IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –III

Service Tax Cross Appeal No. 55736/2013-ST [DB]
Service Tax Appeal No. 3806/2012-ST [DB]

[Arising out of Order-in-Appeal No. IND/CEX/000/APP/262/12 dated 23.08.2012 passed by the Commissioner (Appeals), Central Excise & Customs & Service Tax, Indore]

Premier Industries India Ltd. …Appellant

Vs.

C.C.E., Indore … Respondent

Present for the Appellant : Mr. Ashutosh Upadhyay, Advocate
Present for the Respondent: Mr. Neha Garg, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. V. PADMANABHAN, MEMBER (TECHNICAL)

Date of Hearing: 30.05.2017
Date of Pronouncement: _22.09.2017_

FINAL ORDER NO. ___56694/2017_

PER: S.K. MOHANTY

This appeal is directed against the impugned order dated 21.08.2012 passed by the Commissioner (Appeals), Customs, Central Excise and Service Tax, Indore.

2. Brief facts of the case are that the appellant is engaged in the manufacture of soya milk, soya oil, etc. The appellant avails the services of transporters for transportation of soya to its factory premises. The appellant being a company under the provisions of

Companies Act, 1956, discharges its service tax liability as the recipient of service under Rule 2(d)(v) of the Service Tax Rules, 1944. For this purpose, the appellant is registered with the Service Tax Department under the category of goods transport agency service. During the course of audit of records by the Service Tax Department, it was observed that the appellant had calculated the service tax in respect of GTA service after claiming abatement of 75% as provided under Notification No.32/2004-ST dated 3.12.2004 and 1/2006-ST dated 1.3.2006. On the rest freight amount of 25%, the appellant had paid service tax considering such amount as inclusive of service tax. Thus, it was contended by the Department that on this account, the appellant had short paid service tax amounting to Rs.28,791/- for the period from 1.1.2005 to 31.03.2010. Further, the Department also contended that the benefit of abatement provided under notification dated 3.12.2004 and 1.3.2006 is not available to the appellant on the ground that no billities/consignment notes were issued for transportation of soya seeds from various mandis by the truck operators. On the basis of the above observations, the Department initiated show cause proceedings against the appellant, seeking confirmation of the service tax demand. The matter was adjudicated vide order dated 30.02.2012, wherein service tax demand of Rs.30,40,450/- was confirmed under the proviso to Section 73(1) of the Finance Act, 1994 along with interest. Besides, penalties were imposed under Section 76, 77 and 78 ibid. Further, an amount of Rs.1,000/- for late filing of returns was confirmed under Section 70 *ibid*. On appeal, the ld. Commissioner (Appeals) vide the impugned order, has upheld the adjudged demand. Feeling aggrieved with the impugned order, the appellant has filed this appeal before the Tribunal.

3. Ld. Advocate appearing for the appellant submitted that the appellant has only engaged the truck/trolly owners for transportation of soya from the mandis and such transporters cannot be termed as "goods transport agent" for the purpose of levy and payment of service tax. Thus, he submitted that there was no occasion or scope on the part of the owners of the transport vehicles for issuance of consignment note/LR/billities for transportation of such goods. Thus, he submits that in absence of issuance of consignment notes, the transportation activities undertaken by the transportrs will not be subjected to levy of service tax under GTA service. To support such stand, the ld. Advocate has relied on the decision of this Tribunal in the case of **Birla Ready Mix -2013 (30) STR 99 (Tribunal-Delhi)** and **South Eastern Coal Fields Ltd. – 2016 (41) STR 636 (Tribunal-Delhi).**

4. On the other hand, ld. DR appearing for the Revenue reiterated the finding recorded in the impugned order and further submitted that the abatement provided under Notification dated

3.12.2004 and 1.3.2006 is not available to the appellant in absence of non-fulfillment of the conditions mentioned therein.

5. Heard both sides and perused the appeal records.

6. The show cause notice indicates that the appellant had received soya seeds from various mandis through trucks, without issuance of the billities/LR (consignment notes). The relevant paragraph in the show cause notice is extracted below:-

> "Furthermore, it is noticed that the notice received the soya seeds from various mandis by local trucks without the coverage of bilties /L.R. (Consignment Notes). Service tax is being calculated /paid on the reference of transportation charges/payment made to truck drivers. Notification No.32/2004-ST Dr. 3.12.2004 and 1/06 ST Dr. 01.03.2006 prescribed abatement/exemption. This exemption is available if the goods are received under the cover of consignment note/LR/Builty issued by Transport Agency to the customers. In the absence of above such documents, the aforesaid exemption is not available to the noticee."

7. It is evident from the contents in the SCN that no consignment notes were issued in this case by the transport agencies for transportation of goods for the appellant. The term "goods transport agency" is defined under Section 65(2) (50b) of the Finance Act, 1994 to mean, "any person who provides service

in relation to transportation of goods by road and issues consignment notes by whatever name called”. Thus, from the above definition, it transpires that in order to qualify a person to be goods transport agency, the mandatory requirement is issuance of the consignment notes, which in the present case has not been issued. Hence, transporters transporting the goods for the appellants are not conforming to the definition of “goods transport agency” for the purpose of payment of service tax by the appellant under ‘reverse charge mechanism’. We find that this Tribunal, in an identical set of facts, in the case of **Birla Ready Mix** (supra) has held that mere transport operators would not be considered as goods transport agency for the purpose of payment of service tax. The relevant paragraph in the said decision is extracted herein below:-

> “9. We further note that service tax is levied on the services of a “Goods Transport Agency” and not on services of a “Goods Transport Operator”. The latter term was used in Finance Act, 1994 during the period Nov., 1997 to June, 1998 and the former expression is being used now. So it is to be understood that these two expressions refer to different types of persons. The mere fact that the operator is doing activity of transportation cannot make the operator a “Goods Transport Agency”. So the operators in this case cannot be considered as “Goods Transport Agencies”. We are not in agreement with the argument of

> Revenue that the log-book maintained by the operators should be considered as equivalent to consignment note. The fact that part of the hire charges for the vehicles is being paid on the basis of number of kilometers run cannot alter the nature of the responsibility of the operators because such payment is consistent with a scheme of hiring the vehicle though it may be consistent with a contract for transportation of goods also. On the other hand a fixed charge per month for the vehicle is more consistent with a scheme of hiring the vehicle rather than a contract for transporting the goods. It is seen the contracts provide for such component of remuneration also.

8. In view of above, the transport operators engaged by the appellant for transportation of soya from various mandis will not be considered as goods transport agents for the purpose of levy of service tax. Accordingly, the impugned order confirming the service tax demand on the appellant is liable to be set aside. Therefore, after setting aside the impugned order, we allow the appeal in favour of the appellant. Cross Appeal is disposed of.

(Pronounced in the open court on 22.09.2017)

(V. PADMANABHAN)	**(S.K. MOHANTY)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Ckp.