the Tribunal in **Bellary Iron & Ores Pvt. Ltd.** (supra). The observation of the Tribunal is as below :-

> "12. As regards exemption extended under Notification No. 34/2004 dated 3-12-04, the Commissioner held that the consignments meant for the same consignee could not be split up so as to keep the freight amount for each

bundle or packet with in the limit of Rs. 750/- while the aggregate exceeded Rs. 750/-. In order to avoid such splitting of consignments to the same consignee, the exemption under clause (ii) would apply when there was transportation of multiple consignments to multiple consignees. The explanation for "individual consignment" would then come into play, and the exemption would be restricted to freight charges up to Rs. 750/- for transportation of individual consignment. The exemption would be available in the case of consignments transported in the same goods carriage and meant for the same consignee only if the aggregate freight in respect of such consignments is Rs. 750/- or below. He held that BIOL were entitled for exemption in cases where gross amount paid on individual consignments transported in a goods carriage did not exceed Rs. 750/- only and not in cases where gross amount paid on consignments transported in a goods carriage was upto Rs. 1500/- as contented by BIOL. He held BIOL liable to pay service tax on the freight amount paid in all cases where the gross amount charged/paid on an individual consignment transported in a goods carriage exceeded Rs. 750/-. BIOL has argued that the notification extended two types of exemption under the clauses (i) and (ii). It is argued that BIOL was eligible for exemption when the goods carriage transported only a single consignment belonging to BIOL and freight paid was upto Rs. 1500/-. The explanation for the expression "individual consignment" appearing in clause (ii) of the notification was not applicable for exemption under clause (i) where freight charged was upto Rs. 1500/-. Let us examine the exemption under this notification.

Notification No. 34/ 2004 dated 3-12-2004 is reproduced below :

In exercise of the powers conferred by sub-section (1) of Section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service provided by a goods transport agency to a customer, in relation to transport of goods by road in a goods carriage, from the whole of service tax leviable thereon under section 66 of the said Act, where, -

(i) the gross amount charged on consignments transported in a goods carriage does not exceed rupees one thousand five hundred; or

(ii) the gross amount charged on an individual consignment transported in a goods carriage does not exceed rupees seven hundred fifty.

Explanation. - For the purposes of this notification, 'an individual consignment' means all goods transported by a goods transport agency by road in a goods carriage for a consignee.

This notification shall come into force on the first day of January, 2005.

Notification No. 34/2004 grants full exemption from service tax in the following two situations :-

(i) the gross amount charged on consignments transported in a goods carriage does not exceed rupees one thousand five hundred; or

(ii) the gross amount charged on an individual consignment transported in a goods carriage does not exceed rupees seven hundred fifty.

12.1 In view of the clear language of the explanation to 'individual consignment' used in the notification, the exemption is obviously admissible to goods of transported as a single consignment for which the freight charged is not above Rs. 750/-. Where the goods carriage transports several consignments, the exemption will be available if the aggregate freight charged for the trip does not exceed Rs. 1500/-. Therefore, where an assessee incurred freight upto Rs. 1500/- per consignment the assessee is not eligible for exemption. We uphold this reading of the notification by the Commissioner".

7. We find that in view of the discussion and analysis made above, impugned order of the Commissioner is not legally sustainable. Accordingly, the same is set aside and the appeal by Revenue is allowed.

(Order dictated and pronounced in open court.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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