IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

Appeal No. ST/14/2009

Arising out of order-in-original No. CCE/BBSR-II/S.TAX/No.16-Commissioner/2008 dated 04.12.2008 passed by the Commissioner of Service tax, Bhubaneswar.

M/s ESSEL MINING & INDUSTRIES LIMITED
…APPELLANT(S)

VERSUS

Commissioner of Service Tax, Bhubaneswar

…RESPONDENT (S)

APPEARANCE
Shri R. Raghuvan, Advocate & Shri H. Shukla, C.A. for the Appellant (s)
Shri S. S. Chttopadhyay, Suptd. (AR) for the Respondent (s)

CORAM:
SHRI P. K. CHOUDHARY, HON'BLE JUDICIAL MEMBER
SHRI C. L. MAHAR, HON'BLE TECHNICAL MEMBER

DATE OF HEARING :-22.06.2018

DATE OF PRONOUNCEMENT : 29.06.2018

ORDER NO.FO/A/76385/2018

Per Shri C. L. Mahar :

This is an appeal filed by the appellant against the order-in-original No. CCE/BBSR-II/S.TAX/No.16-Commissioner/2008 dated 04.12.2008 passed by the Commissioner of Service tax, Bhubaneswar.

2. Brief facts of the matter are that the appellants are engaged in the business of mining of iron ore and have engaged various transporters for transportation of Iron Ore by trucks from different point of mines to designated places of storages etc. As per the provisions of the Finance Act, 1994, the appellants have been paying

service tax under Goods Transport Agency (GTA) service on reverse charge basis on the consignments which were got transported by the appellant from individual truck oweners and where the freight charges exceeded Rs.1,500/- per trip by availing the benefit of Notification No. 34/2004-ST dated 3.12.2004.

3. It has been the contention of the Revenue that the Notification No. 34/2004-ST dated 3.12.2004 has the exemption from payment of service tax for an individual consignment if the freight charge does not exceed Rs. 750/- per trip. In the view of the Revenue, the limit of Rs. 1,500/- per trip availed by them under Notification No. 34/2004-ST dated 3.12.2004 is not applicable in their case because the same is relevant only when a carriage carry more than one "individual consignment" and where total freight comes to less than Rs.1,500/- per trip. A show Cause Notice, therefore, came to be issued demanding service tax of Rs.62,12,831/- under Section 73 of the Finance Act, 1994. The panel provision under Section 76 and Section 78 of Finance Act, 1994 had also been invoked for imposition of penalty. The show-cause notice was adjudicated and the Ld. Commissioner vide order dated 4.12.2008 confirmed the demand of service tax and imposed equal amount of penalty under Section 78 of the Finance Act, 1994.

4. The Ld. Advocate appearing for the appellant has contested that the adjudicating authority has grossly erred in not findings them entitled for benefit of Notification 34/2004-ST dated 3.12.2004. It has been argued that under Clause (i) of the Notification 34/2004-ST, it

has been provided that if the gross amount charged on consignments transported in a goods carriage does not exceed Rs. 1,500/, no service tax is payable. It has been the argument of the Ld. Advocate that they have rightly discharged the service tax liability under GTA charges on reverse charge basis wherever, the freight charges were above Rs. 1,500/- per trip of the trucks owned by the individual persons. The Ld. Advocate has submitted that Clause (ii) of the Notification No. 34/2008, pertains to a situation where in a consignment in truck or Lorry, the several individuals book their consignments, in that situation, the limit of Rs. 750/- per individual consignment will be applicable and since in their case, it was single consignment transported by a truck in a trip, the freight limit of Rs. 1,500/- per trip will be applicable and therefore, there is no short payment of service tax. It is also argued by the ld.Advocate that in the present case, the service providers are not GTA service providers as they are individual truck owners as can be seen from the various documents and computation sheets on the basis of which, the short payment of service tax has been calculated. The ld.Advocate has fortified his averment by taking reliance on the following decisions wherein as per the ld.Advocate's assertion in identical situations, this Tribunal has held that the service tax is not payable under GTA service :

(i) Nandganj Sihori Sugar Co. Ltd. Vs. Commissioner of Central Excise, reported in 2014 (34) S.T.R. 850 (Tri.).

(ii) Candico India Pvt. Ltd. Vs. Commissioner of Central Excise, reported in 2017 (4) GSTL 86 (Tri.).

(iii) Shreenath Mhaskoba Sakhar Karkhana Ltd. Vs. Commissioner of Central Excise, reported in 2017 (3) GSTL 169 (Tri.).

(iv) Caps & Prints Pvt. Ltd. CST 2013 (30) STR 426 (Tri.).

On the basis of the above Judgments of this Tribunal, the Ld. Advocate has tried to prove that since the individual truck owners do not fall under the definition of "GTA Service" as all of them are individual truck owners and therefore, the service tax itself is not leviable on them.

5. We have also heard Ld. D.R. for the Revenue who has vehemently opposed the arguments advanced by the Ld. Advocate and has advanced the judgement of the Hon'ble Madras High Court in the case of Commissioner of Central Excise, Salem Vs. Suibramania Siva CO-OP. Sugar Mills Ltd. reported in 2014 (35) S.T.R. 500 (Mad.). The relevant extracts of the above judgement are reproduced here below for the sake of convenience:-

> "**18.** The expression "any person" is not defined under the Act. Section 3(42) of the General Clauses Act defines "person", as including any company or association or body of individual whether incorporated or not. The thrust of the definition is that it includes every person engaged in an activity providing service of transport of goods by road. Thus, any commercial or a proprietary concern carrying on the business of Goods Transport would fall under the definition of "Goods Transport, Agency" in Section 65(50b) of the Finance Act. In the absence of any words of restriction, the definition 'any person' thus would have application to any concern providing the service.

22. The Explanation given in the Notification gives the guidance as to the scope of clause (1) and clause (2) of the Notification. As is evident from the reading of the Explanation, "individual consignment" means all goods transported by "a goods transport agency" by road "in a goods carriage" "for a consignee". In contra distinction to this, the first clause, fixing the exemption limit to Rs. 1,500/- is not limited to the consignment to an individual but it refers to consignment relatable to more than one consignee. In other words, while clause (1) is with reference to consignments transported in a goods carriage to different consignees, Clause (2) as seen from the Explanation refers to transport of goods by a goods transport agency by road in a goods carriage for "a consignee". Thus, by making two classifications, exemption Notification limits its operation based on the consignee, the charges and the consignment. For the purpose of claiming exemption, in the first case the gross amount charged on consignments is limited upto a sum of Rs. 1,500/-. In the second case, the charges not exceeding Rs. 750/- is referable to goods transported in a goods carriage for a consignee. On the admitted case, the goods carried was for a single consignee, viz., the assessee alone, transported by the Goods Transport Agency, the assessee's case would fall under sub-clause (2); in which event, when the gross amount charged exceeded Rs. 750/-, as rightly advised by the assessee's internal audit, they remitted the liability. In the circumstances, we agree with the Revenue that the question of limitation, does not arise to hold that the demand herein is time barred as per Section 69 of the Finance Act, 1994. As far as the levy of interest is concerned, Section 75 of the Finance Act, 1994 is the relevant provision, which reads as under :

6. The ld. D.R. on the basis the above judgment of the Hon'ble Madras High Court, has stressed the following arguments in support of the Revenue's claim :

(i) That any person providing the service of transport of goods by road will fall in the catogary of "GTA service" and thus the individual transport owner whose services have been used by the appellant will be classifiable under the GTA and, hence service tax under Goods Transport Agency Service will be very much payable by the individual truck owners. It has also been argued that under Notification No. 34/2004-ST dated 3.12.2004, the charges not exceeding Rs. 750/- is referable to the goods transported in the goods carriages for a consignee. Thus, by the above interpretation of Hon'ble Madras High Court, the payment limit for individual consignment in the appellants case is of Rs. 750/- and therefore, they need to pay service tax on GTA service on reverse charge basis on the charges which have been made above Rs.750/- per trip.

7. We heard both sides and have also perused the record of the appeal. The matter is no longer res-integra as per the above decision of the Hon'ble Madras High Court's judgement (supra). Taking the reliance of the above judgement of the Hon'ble Madras High Court, we hold that

(i) As the definition of "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", any person who is providing GTA service by road, will fall under the category of GTA service and as has been held by the Hon'ble Madras High Court's judgement (supra). The argument of the ld.Advocate that since the service providers are mostly individual truck owners do not fall under goods transport agency is not legally sustainable and we hold that the GTA service provided by the individual truck owner is leviable to the service tax as per the provisions of the Finance Act, 1994.

(ii) We also hold that when so far as the entitlement of exemption benefit under Notification No. 34/2004-ST dated 3.12.2004 is concerned, they will fall under the category of Clause (ii) of the above Notification and thus the appellants need to pay service tax on the freight charges above @ Rs.750/- per trip.

8. In view of the above, we hold that there is no merit in the appeal and the same is dismissed.

(Pronounced in the court on.29.06.2018..)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

(C.L. MAHAR)
MEMBER (TECHNICAL)

T.K.