

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD**

REGIONAL BENCH - COURT NO. – I

Excise Appeal No. 23240 of 2014

(Arising out of **Order-in-Original** No.GUN-EXCUS-000-COM-046-14-15-CE dated
30.07.2014 passed by Commissioner of Central Excise & Service Tax, Guntur)

M/s Sri Balaji Weld Mesh Industries

..

APPELLANT

Nunna, Vijayawada,
Krishna District,
Andhra Pradesh - 521 212.

VERSUS

**Commissioner Of Central Excise
and Service Tax
Guntur**

..

RESPONDENT

P.B.NO. 331, C.R.Building,
Kannavari Thota, Guntur,
Andhra Pradesh - 522 004.

APPEARANCE:

Shri Ch. Venkateswara Rao, Advocate for the Appellant.

Shri K. Sreenivasa Reddy, Authorized Representative for the Respondent.

**CORAM: HON'BLE Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)**

FINAL ORDER No. A/30530/2025

Date of Hearing: 04.09.2025

Date of Decision: 04.09.2025

[ORDER PER: ANGAD PRASAD]

Appellant M/s Sri Balaji Weld Mesh Industries (hereinafter called appellant) has filed this Excise Appeal against OIO No. GUN-EXCUS-000-COM-046-14-15-CE dated 30.07.2014. Learned Commissioner has confirmed the demand of Central Excise Duty under section 11A of the Central Excise Act, 1944 (hereinafter called Excise Act) with interest under section 11AA and imposed penalty under section 11AC as proposed in Show Cause Notice dated 07.11.2013.

2. We had heard both sides and dismissed the appeal with detailed order to follow. Thereafter, we noticed that in this Excise Appeal and in the

impugned order passed by the Commissioner, there was also a demand of a small amount of service tax of Rs. 9,410/- on reverse charge basis under section 73 of the Finance Act, 1994 (hereinafter called as the Finance Act) with interest under section 75 of the Finance Act and penalties imposed under section 77 and 78 of the Finance Act. This part of the demand was not brought to our notice or argued at the time of hearing by either side. However, we find that this demand of service tax, interest and penalties also need to be examined on merits and decided. Therefore, we proceed to pass this order covering both demands (excise duty and service tax).

3. Appellant is a manufacturer of G.I. Wire Welded Mesh on which it was not paying central excise duty. Central Excise officers of the Head Quarters Preventive Unit, Vijayawada Branch visited the Unit of the appellant and vide their letter dated 25.04.2013 called for information relating to the manufacture and clearances of the finished goods for the period of 2012-13. Subsequently, they also called similar particulars for the financial year 2013-14. Appellant submitted the particulars to the Central Excise Officer, recorded the statement of concerned person related to appellant unit. According to the appellant, the wire welded mesh manufactured by it was classifiable under Central Excise Tariff Sub Heading 8436 29 00 (poultry keeping machinery) and was exempted from central Excise duty while according to the Revenue, it was classifiable under Central Excise Tariff Sub Heading 7314 20 90 (as wire mesh) and was chargeable to central excise duty.

4. Appellant furnished copies of its accounts, which, inter alia, showed that it had incurred an amount of Rs. 3,04,312/- towards freight charges (after deducting the amounts of less than Rs. 750/- as per Serial No. 21 (C) of Notification No. 25/2013 ST d/20.06.2012). According to the department

the appellant was liable to service tax under reverse charge on this amount as a recipient of 'Goods Transport Agency' service. According to the appellant, these amounts were paid to individual truck operators and not to 'Goods Transport Agencies' and hence the appellant was not liable to pay service tax under reverse charge on this amount.

5. Two Show Cause Notices were issued to the appellant, the first one by the Joint Commissioner of Central Excise, Guntur, for the period of 2013-14 and the second one by the Commissioner of Central Excise, Guntur, for the period of 2013-14. In the Show Cause Notices it has been alleged that the finished goods manufactured by the Appellants are classifiable under Ch.S.H.No.73142090 of the Central Excise Tariff Act, 1985 attracting Central Excise duty at @ 12.36% ad valorem, that appellants removed the goods without payment of duty in contravention of the provisions of the Central Excise Act, 1944 and the rules made thereunder. In the Show Cause Notice proposals have been made to confirm demand of Central Excise duty of Rs. 21,01,313/- with interest thereon proposal has also made for imposition of penalties on the appellants under Section 11 AC of the Central Excise Act, 1944. Further proposals have also been made to demand Service Tax of Rs. 9,410/- on the freight charges paid by the appellant with interest thereon and for imposition of penalties under Sections 77 and 78 of the Finance Act, 1994.

6. In the subsequent Show Cause Notices issued by the Commissioner of Central Excise, Guntur, for the period of 2013-14, similar averments and allegations as made in the first Show Cause Notice and confirmation of demand of Central Excise duty of Rs. 55,45,505/- was proposed with interest thereon and imposition of penalty under Rule 25 of the Central Excise Act, 1944. Both the above two Show Cause Notices were clubbed and the

Commissioner of Central Excise, Guntur, took up the adjudication. Appellant submitted their reply to the Show Cause Notices that the Poultry Cage Mesh manufactured and cleared by them is classifiable as 'Other Poultry keeping machinery' falling under Ch.S.S.No.84362900 of the schedule to the Central Excise Tariff Act, 1985 attracting 'Nil' rate of duty and the said goods have been wrongly classified in the Show Cause Notices issued by them and therefore no liability is cast upon them to pay any Central Excise duty and the said goods.

7. With regard to the proposal to demand Service Tax from them on the freight charges paid by them, appellants submitted that they availed the services of private truck operators and paid them the freight charges and the services provided by the private truck operators do not fall under the definition of GTA.

8. The Commissioner did not accept the submissions of the appellant and confirmed demand of Central Excise duty of Rs. 21,01,313/- for the period from September 2012 to March 2013, Rs. 55,45,505/- for the period from April 2013 to March 2014 with interest on the said amount and also imposed penalty of Rs. 21,01,313/- under Section 11 AC of the Central Excise Act, 1944 and Rs. 18,50,000/- under Rule 25 of the Central Excise Rules, 2002 and also confirmed demand of Service Tax Rs. 9,410/- with interest thereon and imposed penalty of Rs. 10,000/- or Rs. 200/- per day whichever is higher under Section 77 and penalty of Rs. 9410/- under Section 78 of the Finance Act, 1944. Aggrieved by the said order, appellants filed an appeal before this Tribunal.

9. Learned Authorised Representative for the Revenue reiterated the findings of the Learned Commissioner and also stated that the Hon'ble High

Court of Delhi has decided that wire mesh, even if it is used by poultry farms is classifiable under heading 73.14 of Central Excise Tariff in the case of Azra Poultry Equipments Vs Union of India [2015 (323) E.L.T. 88 (Del)]. He also relied on Hon'ble Supreme Court decision in the case Commissioner of Central Excise Delhi Vs Carrier Aircon Ltd., [2006 (199) E.L.T. 577 (S.C.)].

10. Heard both the sides and perused the records.

11. There are only two issues to be decided in this matter. First is whether the Wire Welded Mesh is classifiable under Ch.S.H.No.84362900 as stated by appellant or classifiable under Ch.S.H.No.73142090 of First Schedule to Central Excise Tariff Act, 1985. Second is whether the appellant was liable to pay Service Tax on freight charges under the definition of GTA.

12. Learned AR for the Respondent submits that G.I Wire Welded Mesh are not classifiable under 84.36 (as poultry keeping machinery) but under heading 73.14 (as wire mesh). Hon'ble High Court, Delhi in the case of Azra Poultry Equipments Vs Union of India [2015 (323) E.L.T. 88 (Del)] held that wire mesh admittedly made of iron and steel, can be sold to persons other than poultry farmers also. Impugned goods are thus of general nature, use in poultry machinery being only one such use but not exclusive use. Impugned goods only iron cages without being equipped with automatic devices not eligible to be covered under term 'poultry keeping machinery'. Classification of impugned goods not under heading 84.36 but under heading 73.14 of the Central Excise Tariff Act, 1985. Therefore, it is a settled matter and Hon'ble High Court of Delhi has decided that impugned goods are classifiable under heading 73.14 of Central Excise Tariff Act, 1985. Learned Commissioner has decided the matter on the basis of Hon'ble Delhi High Court decision, therefore, it is based on Hon'ble High Court decision, since

facts are same. Thus no any force in the appeal regarding classification of goods.

13. The next issue is that appellant had incurred certain amount towards freight charges on the goods procured by them but had not registered themselves with the Department for payment of Service Tax of GTA services and did not discharge the tax liability.

14. Goods Transport Agency has been defined under Section 65 (50b) of Finance Act as under:

(50b) "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;

15. Taxable service is defined under various clauses of Section 65 (105) of the Finance Act. As per Section 65 (105) (zzp) of the Finance Act, 1994 "taxable service" means any services provided to any person by a Goods Transport Agency, in relation to transport of goods by road in a goods carriage. Rule 4B of Service Tax rules 1994 imposed responsibility on Goods Transport Agency to issue a consignment note to the recipient of service. Rule 4B of the Service Tax Rule 1994 is as under:

4B. Issue of consignment note

"Any goods transport agency which provides service in relation to transport of goods by road in a goods carriage shall issue a consignment note to the recipient of services:

PROVIDED that where any taxable service in relation to transport of goods by road in a goods carriage is wholly exempted under section 93 of the Act, the goods transport agency shall not be required to issue the consignment note."

16. It is a well settled legal position that transportation service provided by individual truck operators is not Goods Transport Agency Service and no service tax is payable on such payments. There is no evidence on record to show that the appellant had obtained the services of any Goods Transport

Agency. According to the appellant, it only paid amounts to individual truck operators for transport of goods. Such transportation service is not exigible to service tax under Goods Transport Agency Service.

17. In view of the above, there is no merit in the appeal as far as the demand of excise duty with interest and penalties is concerned. However, as there is no evidence of the appellant availing the services of any Goods Transport Agency the demand of service tax under reverse charge on such service is liable to be set aside.

18. The appeal dismissed except to the extent of setting aside the demand of service tax of Rs. 9,410/- in the impugned order under reverse charge basis on Goods Transport Agency Service with interest and consequential penalties under sections 77 & 78 of the Finance Act.

(Operative part of this order was pronounced in court on conclusion of the hearing)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)