# CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
# HYDERABAD

REGIONAL BENCH - COURT NO. – I

**Service Tax Appeal No. 21163 of 2015**
(Arising out of **Order-in-Original** No.VSP-EXCUS-001-COM-035-14-15 dated 13.02.2015 passed by Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam-I)

**Sarat Chatterjee And Co Pvt Ltd.,** .. **APPELLANT**
28-2-47, Daspalla Centre,
Suryabagh,
Visakhapatnam,
Andhra Pradesh – 530 020.

*VERSUS*

**Commissioner of Customs,** .. **RESPONDENT**
**Central Excise & Service Tax**
**Visakhapatnam– I**
GST Commissionerate,
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

**AND**
**Service Tax Appeal No. 21205 of 2015**
(Arising out of **Order-in-Original** No.VSP-EXCUS-001-COM-035-14-15 dated 13.02.2015 passed by Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam-I)

**Commissioner of Central Excise** .. **APPELLANT**
**& Service Tax**
**Visakhapatnam– I**
GST Commissionerate,
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

*VERSUS*

**Sarat Chatterjee And Co Pvt Ltd.,** .. **RESPONDENT**
28-2-47, Daspalla Centre,
Suryabagh,
Visakhapatnam,
Andhra Pradesh – 530 020.

**APPEARANCE:**
Shri S. S. Aditya, Chartered Accountant for the Appellant.
Shri Shyam Raj Prasad, Authorized Representative (Special Counsel) for the Department.

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

## FINAL ORDER No. A/30485-30486/2026

Date of Hearing: 17.08.2026
Date of Decision: 01.09.2026

**[ORDER PER: ANGAD PRASAD]**

These two appeals arise out of the common Order-in-Original No. VSP-EXCUS-001-COM-035-14-15 dated 13.02.2025 (impugned order) passed by the Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam-I, and, therefore, they are being disposed of by this common order.

2. The appeal no. ST/21163/2015 has been filed by the M/s Sarat Chatterjee & Co. Pvt Ltd., (appellant) challenging confirmation of service tax demands under the categories of "Cargo Handling Services" (CHS), "Business Auxiliary Services" (BAS) and "Transport of goods by Waterways" (TGW), together with interest and penalties. Appeal no. ST/21205/2015 has been filed by the Revenue against that part of the impugned order, whereby the Adjudicating Authority refrained from imposing penalty under Section 76 of the Finance Act, 1994.

3. The fact, in brief, is that the appellant M/s Sarat Chatterjee & CO. Pvt Ltd., is engaged, inter alia, in providing port logistics, stevedoring, clearing and forwarding, coastal shipping, inland logistics and warehousing. M/s Andhra Pradesh Power Generation Corporation Ltd., (APGENCO) awarded a contract to the appellant for movement of coal from the collieries of MCL/Talcher to the power stations of APGENCO through a Rail-cum-Sea-cum-Rail route involving Paradeep Port and Kakinada Port.

4. The movement contemplated under the contract involved several distinct stages. The appellant monitored loading at the collieries and at the railway sidings, transportation by rail up to Paradeep Port was undertaken by Indian Railways; unloading at Paradeep and loading into vessels was undertaken by the appellant; Sea-transportation from Paradeep to Kakinada was undertaken through vessels chartered by them from M/s Jaldhi Overseas

Pte Ltd., Singapore; unloading at Kakinada and loading into Railway wagons was undertaken by the appellant; and onward rail transportation was undertaken by Indian Railways.

5. The schedule of Rates under the contract separately specified consideration for different components. The rate of Rs. 1100 PMT comprised, inter alia, Rs. 310.32/- towards monitoring/handling at the originating end, Rs. 579/- towards ocean transportation and Rs. 210.68 towards monitoring/handling at Kakinada. The appellant also raised separate invoices in respect of statutory charges, non-statutory/handling charges and ocean transportation.

6. A Show Cause Notice dated 24.10.2013 was issued for the period 01.04.2008 to 31.03.2013. The Department proceeded broadly on the footing that the entire activities undertaken for APGENCO constituted a composite "Cargo Handling Service". It further proposed service tax under reverse charge on amounts paid by appellant to M/s Jaldhi Overseas, first under "Business Auxiliary Service" and, from 01.09.2009, under "Transport of goods by Waterways".

7. By the impugned order, the Commissioner confirmed, inter alia, the following demands:

(i) Under Cargo Handling Service – Rs. 19,84,10,079/- against which Rs. 19,17,49,332/- already paid though under different categories was appropriated, leaving a balance demand of Rs. 66,60,747/-;

(ii) under Business Auxiliary Service – Rs. 20,77,52,695/-; and

(iii) under Transport of Goods by Waterways – Rs. 5,26,84,238/-.

The Commissioner also imposed penalties under Section 77 and 78, but declined to impose penalty under Section 76 of the Finance Act, 1994.

8. Learned Counsel for the appellant submits that the fundamental error in the impugned order is the treatment of several legally and commercially independent and distinct activities as one composite scheme of Cargo Handling Service. The contract itself separately prices the various limbs; the activities are undertaken by different persons; invoices were separately raised; the risk and liabilities are limb – specific; and the Department itself has, at different stages, treated sea transportation and port activities under separate taxable heads.

9. It was submitted that transportation is the dominant activity and loading/unloading is merely incidental to transportation. Reliance is placed, inter alia, on United Shippers Ltd., Vs CCE, Thane-II [2015 (37) STR 1043 (Tri-Mum)], affirmed in the case of Commissioner Vs United Shippers Ltd., [2015 (39) STR J369 (SC)] and Arkay Logistics Ltd., Vs CCE & ST, Appeal No. ST/10961/2013, Final Order No. A/10796/2023 dated 03.04.2023. It is submitted that where transportation and cargo handling are separately identifiable and separately priced, the entire consideration cannot be subjected to tax under Cargo Handling Service.

10. In respect of the demand under Business Auxiliary Service, it is contended that M/s Jaldhi Overseas, was engaged under a charter party/contract of affreightment on a principal-to-principal basis. M/s Jaldhi Overseas rendered transportation service to the appellant and not "on behalf of" the appellant to a third party. There was neither any agency relationship nor any third-party agreement as contemplated under the relevant limb of Business Auxiliary Service.

11. It is further argued that coastal transportation of goods was specifically brought into the service tax net only with effect from 01.09.2009 and, therefore, the identical activity could not be taxed for the anterior period by artificially classifying it as Business Auxiliary Service. Reliance has been placed upon Indian National Shipowners' Association Vs Union of India [2009 (14) STR 289 (Bom)], affirmed by the Hon'ble Supreme Court, as also United Shippers Ltd. In respect of the demand under Transport of Goods by Waterways, it is submitted that the entire demand pertains to a period ending on 30.09.2011 whereas the Show Cause Notice was issued only on 24.10.2013. The entire demand is therefore beyond the normal period. It is further submitted that any tax paid by the appellant under reverse charge would have been available to it as Cenvat Credit against its output tax liability, rendering the transaction revenue neutral.

12. On limitation, Learned Counsel submits that three earlier Show Cause Notices had already been issued involving the same contract/activity and the Department was fully aware of the nature of the transactions. It is therefore contended that suppression or wilful mis-statement with intent to evade tax cannot be allowed.

13. As regards the Department's appeal, it is submitted that simultaneous penalty under Section 76 and 78 is impermissible. It is further submitted that once the substantive demands themselves are unsustainable, the revenue's appeal concerning penalty cannot survive.

14. Learned Special Counsel for the Department reiterates the findings of the Adjudicating Authority. It is submitted that APGENCO contract is a single contract for movement of coal from collieries to the ultimate destination and the various activities of loading, unloading, stacking, intra-port

transportation and monitoring constitute an integrated Cargo Handling Service.

15. In respect of the Department’s appeal, Learned Special Counsel submits that the proviso to Section 78 prohibiting simultaneous penalties under Section 76 and 78 was inserted only with effect from 10.05.2008 and that, for the period prior thereto, penalties under both provisions could have been simultaneously imposed. Reliance is placed particularly upon Bajaj Travels Ltd., Vs Commissioner of Service Tax [2012 (25) STR 417 (Del)].

16. We have considered the rival submissions and perused the records with submissions.

17. The principal questions requiring determination are:

(i) Whether the entire consideration received under the APGENCO contract can be subjected to service tax under Cargo Handling Service;

(ii) Whether payment made to M/s Jaldhi Overseas prior to 01.09.2009 are taxable under Business Auxiliary Service;

(iii) Whether the demand under Transport of Goods by Waterways is sustainable, particularly in view of limitation and revenue neutrality;

(iv) Whether the extended period under the proviso to Section 73(1) is invocable; and

(v) Whether the Department’s appeal for imposition of penalty under Section 76 deserves to be allowed.

**Cargo handling service:**

18. The first and most important feature of the APGENCO contract is that the consideration is not an indivisible lum-sum consideration for an undefined bundle of activities. The Schedule of Rates itself separately

identifies and quantifies the consideration relatable to different activities. Ocean freight is specifically fixed at Rs. 579 PMT, while the activities at the two ports are separately priced. The material placed before us further shows that separate invoices were raised for statutory charges, non-statutory charges and ocean transportation.

19. Equally significant is the fact that all the activities were not performed by the appellant. Rail transportation was performed by the Indian Railways. Ocean transportation was effected through M/s Jaldhi Overseas. The appellant itself performed the handling and monitoring activities at specified stages. The contract thus contains distinct commercial and operational limbs, undertaken by different persons and supported by separately ascertainable consideration.

20. The Letter of Intent (LoI) prescribes the payment to appellant, as under:

| Sl. | Head | Rate (Rs./Mt) |
|---|---|---|
| II(A) | Monitoring loading at Talcher and handling of coal at Paradip Port _statutory charges Rs. 207.69+Service Tax @ 12.36%Rs/ 25.67 = Rs. 233.36; non-statutory charges Rs. 76.96 | 310.39 |
| II(B) | Ocean transportation of coal by sea from Paradip to Kakinada Port (expressly "exclusive of Service Tax") | 579.00 |
| II(C) | Monitoring and handling at Kakinada Port – statutory charges Rs. 53.46 + Service Tax @ 12.36% Rs. 6.61 = Rs. 60.07; non-statutory charges Rs. 150.61 | 210.68 |
| IV | Grand total | 1,100.00 |

Admittedly, they have discharged service tax on loading and unloading outside port area under CHS, loading and unloading inside port area under CHS up to 30.06.2010 and under port service with effect from 01.07.2010 consequent to amendment of Section 65(82), on ocean freight under

Transportation of goods by Waterways with effect from 01.09.2009 as the said Section was introduced only with effect from said date.

21. The contract is clearly for different activities in course of movement of coal from mines of MCL to APGENCO to the extent appellant was responsible to execute or undertake: Total consideration of 1100 MT is clearly broken into 3 parts where Ocean freight is dominant (52.64%), statutory charges are paid to Port Authorities and constitutes over 20%. Only about 20% is attributable to handling, supervision etc. Even Board's Circular F.No. B11/1/2002-TRU dated 01.08.2022 clarifies that where bill indicates the amount charged for cargo handling and transportation separately on an actual basis verifiable by documents, tax is leviable only on cargo handling charges.

22. We also note that on introduction of Section 65(105)(zn) i.e. port services with effect from 01.10.2010, there was a statutory provision which prohibited application of Section 65A. In other words, all services under the Port area has to be treated as Port services alone and principle of classification under section 65A cannot be applied. Hence, any service provided within the port area is to be treated under port services only and not CHS or any other service.

23. Merely because all these activities ultimately facilitated movement of coal from the originating point to the destination, it cannot follow that every activity loses its individual character and the entire consideration becomes consideration for Cargo Handling Service. The taxable event has to be determined with reference to the true nature of the service rendered and the consideration attributable thereto.

24. The Mumbai Tribunal in the case of United Shippers Ltd., supra, held that where transportation services and cargo handling services under a contract have separate rates, service tax cannot be levied on the entire consideration under the single category of Cargo Handling Service, the Tribunal's decision was carried out in appeal to the Hon'ble Supreme Court and the Revenue's Civil Appeal was dismissed by the Hon'ble Supreme Court.

25. The same principle has subsequently been applied where transportation is the principal activity and handling is incidental thereto. In Arkey Logistics Ltd., supra, the Ahmedabad Tribunal found that the transportation element could not be subjected to Cargo Handling Service merely because handling activities were undertaken in connection with such transportation.

26. In the present case, the Department has itself accepted the seperateness of several limbs. Service tax paid by the appellant under port service and Transport of Goods by Waterways have been appropriated against the proposed Cargo Handling Service demand. The Show Cause Notice itself treats the sea transportation through M/s Jaldhi Overseas separately for the purpose of reverse charge. These circumstances, substantially weaken the premise that there existed only one indivisible taxable Cargo Handling Service. It is also relevant to note that even when they have paid freight to Railways, it was reimbursed to them by APGENCO and in any case no demand has been made on this part of transaction.

27. We, therefore, find no legal justification for clubbing the separately identifiable ocean freight, statutory port charges and other independently

rendered transportation components with the appellant's own cargo handling services and subjecting the aggregate to tax under Cargo Handling Service.

28. The appellant has discharged service tax on its own taxable cargo handling activities under the appropriate taxable heads. In the absence of any sustainable basis for treating the entire contractual consideration as Cargo Handling Service, the demand to the extent of addition of other components with the value of service under Cargo Handling Service cannot be sustained.

**Business auxiliary service – M/s Jaldhi Overseas:**

29. The demand of Rs. 20,77,52,695/- under Business Auxiliary Service is principally founded on the allegation that M/s Jaldhi Overseas rendered a service "on behalf of" the appellant to its customers.

30. We are unable to sustain this reasoning. The record shows that the relationship between the appellant and M/s Jaldhi Overseas was governed by a charter party/contract of affreightment under which M/s Jaldhi Overseas undertook carriage of goods for consideration payable by the appellant. M/s Jaldhi Overseas was thus performing its own contractual obligation as a principal. The mere fact that the transportation enabled the appellant to fulfil another contract entered into with APGENCO or for M/s V.S. Dempo does not convert M/s Jaldhi Overseas into an agent of the appellant.

31. The expression "provision of service on behalf of the client" necessarily contemplates something more than performance of a service for the client. In the normal principal-to-principal sub-contracting arrangement, the sub-contractor performs its own contractual obligations for the contracting party; it does not thereby act as an agent of such contracting party.

32. The jurisprudence under Business Auxiliary Service has consistently recognised the relevance of a third-party element where the alleged service is said to have been rendered "on behalf of" a client. The Tribunals have also recognised that a principal-to-principal purchase and sale of freight/cargo space and the margin arising therefrom do not, merely for that reason, constitute consideration for Business Auxiliary Service.

33. There is a further and independent reason why the demand relating to coastal transportation prior to 01.09.2009 cannot be sustained. The very same activity, namely carriage of goods by Sea between Indian Ports, was specifically brought within the Service Tax net under "Transport of Goods by Waterways" with effect from 01.09.2009. Nothing in the underlying transaction changed on that date; what changed was the statutory levy.

34. It is well settled that when a new or specific taxable entry introduced on an activity, the same cannot ordinarily be subjected to tax for the preceding period under a pre-existing general entry unless the new entry is demonstrably carved out of the earlier one. Decision in the case of United Shippers Ltd., supra, itself applied this principle to coastal transportation and held that such transportation could not be taxed under Cargo Handling Service for the period prior to the introduction of the specific levy. The principle is also consistent with Indian National Shipowners' Association, supra, which was affirmed by the Hon'ble Supreme Court.

35. We, therefore, hold that the demand of Rs. 20,77,52,695/- under Business Auxiliary Service cannot be sustained and is liable to be set aside.

36. The demand of service tax on Reverse Charge Method (RCM) has been made based on payment made by appellant to M/s Jaldhi Overseas Pte Ltd., on account of higher charges paid by them for hiring the vessel. This was

confirmed by the Adjudicating Authority in terms of Section 66A of Finance Act, 1994. The Adjudicating Authority felt that this service i.e. BAS/ TGW was provided by a company situated outside India to the appellants in India and were not having any office in India and therefore the appellant has to discharge the duty on RCM basis. It is an admitted fact that appellant has not paid any service tax on ocean freight paid to M/s Jaldhi Overseas Pte Ltd., for the period prior to 01.09.2009 where the demand is made under the category of BAS, either on forward charge basis or on RCM basis. However, for the period post 01.09.2009 appellant have paid the service tax on the service covered under the category of TGW but not on forward charge and not under RCM rather on forward charge basis. It is their argument that as per their interpretation and understanding they were the one who was providing this service to M/s APGENCO and not M/s Jaldhi Overseas Pte Ltd. They had hired the Vessel on their own account and using the same to complete their contractual obligation for transportation through sea from Paradeep to Kakinada for which they have been paid a pre-determined rate on per tonne basis by M/s APGENCO. They have further argued that even if it was to be paid by them on RCM basis, it would have been available to them as credit for discharge of service tax paid by them on the same activity therefore it is a revenue neutral situation. Moreover, they have pointed out that by paying on a forward basis on the said activity they had paid more than the demand made by the Department for the same activity where the demand has been made after allowing the abatement of 25% from the value in terms of notification 1/2006 as amended by 16/2011. Whereas, they had discharged the entire service tax on the service of TGW on full value received by them from M/s APGENCO.

**Transportation of Goods by Waterways:**

37. The demand of Rs. 5,26,84,238/- relates to the period from 01.09.2009 to 30.09.2011. The Show Cause Notice was issued on 24.10.2013. Thus, even taking the enhanced normal limitation period applicable during the relevant time, the entire demand under this category falls beyond the normal period and can survive only upon a valid invocation of the extended period. Even otherwise, demand for the period prior to 01.09.2009 would not sustain on merit as said service was specifically brought under tax net with effect from 01.09.2009 and having regard to submissions and the case laws, cited supra, it cannot taxed under some other heading during earlier period. However, with effect from 01.09.2009 it is correctly classified under Transportation of Goods by Waterways Service and appellants have also been discharging service tax on said activity, though under forward charge basis till 30.09.2011.

38. The appellant has demonstrated that the Ocean freight payable to M/s Jaldhi Overseas and the ocean freight recovered from M/s APGENCO were clearly identified in the relevant contracts. The margin of 1.25% retained on payment received and freight paid was on account of trading profit on sale and purchase of space on ship and said margin cannot be individually subjected to service tax as held in the case of Greenwich Meridian Logistics (India) Pvt Ltd., Vs CST, Mumbai [2016 (43) STR 215 (Tri-Mumbai)] and EMU Lines Pvt Ltd., Vs Commissioner of GST & C.Ex., Belapur [2023 (4) CENTAX 122 (Tri-Bom)]. Further, the transactions were routed through Banking Channels and reflected in the books of accounts. More importantly, the Department had dealt with the very same APGENCO contract and allied activities through earlier notices. Thus, once the Department was already aware of the nature of the contract and the manner in which the activities

were being undertaken, a subsequent invocation of the extended period on the premise that the very same material facts were suppressed cannot be readily accepted.

39. Further, the case involves substantial issue of classification. Material itself shows that, at different stages, the Department contemplated different classifications for payments connected with the sea leg. Where the controversy itself arises from competing classifications of a fully disclosed transaction, the necessary ingredient of wilful suppression with intent to evade payment of tax requires particularly cogent evidence and incontrovertible to the contrary.

40. We also find force in the plea of revenue neutrality in respect of demand under RCM under the category of BAS and TGW as the tax discharged by the appellant under reverse charge in respect of the input services would ordinarily be available as Cenvat Credit subject to the applicable provisions and would be available for utilisation against the appellant's output service tax liability. We also find force in appellant's reliance on various judgments including Jay Yushin Ltd., Vs Commissioner of Central Excise, New Delhi [2000 (119) ELT 718 (Tri-LB)], Amco Batteries Ltd., Vs Collector of Central Excise, Bangalore [ 2003 (153) ELT (SC)]. Revenue neutrality by itself may not, in every case, extinguish the substantive levy, but it is a relevant and important circumstance while examining an allegation of deliberate suppression with intent to evade tax.

41. We also note that the appellant has referred to three earlier Show Cause Notices issued in relation to substantially the same activities/contract. The principle laid down by Hon'ble Supreme Court in the case of Nizam Sugar Factory Vs CCE [2006 (197) ELT 465 (SC)], is that once the relevant

facts are within the knowledge of the Department through earlier proceedings, invocation of the extended period in a subsequent notice on the same factual foundation requires careful scrutiny.

42. In the facts before us, we find no positive evidence, establishing deliberate withholding of information with intent to evade service tax. On the contrary, the dispute substantially concerns the proper classification and tax treatment of disclosed contractual transactions.

43. In the present case, the combination of prior Departmental knowledge, disclosure in the appellant's record, the bona fide belief about classification adopted, payment of service tax with effect from 01.09.2009 under TGW service on forward charge basis, revenue-neutral consequences etc., militate against allegation of wilful suppression or intent to evade service tax. Therefore, the invocation of the extended period for sustaining the demands is unsustainable.

**Interest and Penalties:**

44. Interest is consequently to a legally sustainable tax demand. Since the impugned demands under Cargo Handling Service and Business Auxiliary Service are set aside on merits itself and the demand under Transport of Goods by Waterways is set aside as time-barred, the corresponding liability to interest does not survive. For the same reasons, penalties imposed under Section 77 and 78 cannot survive. In addition, once suppression or wilful mis-statement with intent to evade is not established, the essential basis for penalty under Section 78 itself disappears.

**Department appeal – penalty under Section 76:**

45. We now take up, Appeal no. ST/21205/20215 filed by the Department. The sole grievance therein is that the Commissioner ought to have imposed a penalty of Rs.44,37,584/- under Section 76 for the period prior to 10.05.2008, notwithstanding the penalty imposed under Section 78 of the Finance Act, 1994.

46. Department has relied upon in the case of Bajaj Travels Ltd., supra, wherein the Delhi High Court held, in the context of the law prevailing prior to the 2008 amendment, that Section 76 and 78 operated in different fields and simultaneous penalties could be attracted for the earlier period. The appellant, on the other hand, has relied upon Raval Trading Company Vs Commissioner of Service Tax [2016 (42) STR 210 (Guj)], wherein, the Gujarat High court regarded the proviso introduced in Section 78 as clarificatory and held against simultaneous penalties. Subsequent Tribunal decisions have noticed the said principle.

47. In the facts of the present appeals, however, it is unnecessary for us to resolve this divergence for the simple reason that the very tax demands on which the penalties were founded, have been set aside. A penalty under Section 76 is consequential upon a legally sustainable failure to pay service tax. Once the underlying demand does not survive, there remains no independent foundation upon which the Revenue’s prayer for enhancement by way of an additional penalty can be sustained.

48. The Department’s appeal, therefore, fails and is liable to be dismissed.

49. It is also clarified that appropriation of service tax paid under different services towards confirmed demand in the impugned order under CHS cannot sustain as the demand under said category has been held to be not correct, except to the extent of loading and unloading for which service tax

has been correctly paid by them under the respective categories like CHS, port service or under Transportation of Goods by Waterways Service etc. The payment of service tax under the said categories are correct and hence amount paid under different services already paid was not available for apportionment towards confirmed demand as they stand rightly paid under respective categories/classification of service by the appellant.

50. In view of the foregoing discussion, we pass the following order:

(i) The demand of Rs. 19,84,10,079/- under Cargo Handling Service is set aside.

(ii) Order of appropriation of an amount of Rs. 19,17,49,332/- towards confirmed demand above is set aside.

(iii) The demand of Rs. 20,77,52,695/- under Business Auxiliary Service for the period 01.04.2008 to 31.08.2009 is set aside on merit as well as limitation.

(iv) The demand under the category of Transport of Goods by Waterways Service is set aside as barred by limitation.

(v) Consequential interest and penalties imposed under Section 77 and 78 of the Finance Act, 1994 are also set aside.

51. (i) Appeal No. ST/21163/2015 filed by the appellant is allowed.

(ii) Appeal No. ST/21205/2015 filed by the Department is dismissed.

(Pronounced in the open court on 01.09.2026 )

**(A.K. JYOTISHI)**
**MEMBER (TECHNICAL)**

**(ANGAD PRASAD)**
**MEMBER (JUDICIAL)**

Jaya