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

Service Tax Appeal No. 3844 of 2012

[Arising out of Order-in-Appeal No. 225/2012 dated 10.10.2012 passed by the Commissioner of Central Excise, Jaipur]

M/s. Ashoka Marbles Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise **Respondent**
Jaipur I

Appearance:

Shri Kumar Vikram, Advocate for the Appellants
Shri Ranjan Khanna , DR for the Respondent

CORAM:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Date of Hearing : 18.07.2017
Date of Decision: 21.07.2017

FINAL ORDER NO. 55391 /2017

Per: V. Padmanabhan:

The appeal is filed against the impugned Orders-in-Appeal No. 225/2012 dated 10.10.2012. The appellant availed the services of Goods Transport Operators for inward transportation of marble blocks from mines area to their factory. During the course of verification carried out by the Departmental officers at the appellants premises on 30.5.2008, it was found that the appellant was receiving marble blocks and paying the freight but not paying the service tax on such transaction. Since the appellants unit is a company registered under Companies Act. The Revenue was of the view that they were covered within the Rule 2(1) (d)(v) of Service Tax Rules, 1994 and appellant as services receiver, is required to pay the service tax. Accordingly, vide impugned order service tax amounting to Rs.65,731/- was demanded with interest and penalties. Aggrieved by the said decision, the present appeal has been filed.

2. With the above background, we heard Shri Kumar Vikram, learned Advocate for the appellants and Shri Ranjan Khanna, learned DR for the Revenue.

3. Learned advocate submitted on behalf of the appellants that transportation of marble blocks for the appellants were carried out, not by goods transport agency, but by individual truck operators. Such truck operators will not come within the definition of "Goods Transportation Agency" and hence. they are not required to issue consignment note as per Rule 4(B) of the Service Tax Rules, 1994. Accordingly, no service tax is liable to be paid by the appellants. They also relied upon the following case laws:

1) ***Bhima Sahakari Sakhar Karkhana Ltd. vs. CCE***
[2016 (41) STR 438 (Tri-Mum)]

2) Nandganj Sihori Sugar Co. Ltd. vs. CCE, Lucknow
[2014 (34) STR 850 (Tri-Del)]

3) Caps & Prints (P) Ltd. vs. CST
[2013 (30) STR 426)Tri-Kolkata]

4) Kisan Sahkari Chini Mills Ltd. vs. CCE
Final Order No. ST/A/240-243/12(DB) dt 08.02.2012

5) CCE vs Kanaka Durga Agro Oil Products P Ltd.
[2009 (15) STR 399 (Tri-Bang)]

6) Lakshminarayana Mining Co. vs. CST
[2009 (16) STR 691 (Tri-Bang)]

4. Learned DR supported the impugned order.

5. We heard both the sides and perused the record. We find that the issue involved in the present case is no more res integra and has been decided by various cases cited by the appellants. In the case of ***Nandganj Sihori Sugar Co. Ltd. vs. CCE, Lucknow*** (supra), the Tribunal has held as follows:

> ***"6.*** *In terms 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(l)(d)(v) of the Service Tax Act, 1994 read with Notification No. 35/2004-S.T., dated 3-12-2004, 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 terms 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…."*

6. By following the co-ordinate Bench decision, we set aside the impugned order and allow the appeal.

(Pronounced in the open Court on 21.07.2017)

(V. Padmanabhan)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

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