CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi

PRINCIPAL BENCH

Service Tax Appeal No. 52874 of 2016-DB

(Arising out of Order-in-Appeal No.BHO-EXCUS-001-APP-143-16-17 dated 13.07.2016 passed by Commissioner of Central Excise & Service Tax, Bhopal)

M/s All Cargo Global Logistics Limited **..Appellant**
6th Floor, Avvashya House,
CST Road, Santacruz East,
Mumbai 400098

Versus

Commissioner of Central Goods &
Service Tax, Customs & Central Excise, Bhopal **..Respondent**
Office of Commissioner (Appeals)
Customs, Central Excise & Service Tax, Bhagya Bhavan
MP Nagar, Zone-II, Bhopal (MP)

Appearance

Present for the appellant: Ms. Shohini, Advocate
Present for the respondent: Shri G R Singh, DR

CORAM: **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Mr. Bijay Kumar, Member (Technical)

Date of hearing: 28.03.2019
Date of decision: 19.07.2019

Final Order No. 50911 /2019

Per Bijay Kumar:

1. Being aggrieved with the impugned order-in-Appeal No. 632-ST/14 dated 13/07/2016, the appellant has preferred this appeal. In the impugned order, ld. Commissioner (Appeal) has uphold the order passed by the Original

adjudicating authority dated 04/12/2014, who has confirmed the demand of Rs. 1,22,541/- in terms of show cause notice dated 08/10/2013.

2. Brief facts of the case are that the Internal Audit Branch Central Excise Division, Pitampur observed, from the financial record of the appellant, that in the year 2008-09 the appellant has shown the description of Rs. 39,65,750/- paid to the different transporters on account of the transportation of the goods on behalf of their clients and as such they were required to pay service tax for providing the taxable services under the provisions of Section 65 (50b) and 65 (105) (zzp) of the Finance Act, 1994 (for short 'Act') for the taxable services of goods transport agency.

3. Ld. Advocate, on behalf of the appellant submits that the appellant, is engaged in providing transportation and logistics solutions and is registered with the service tax department for the taxable services under the category of 'Cargo Handling Services' , 'Goods Transport Agency Services' and 'Storage of Warehouse Services'. The appellant has been discharging service tax and also file ST-3 returns as per the provisions of Act. During the disputed period i.e. 2008-09 the appellant was receiving input services from various truck owners and their payments were made, which were treated as expense in the books of account of the appellant. The Department felt that the appellant has paid this amount towards provisions of the

service and as such liable to pay service tax under 65 (105)(zzp) of the Act.

4. It was submitted that the impugned Order-in-Originals dated 14/10/2014 and dated 30/07/2016 have been confirmed on the charge which were never part of the show cause notices, and therefore, was beyond the scope thereof. The impugned orders wrongly confirmed the demands on the appellant as service provider on the basis of reverse charge. There is no dispute on the payment of service tax by the appellant as service provider but the demand proposed under GTA service on them as service recipient. Therefore, the impugned order is beyond the scope of the show cause notice issued is not sustainable and for which reliance was placed on the following decisions;

(i) **Commissioner of Central Excise vs. Gas Authority of India Limited, 2008 (232) ELT 7 (SC)**

(ii) **Commissioner vs. Reliance Ports and Terminals Limited, 2016 (334) ELT 630 (Guj.)**

5. Ld. Advocate also pleaded that the truck owners do not fall under the category of 'Goods Transport Agency Services' and hence no service tax is leviable upon the appellant under the reversed charge mechanism. The appellant is receiving the service from various truck owners, who were not 'Goods Transport Agency'. The truck owners do not issue any consignment notes for providing such services. Ld. Advocate also placed reliance on Notification No. 29/08-ST dated 26/06/2008, which exempts supply of tangible

goods services provided to goods transport agency for transport of goods, which also stands further clarified by circular No. 334/13/09-TRU dated 06/07/2009 and an explanatory note to Budge, 2009. Ld. Advocate thus pleads that the original adjudicating authority as well as ld. Commissioner (Appeal) in the impugned order have erred in confirming the demand by invoking amended provisions of Finance Act which is applicable with effect from 01/07/2012 i.e. Section 65B(44) and Section65B(26) Section 65B(37) which was neither invoked in the show cause notice nor applicable for the disputed period i.e. 2008 and 2009. Further also the extended period is stated to be inapplicable, as the entire transaction relating to payment made to the truck owners were recorded in the books of account and returns were being file regularly and also service tax were being discharged on various services. The show cause notice did not give any reason for invocation of provisions to Section 73 (1) of the Act. In the circumstances, there is no liability towards payment of interest and also imposition of penalty is not warranted. Accordingly, he prayed for setting aside the impugned order.

6. Ld. AR on behalf of Revenue, however, supports the impugned order.
7. We have considered the rival submissions and also perused the case records.

8. The Department wanted to tax the appellant for the amount reflected in their books of account as transportation charges under the category of 'Goods Transport Agency Service'. It is stated that the transporters have not issued any consignment note to the effect of providing all the transportation service to their clients. The appellant has explained the activities undertaken by them as under;

> "7.10 The noticee submitted the set of document as an example which would make the above explanation more clear and easy to understand:-
>
> M/s All Cargo Logistics Limited (ICD-Pitampur) (hereinafter referred to as Noticee) hires vehicles from various Transporters from delivery of Goods/ Containers for clients from the Port to the Premises of the consignee and from consignee place to the port. The noticee hired Goods Transport Vehicle from M/s Khandelwal Roadlines for providing transportation services. The noticee pays transportation charges for the trip wise services provided by M/s Khandelwal Roadlines. Invoices raised by M/s Khandelwal Roadlines specify the container number and the description of the same. M/s Kandelwal Roadlines doesn't issue nor provide any consignment note for the above transactions; hence it would not be covered under GTA service. As consignment note is not issued, no service tax would be payable on the same under reverse charge mechanism as per Notification No. 35/2004 and Notification No. 36/2004 read with Section 68 (2) of the Finance Act, 1994 as amended from time to time.
>
> Further, the noticee provides transportation services to M/s Soya Industries Limited. The noticee charged transportation charges for the service provided to the party and issued invoices along with the consignment note.

> The consignment note issued by the noticee clearly specifies the name of the consignee i.e. M/s Ruchi Soya Industries Limited who is the ultimate receiver of the service. The consignee who is the ultimate recipient of the service would be liable to pay service tax under Reverse charge mechanism. Hence, M/s Ruchi Soya Industries Limited would pay service tax under reverse charge mechanism."

9. The above illustrations indicated that the appellant is not issuing any consignment note for providing all the transport service and only raising bills for the transportation charges for various trucks hired by them from the independent owners and use them for providing the services to their clients. Hence, they would not be covered under the GTA service. GTA service is defined as under;

> "Goods transport agency" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called. (Section 65 (50b) of Finance Act, 1994 as amended)"

10. From perusal of the above definition regarding GTA as contained in the Act, it is apparent that the issue of consignment note, by whatever name is pre-requisite for the transaction to be covered under 'Goods Transport Agency'. In the present case service provider has not issued the consignment note to the appellant and hence the appellant is not liable to pay service tax under the reverse

charge mechanism and also do not fall under the category of GTA as under Section 65 (5b) of the Finance Act

11. In view of above, we set aside the impugned order and allow the appeal.

(Order pronounced in open court on 19.07.2019)

(BIJAY KUMAR)
MEMBER (TECHNICAL)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

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