CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD
REGIONAL BENCH - COURT NO. – I

Service Tax Appeal No. 2535 of 2012
(Arising out of **Order-in-Original** No.VIZ-STX-001-071-12 dated 17.05.2012 passed by Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam)

Parrys Sugar Industries Ltd., .. **APPELLANT**
(Formerly known as GMR Tech &
Industries Ltd.,)
Sankili Village, Palakonda Mandal,
Srikakulam District,
Andhra Pradesh – 532 440.

VERSUS

Commissioner of Central Tax .. **RESPONDENT**
Visakhapatnam– GST
GST Commissionerate,
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

AND

Service Tax Appeal No. 30317 of 2016
(Arising out of **Order-in-Appeal** No.VIZ-EXCUS-001-APP-048-15-16 dated 30.11.15 passed by Commissioner of Central Excise, Customs & Service Tax (Appeals), Visakhapatnam)

EID Parry India Ltd., .. **APPELLANT**
Parrys Sugar Industries Ltd.,
Sankili Village, Palakonda Mandal,
Srikakulam District,
Andhra Pradesh – 532 440.

VERSUS

Commissioner of Central Tax .. **RESPONDENT**
Visakhapatnam– GST
GST Commissionerate,
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

APPEARANCE:
Shri Kailash Nath, Advocate for the Appellant.
Shri K Sreenivasa Reddy, AR for the Respondent.

CORAM: **HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)**
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30236-30237/2025

Date of Hearing:07.05.2025
Date of Decision:07.05.2025

[ORDER PER: A.K. JYOTISHI]

M/s Parrys Sugar Industries Ltd., (hereinafter referred to as appellant) are in appeal against the order Order-in-Appeal No.VIZ-EXCUS-001-APP-048-15-16 dated 30.11.15, whereby demand of Rs. 27,32,493/- for the period May 2011 to September 2012 confirmed by the Adjudicating

Authority has been upheld. Appellants are also in appeal against order dated 17.05.2012 by the Adjudicating Authority covering period from 01.04.2006 to 31.03.2011 wherein the demand of Rs. 60,47,834/- has been confirmed as well as penalty has been imposed under Section 78.

2. The issue, in brief, is that appellants are engaged in manufacture of sugar and are also facilitating transportation of cane from the can grower to their factory. The appellants were reportedly paying for the transportation initially and thereafter cane transportation charges were being recovered from the amount payable to cane grower. It was felt by the Department that they were paying the freight on behalf of the farmers and that in terms of Rule 2(1)(d)(v) of service tax rules read with Notification No. 35/2004, the appellants were liable to pay service tax on freight charges incurred towards transportation of sugar cane. Further, as per Notification No. 35/2004 dated 03.12.2004, any person making payment towards freight would be liable to pay service tax in case the consignor or consignee of goods transported is one of the specified category. Since the appellants were falling under the specified category, Department felt that the service tax is leviable on the appellant.

3. On adjudication, the Adjudicating Authority has, interalia, observed that in the given factual matrix, as per Rule 2(1)()(v) any factory under Factory Act, 1948 or Companies Act 1956, being the consignor or consignee and who pays or is liable to pay freight either himself or through his agent for transportation of such goods by road in a goods carriage, would be the person liable for paying service tax. He held that the appellants were holding the status of consignee. This Rule read with Section 68(2) casts a liability on person to pay service tax. It was also indicated that the transporters were engaged by the assessee to carry sugar from the cane

fields to the assessee factory. He has also held that appellants are recipient of GTA service. He further denied the exemption under Notification No. 33/2004 on the ground that cane is not fruit but grass and also disallowed the claim that freight was less than Rs. 1500/- and therefore entitled for exemption on the ground that there was no evidence to that effect.

4. Learned Advocate has mainly contested on two grounds. Firstly, that in this case, they were only acting as a facilitator between transporters and cane growers and were initially paying the amount on behalf of the farmers to transport which were later on deducted from the total cane bill payable to the said farmers. Therefore, it cannot be alleged that they were the one who were paying the freight for the said consignment of cane as they were merely providing the freight on behalf of the cane grower themselves initially, which was recovered from the cane grower's fee. His another argument is that in terms of definition of goods transport agency (GTA) any service provided by the GTA invariably required issuance of consignment note, by whatever name it may be called. He further informs that Order-in-Original where it has been held that no consignment note has been issued or relied upon by the Department to invoke the classification under GTA service. He is relying on the judgment of M/s India Sugars and Refineries Ltd., Vs Commissioner of Customs, Central Excise & Service Tax, Bellary, Karnataka[2024 (8) TMI 321 (CESTAT-Ban)] where, in the identical situation, the amount paid by the sugar factory towards freight and later on recovered from cane bill was not considered as liable to service tax. As regards issuance of consignment note being mandatory for its getting covered within the definition of goods under GTA service, he has relied on the judgment of M/s Vaishnav Marbles Pvt Ltd., M/s Lalit Marmo & Granites Pvt Ltd., & M/s Sai Nath Natural Stones Pvt Ltd., Vs Commissioner of Central

Excise and Central GST, Udaipur (Rajasthan) [2024 (5) TMI 274 (CESTAT-New Delhi)].

5. On the other hand, Learned AR is mainly submitting that in this case, it is an admitted fact that transportation has taken place and the appellant is the one who has organised the transportation and also made payment towards the freight and therefore in terms of Rules relied upon by the Adjudicator, the person who has paid freight are required to pay the service tax on transportation charges. He is relying on the judgment of High Court of Madras in the case of CCE, Salem Vs Suibramania Siva Co-op Sugar Mills Ltd., [2014 (35) STR 500 (Mad)] and S.N.I. Industries Vs Commissioner of Central Excise & ST, Salem [2016 (41) STR 563 (Tri-Chennai].

6. Heard both the sides and perused the records. Since the issue is common in both the appeals, we are taking up both the appeals together.

7. The short question for determination in these appeals is whether the appellants are required to pay service tax, as alleged by the Department on the transportation charges paid by them or otherwise. We find that admittedly, they have paid to transporters certain freight charges initially but thereafter it is also an admitted fact that the same were also deducted from the cane bill payable to those farmers. Thus, it is obvious that cane growers were supposed to deliver the cane to their factory but for facilitating small growers they have engaged independent transporters and also paid their freights initially. The show cause notice and Order-in-Original admit that there were certain transporters and Department has not alleged that the appellant themselves was acting as a Goods Transporting Agency (GTA) or providing GTA services in relation to transportation of cane from the grower to their factory. We find that as per the definition of GTA "any

service provided to any person by a goods transport agency in relation to transport of goods by road in a goods carriage is a taxable service". Further, in terms of Section 65(50b) a "goods transport agency means any person who provides service in relation to transportation of goods by road and issued consignment note, by whatever name called". Therefore, in this appeal, the first issue is whether the demand has been made under the category of GTA service covered by Section 65(105)(zzp) or otherwise. We find from the facts discussed in the show cause notice as well as Order-in-Original that in order to be covered within this specified service category till the introduction of negative service regime, the service has to be provided by a goods transport agency and one of the essential criteria is that there has to be an issue of consignment note by whatever name it may be called by the said agency. Observations of the Adjudicating Authority that the issuance of consignment note is not necessary for getting covered within the purview of taxable service falling under Section 65(105)(zzp) is not correct. Before a service tax is charged, whether on forward basis or on reverse charge basis, there has to be a provision of service and prior to negative regime it has to be a specified service also. In this case, the specified service alleged is goods transport agency (GTA) service only, as no other service has been alleged. In view of the clear definition, we find that in the absence of consignment note, the classification of service under which the demand has been raised itself is not sustainable.

8. Further, we find that in the case of M/s Vaishnav Marbles Pvt Ltd., M/s Lalit Marmo & Granites Pvt Ltd., & M/s Sai Nath Natural Stones Pvt Ltd., supra, it was held that if the transporter does not issue consignment note or LR, he cannot be brought under GTA service. Further, in the case of M/s India Sugars & Refineries Ltd., supra, in the similar factual matrix, Co-

ordinate Bench held that amount of transportation cost paid initially and later recovered from cane grower cannot be subjected to service tax. Learned AR's reliance on the judgment of Madras High Court in the case of CCE, Salem Vs Suibramania Siva Co-op Sugar Mills Ltd., supra, is distinguishable on facts and hence not relevant to present appeal. When the amount has been paid on behalf of the farmer only by the sugar mill it was held that the sugar mill would not be liable to pay any service tax on the said amount under the category of GTA. Therefore, on this ground also, the demand is not sustainable. Even for the two months period beyond 01.07.2012 in the absence of any identified service provider, the demand will not sustain on that count.

9. We also find that reliance placed by the Commissioner on Rule 2(1)(d)(v) of Service Tax Rules read with Section 68(2) is also misplaced. The Rule 2(d) provides for the person liable to pay service tax and as per Rule 2(d)(i)(B), it would be the person who pays the freight provided it comes within the categories specified therein. However, this is in relation to that taxable service, which is notified under Section 68(2). Section 68(1) provides that every person, who is providing taxable service, is required to pay service tax, however, in respect of any taxable service notified by Government, it could be the recipient of service, who shall pay service tax. Therefore, a cogent reading would indicate that before deciding who will pay the service tax, the service itself has to be a taxable service. In this case, it is alleged to be GTA service, but there is no evidence that said transportation would get covered within the purview of said service in view of it's definition. Therefore, on this count also demand cannot be sustained.

10. Since the demand is not sustainable on merit itself, no penalty, either under Section 78 or 76, is imposable. In view of the same, both the appeals are allowed.

(Dictated and pronounced in open court)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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