

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA
EASTERN ZONAL BENCH: KOLKATA**

Service Tax Appeal No. 75104 of 2022

(Arising out of Order-in-Original No. 07/CCE/S.Tax/RKL/2021-22 dated 10.12.2021 passed by Commissioner of CGST & Central Excise, Rourkela.)

M/s Maa Kalika Transport Private Limited,
OCL Market, Rajganpur, Sundargarh-770017.

....Appellant (s)

VERSUS

Commissioner of CGST & Central Excise, Rourkela,
KK- 42, Civil Township, Rourkela-769004.

....Respondent(s)

APPEARANCE :

Shri Kartik Kurmy, Advocate for the Appellant
Shri J. Chattopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. ASHOK JINDAL MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)

FINAL ORDER No.76017/2023

DATE OF HEARING : 16.06.2023

DATE OF PRONOUNCEMENT: 10.07.2023

PER K. Anpazhakan:

M/s Maa kalika Transport Pvt. Ltd.,(The Appellant) was issued a Show Cause Notice dated 30.12.2020, demanding service tax of Rs.9,50,54,524/- for the period from 01.04.2015 to 31.03.2016, under the category of 'Cargo Handling Service'. The said Notice was adjudicated vide Order-in-Original dated 10.12.2021, wherein the Ld. Commissioner has confirmed the Service Tax demand Rs.9,50,54,524/-including Cess along with interest and imposed penalty of Rs.9,50,54,524/- under Section 78(1) of the Act and penalty Rs.

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10,000/- under Section 77(2) of the Act. Aggrieved against the impugned order, the Appellant has filed the present appeal.

2. In the instant case, the Appellant claimed that they have provided "Transportation of Coal Services" upto a distance of 200 km against various work orders, on collection of total value of Rs.65,56,50,736/-. The details of such work orders executed by the Appellant during the relevant period are furnished below:

Sl. No.	Work Order No. & Date	Party	Nature/Scope of work	Value of Service
(1)	(2)	(3)	(4)	(5)
1.	KWPCL/TC/COAL/028 dated 21.12.2016	M/s Korba West Power Company Ltd,	Lifting and Transportation of e-auction Coal from Basundhara Mines of MCL to KWPCL Thermal Power Plant (Distance 180 km.)	6,47,93,932/-
2.	SRPL/Trans/03 dated 17.06.2015	M/s Saffron Resources Pvt. Ltd.,	Loading, Transportation and unloading of Coal from various Mines/washery to Hindalco Industries Ltd., Lapanga & OCL, Rajgangpur from Kulda, Basundhara mines and Barliawashery (Distance 200 km).	3,72,33,248/-
3.	Agreement dated 30.05.2015	M/s Vedanta Ltd., (CPP formerly sesaSterlite Ltd,)	Lifting & Transportation of E-auction / Linkage coal from Basundhara Mines and Kulda mines of M/s MCL to the CPP and IPP of M/s Vedanta Ltd., (Distance 180 km).	39,77,33,902/-
4.	Dated 03.03.2016	M/s TR Chemicals Ltd.,	Transportation of Linkage/e-auction Coal Inside the Mines (Distance 3 km).	44,850/-
5.	Dated 03.03.2016	M/s Scan Steels Ltd.,	Transportation of Linkage /e-auction coal Inside the Kulda/Basundhara Mines (Distance 3 km).	8,73,428/-
			Total	65,56,50,736/-

3. The Appellant stated that they bonafidely believed that the service rendered by them are "Transportation Services", where service receivers are

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liable to pay service tax. Accordingly, they have not collected service tax from their customers.

4. The Appellant further stated that the investigations in the instant case was started consequent to the data received from Income Tax Department that the Appellant has received Rs.66,72,04,285/- during the relevant period. On the basis of this data, the Service Tax department observed that the Appellant has not discharged their service tax liability on this amount and accordingly the Notice was issued. No effort was made by the department to ascertain whether the amount received by the Appellant was on account of rendering of any taxable service on which the Appellant was liable to pay service tax.

5. In the instant case the Appellant contended that they have transported coal within a distance of 180 KM to 200 KM, which is rightly classifiable under transportation of Goods Service (GTA) and the services cannot be taxed under "Cargo Handling Service". Only in respect of two contracts namely M/s. TR Chemicals and M/s. Scan Steels Ltd, the distance was within 3 KM, as is evident from the work orders mentioned above. They further stated that the service recipients in the instant case are companies incorporated under the Companies Act, 2013/1956. Accordingly, the liability to pay service tax for the GTA service was on the service recipient.

6. The Appellant further stated that the demand of Service Tax has been confirmed under the category of "Cargo Handling Service" without any allegation in the Show Cause Notice on this count. Hence, they contended that the findings in the impugned order are beyond the scope of Show Cause Notice and hence not sustainable as held by the Hon'ble Apex Court in the case of CCE Vs. Shital International reported in (2011) 1 SCC 109.

7. The work orders awarded by M/s Saffron Resources P. Ltd., M/s Vedanta Ltd., M/s Korba West Power Co. Ltd., M/s Scan Steels Ltd., and M/s T.R.

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Chemicals Ltd., have been analyzed in Paras 13.2 to 13.5 of the impugned order. The Ld. Commissioner failed to appreciate that the obligations, considerations under the contract and terms of contract are different and distinct and cannot be clubbed to ascertain the nature taxable service. In the case of CST Vs. Repco Home Finance Ltd., Reported in (2022) 101 GSTR 430 (CESTAT-Chennai) the Tribunal, Chennai has held that obligation/considerations of contract should not be confused with conditions of contract. The Appellant stated that the contract in these cases are essentially for transportation and all other elements of the contracts are incidental and ancillary and applying the test of essentiality set out under Section 66F(3)(a) of the Act, the contract would be for essentially transport service and the contract is naturally bundled. It is not department's case, neither made out in the show cause notice nor in the impugned order that the contracts are not naturally bundled.

8. The Appellant relied on the following decisions in support of their contentions:-

(i) ACE Construction Mines and Mineral Coop. Society Vs. ACCE reported in 2018 (9) GSTL 107(Tri.-Del.) affirmed by Hon'ble Supreme Court in 2018 (16) GSTL J128 (SC);

(ii) CCE Vs. Drolia Electrosteels (P) Ltd, reported in 2016 (43) STR 261 (Tri.-Del.);

(iii) Hira Industries Ltd., Vs. CCE reported in 2012 (28) STR 23 (Tri.-Del.);

(iv) Narendra Civil Project & Contractor (P) Ltd., Vs. CCE reported in 2022-VIL-575-CESTAT-DEL-ST;

(v) Birla Ready Mix Vs. CCE reported in 2013 (30) STR 99 (Tri.-Del.).

9. The Ld. A.R. reiterated the findings of the adjudicating authority in the impugned order.

10. Heard both sides and perused the appeal records.

11. The issues to be decided in this appeal are:

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- (i) Whether the Appellant has rendered 'Transportation Service' as claimed by them or 'Cargo Handling Service' as claimed by the department?
- (ii) Whether the service rendered are essentially 'Transportation Service' naturally bundled or the individual services in the contract can be vivisected to demand service tax?
- (iii) Whether the demand of service tax under 'Cargo Handling Service' has gone beyond the scope of the Notice?
- (iv) Whether the demand can be made only based on the data received from Income tax department, without any corroborating evidence?
- (v) Whether suppression of fact involved in this case or not, to demand service tax by invoking extended period? Consequently, whether penalties imposed in the impugned order are sustainable or not?

12. From the Terms and conditions of the contracts mentioned in para 2 above, we observe that the contracts are basically meant for Transportation of coal. However, the adjudicating authority has observed that the services would fall under the category of 'Cargo Handling Service' on the basis of his findings in paras 13.2 and 13.3 of the impugned order, which is reproduced below:

"13.2 On scrutiny of the scope of work specified under W/O-SRPL/Trans/03 dated 17.06.2015, issued by M/s Saffron Resources Pvt. Ltd., (mentioned at Sr. No. 1 of the table -1 above), I find that the scope of work includes various activities under running contract on tonnage basis, like provision of trucks along with helpers, supervisors, HSD for loading and transportation of Coal from Kula and Basundhara mine to respective plant site of M/s Hindalco Industries Ltd, and M/s OCL India Ltd., The said work order further specifies that the contractor has to follow safety norms of Hindalco and OCL in respect of Operators and equipment deployed for the work. Thus, the Noticee is not doing merely a transportation job. Rather they are providing multiple activities of providing loading, unloading, handling and transportation of coal from mines to plant site of their service recipients using required specific equipment, supervisors, helpers and operators.

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13.3 on scrutiny of the scope of work specified under Agreement dated 30.05.2015, issued by M/s Vedanta Limited –Aluminum & Power (formerly Sesa Sterlite Ltd.,) (mentioned at Sr. No. 2 of the table –I above,), I find that the scope of work includes multitude of activities like lifting and transportation of coal from mines of M/s MCL to CCP/IPP of M/s Vedanta Ltd., under running contract on tonnage basis together with other service activities like arranging Road Delivery Order (RDO) from Mine owner M/s MCL, Obtaining mining permission from respective mining circles, feeding of the RDO at Kulda and Basundhara Mines area with all documents like mining permit, authorization copy, sale intimation letter immediately after issuance of mining permit issued by Deputy Director of Mines, Co-ordination with M/s MCL, providing trucks, ensuring proper quality and quantity loading, ensuring proper quality of coal to be lifted and transported in respect of Gross Calorific Value (GCV), Volatile matter (VM) and Moisture Content (with applicable penalty clause on Noticee for failing to ensure guaranteed quality of Coal). In view of all these contractual specifications, the agreement dated 30.05.2015 is no a plain transportation work. It involves series of item of works right from arranging necessary statutory/transaction documents to safe and quality lifting, handling and ultimate delivery of coal from mines to the plants of service recipient M/s Vedanta Ltd,. Thus such multitude of activities cannot be termed as transportation job/GTA. "

13. We observe that the Ld. Commissioner has arrived at the conclusion that the Appellant has provided multiple services in the form of loading, unloading, handling, providing trucks, obtaining delivery orders obtaining mining permission etc. and hence the services provided are not mere transportation. We observe that the contract is a composite contract primarily for the purpose of transportation of coal beyond 180 to 200 KM. The activities like loading, unloading, obtaining delivery orders etc are incidental or ancillary to the transportation service. The contract has not provided any separate charges for these activities. The composite contract cannot be vivisected to arrive at the value of service for each activity artificially.

14. We observe that the Board has issued Circular No. 104/07/2008-S.T. dated 06.08.2008, wherein it has been clarified as under:

"3. Issue: GTA provides service to a person in relation to transportation of goods by road in a goods carriage. The service provided is a single composite

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service which may include various intermediary and ancillary services such as loading/unloading, packing/unpacking, transshipment, temporary warehousing. For the service provided, GTA issues a consignment note and the invoice issued by the GTA for providing the said service includes the value of intermediary and ancillary services. In such a case, whether the intermediary or ancillary activities is to be treated as part of GTA service and the abatement should be extended to the charges for such intermediary or ancillary service? Clarification: GTA provides a service in relation to transportation of goods by road which is a single composite service. GTA also issues consignment note. The composite service may include various intermediate and ancillary services provided in relation to the principal service of the road transport of goods. Such intermediate and ancillary services may include services like loading/unloading, packing/unpacking, transshipment, temporary warehousing etc., which are provided in the course of transportation by road. These services are not provided as independent activities but are the means for successful provision of the principal service, namely, the transportation of goods by road. The contention that a single composite service should not be broken into its components and classified as separate services is a well-accepted principle of classification. As clarified earlier vide F.No. 334/4/2006-TRU dated 28.2.2006 (para 3.2 and 3.3) and F. No. 334.1/2008-TRU dated 29.2.2008 (para 3.2 and 3.3), a composite service, even if it consists of more than one service, should be treated as a single service based on the main or principal service and accordingly classified. While taking a view, both the form and substance of the transaction are to be taken into account. The guiding principle is to identify the essential features of the transaction. The method of invoicing does not alter the single composite nature of the service and classification in such cases are based on essential character by applying the principle of classification enumerated in section 65 A. Thus, if any ancillary/intermediate service is provided in relation to transportation of goods, and the charges, if any, for such services are included in the invoice issued by the GTA, and not by any other person, such service would form part of GTA service and, therefore, the abatement of 75% would be available on it."

15. The Board has issued another Circular No. 186/5/2015-ST dated 05.10.2015 on similar lines. The said clarifications issued by Board are reproduced below:

"3. Goods Transport Agency (GTA) has been defined to mean any person who provides service to a person in relation to transport of goods by road and issues consignment note, by whatever name called. The service provided is a composite service which may include various ancillary services such as loading/

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unloading, packing/unpacking, transshipment, temporary storage etc., which are provided in the course of transportation of goods by road. These ancillary services may be provided by GTA himself or may be sub-contracted by the GTA. In either case, for the service provided, GTA issues a consignment note and the invoice issued by the GTA for providing the said service includes the value of ancillary services provided in the course of transportation of goods by road. These services are not provided as independent activities but are the means for successful provision of the principal service, namely, the transportation of goods by road. 4. A single composite service need not be broken into its components and considered as constituting separate services, if it is provided as such in the ordinary course of business. Thus, a composite service, even if it consists of more than one service, should be treated as a single service based on the main or principal service. While taking a view, both the form and substance of the transaction are to be taken into account. The guiding principle is to identify the essential features of the transaction. The interpretation of specified descriptions of services in such cases shall be based on the principle of interpretation enumerated in section 66 F of the Finance Act, 1994. Thus, if ancillary services are provided in the course of transportation of goods by road and the charges for such services are included in the invoice issued by the GTA, and not by any other person, such services would form part of GTA service and, therefore, the abatement of 70%, presently applicable to GTA service, would be available on it."

16. The clarifications cited above clearly establishes that when a contract is entered for a composite contract for transportation service including various intermediate or ancillary services provided in relation to the principal service of road transport of goods like loading/ unloading, packing / unpacking, transshipment, warehousing etc., which are provided in the course of transportation, such contract cannot be vivisected. It will be treated as a contract for transportation only as the other services are naturally bundled together with the principal service. Accordingly, be relying on the Board Circulars and the decisions cited above, we hold that the contracts are essentially meant for transportation of goods and other activities are naturally bundled along with this this principal service. Once the services rendered are classified as Transportation Service, the liability of payment of service tax on these services was not on the Appellant, as the

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service recipients in all these cases are Companies registered under Companies Act, 1956/2003, and the liability to pay service tax is on the recipients of service as provided under Rule 2(1)(d)(i)(B) of the Service Tax Rules, 1994.

17. Regarding classification of the service rendered by the Appellant under the category of 'Cargo Handling Service' we observe that Board has issued a clarification as to what type of services will fall under the category of 'Cargo Handling service' and cited certain illustrations of "Cargo Handling Agents" i.e. container Corporation of India, Airport Authority of India, Inland Container Depot, container Freight Stations etc. The relevant portion of the said circular is reproduced below:-

"3. The services which are liable to tax under this category are the services provided by cargo handling agencies who undertake the activity of packing, unpacking, loading and unloading of goods meant to be transported by any means of transportation namely truck, rail, ship or aircraft. Well known examples of cargo handling service are services provided in relation to cargo handling by the Container Corporation of India, Airport Authority of India, Inland Container Depot Container Freight Stations. This is only an illustrative list. There are several other firms that are engaged in the business of cargo handling services."

18. In the instant case, we observe that the Appellant was not providing any of the services mentioned above which fall under the category of 'Cargo Handling Agent Service'. Further, we observe that there was no proposal in the Notice to categorize the service rendered by the Appellant as 'Cargo Handling Agent service'. In the impugned order, the adjudicating authority classified the services under the category of Cargo Handling agent Service' on his own. Thus, we observe that the adjudicating authority has travelled beyond the scope of the Notice, which is legally not sustainable.

19. The next issue raised by the Appellant is that the demand has been confirmed on the basis of the data received from Income Tax department. No effort was made by the department to ascertain whether the amount received

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by the Appellant was on account of rendering of any taxable service on which the Appellant was liable to pay service tax. There is no finding in the impugned order to this effect. We observe that there is no new material evidence brought on record for raising the demand of service tax on the value mentioned in the records received from the Income Tax department. The demand cannot be raised merely on the basis of the data received from the Income Tax Department, without any corroborating evidence to substantiate that the value received were in connection with taxable service rendered by the Appellant. This view has been supported by the following judgments:-

(i) Larsen & Toubro Ltd., Vs. ACST Reported in (2023) 2 Centax 327 (Cal.);

(ii) CST Vs. Hindustan Cables Ltd., reported in 2022 (382) ELT 188 (Cal.)

20. Regarding invocation of extended period to demand service tax, the Appellant stated that there is no suppression of fact involved in this case. The department itself was not clear under what category the service rendered by the Appellant was classifiable. In the impugned order, in para 13.6.12, the adjudicating authority observed that the contracts are classifiable as 'Mining Service, Clearing and Forwarding Services' and finally in para 13.5, he concluded that the services are classifiable under 'Cargo Handling Service'. In the case of Ugam Chand Bhandari Vs CCE reported in 2004(167)ELT 491, the Hon'ble Supreme Court has held that when there is lack of clarity even within the department, extended period cannot be invoked to demand duty. As observed above, the adjudicating authority himself has classified the service under different categories. Thus, we observe that there was no clarity on the classification of the service even within the department. Accordingly, following the above cited decision of the Hon'ble Supreme Court, we hold that there is no suppression of fact involved in this case. Consequently, extended period cannot be invoked to demand duty. On the same reason, penalties imposed in the impugned order are also not sustainable.

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21. In view of the above discussion, we answer to the questions raised in para 11 above, as below:

(i) The Appellant has rendered 'Transportation service' and not 'Cargo Handling Service' as claimed by the department

(ii) The service rendered by the Appellant under these contracts are essentially Transportation Service, naturally bundled. The individual services in the contract cannot be vivisected to demand service tax from the Appellant under the category of 'Cargo Handling Service'.

(iii) As there was no proposal to demand service tax under 'Cargo Handling Service' in the Notice, the adjudicating authority has travelled beyond the scope of the Notice.

(iv) The demand of service tax cannot be made only basis of the data received from Income tax department without any corroborating evidence.

(v) There is no suppression of fact involved in this case. Consequently, extended period cannot be invoked to demand duty. On the same reason, penalties imposed in the impugned order are not sustainable.

22. In view of the above discussion, we set aside the impugned order and allow the appeal filed by the Appellant.

(Pronounced in the open court on.....10.07.2023....)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

Tushar