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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 76222 of 2014

(Arising out of Order-in-Original No. 05/S.Tax/Commr/2014 dated 15.05.2014 passed by the Commissioner of Central Excise and Service Tax, 143, New Baradwari, Sakchi, Jamshedpur – 831 001)

M/s. Devashish Road Lines **: Appellant**
Sridungari Bastee, (Near Hindustan Coca Cola Beverages P. Ltd.)
Adityapur Indusrial Area, Adityapur,
Saraikela Kharsawan (Jharkhand)

VERSUS

Commissioner of Central Excise and Service Tax **: Respondent**
143, New Baradwari, Sakchi,
Jamshedpur – 831 001

APPEARANCE:

Smt. Sweta Mukherjee, Advocate for the Appellant

Shri Prasenjit Das, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 77574 / 2024

DATE OF HEARING / DECISION: 13.11.2024

ORDER: [PER SHRI ASHOK JINDAL]

The appellant is in appeal against the demand of Service Tax confirmed against them under the category of 'cargo handling service', along with interest, and the various penalties imposed on them under the provisions of the Finance Act, 1994.

2. The facts of the case are that the appellant is registered for providing services under the category of 'Goods Transport Agency' (GTA) service falling under sub-clause (zzn) of clause (105) of Section 65 of Chapter V of the Finance Act, 1994. The allegation against the appellant is that they have rendered cargo

handling services during the period from April 2007 to March 2010, but evaded payment of Service Tax thereon. Accordingly, a Show Cause Notice dated 16.04.2013 was issued to the appellant, *inter alia* proposing to demand Service Tax under the category of 'cargo handling service'.

3. The matter was adjudicated and the demand of Service Tax, along with interest, was confirmed; demands were also raised on account of penalties being imposed against the appellant under Sections 77 and 78 of the Finance Act, 1994, vide the impugned order.

4. Against the said order, the appellant is before us.

5. Today when the matter was called for hearing, the Ld. Counsel appearing on behalf of the appellant submitted that the issue is squarely covered by the decision of this Tribunal in the case of *M/s. Usha Martin Limited & anr. v. Commissioner of Central Excise, Customs and Service Tax, Jamshedpur [Final Order Nos. 77154-77155 of 2023 dated 21.09.2023 in Service Tax Appeal No. 238 of 2011 – CESTAT, Kolkata]* and in view of this, she prayed that the impugned order be set aside.

5.1. The Ld. Counsel for the appellant has also produced the agreement entered into for transportation of goods in support and also produced the list of invoices raised for rendering the said services.

6. On the other hand, the Ld. Authorized Representative of the Revenue supported the impugned order.

7. Heard the parties and considered their submissions.

8. We find that in this case, the claim of the appellant is that they were providing transportation services and for transportation service, the recipient of service is required to discharge Service Tax under reverse charge mechanism (RCM). The case of the Revenue is that the appellant were providing cargo handling services and therefore, are liable to pay Service Tax on the said activity. Hence, we have to see whether in the present case, the appellant was engaged in providing 'Goods Transport Agency' (GTA) service or 'cargo handling service'.

8.1. For better appreciation of the facts, the work order furnished by the appellant, which is very much material to deal with the issue on hand, is extracted hereinbelow: -

Kohinoor Steel (P) Ltd.

Branch Office : 326, Ashiana Trade Centre, Adityapur, Jamshedpur, Jharkhand - 831013
Ph : 0657- 3298353/8357/8841/7321, 2383319, Fax : 0657-2383318
E-mail : ks_jsr@kohinoorsteel.com

93

Ref No.-KS/BRO/WO/087
Date: 13-03-2007

Amended

To
Devashish Road Lines
Sridangari,Bastee
Aditapur Jamshedpur.
Ph: 9431117756, 9334162586 (Satyanarayan Mahato)
9835381400, 9234625562(Santosh Pandey)

Kind Attn: Mr. Satyanarayan Mahato

Sub: Transportation of raw material (coal and iron ore) from Tata Goods Shed (TGS), Goods Dispatch Yards (GDY) and Chandil Yard.

Dear Sir,

Kohinoor Steel Pvt. Ltd. herein after referred to as "The Company" and "Devashish Road Lines" referred to as "The Transporter".

We are pleased to offer the Work Order for transporting of iron ore and coal for following terms and conditions.

1. All charges in respect of Railways, what soever in the nature (except shunting charges for racks placed at GDY) to be borne by transporter.
2. Any fine, Penalty, expenses at unloading point will be borne by transporter.
3. The transporter will ensure adequate patrolling of the movement of raw material from the unloading yard to the Site as mentioned by the company to be delivered.
4. The transporter will ensure that all the vehicle moving from the yard is weighed in proper manner at the designated weigh bridge in route to the site of delivery.
5. Any difference in quantity from the weighment at the unloading point of the rack and weighment at the site over permissible limit of 0.5% shall be deducted for the excess amount over the permissible limit.

:- Village-Khuchidih, Kandra-Chowka Road, P.S. Chandil, Distt. Saraikela-Kharsawan, Jharkhand-832404, Ph. : 06591-283455
Off. :- 11 Middleton Row, Suit # 7, 1st Floor, Kolkata - 700 071, Ph. : 033-2227 4585, 3252, 5457, Fax : 033-2227 4686

(41)

6. In case of material being shifted from the yard to any other yard irrespective to any reason No Extra charge would be paid to the transporter.

Following rates would be applicable:

TGS / GDY	Iron Ore	Rs.215.00 per MT
	Coal	Rs.225.00 per MT
Chandil Yard	Iron Ore	Rs.155.00 per MT
	Coal	Rs.165.00 per MT

Service Tax as applicable

The transporter will ensure that no pilferage, theft takes place at any point. He will deploy man power at the place of unloading for proper safeguard of the material and sweeping of iron ore and coal from the ground. The transporter will also ensure the timely delivery of iron ore and coal to the designated side.

Thanking you

Yours faithfully

For, Kohinoor Steel Pvt. Ltd.

Authorised Signatory

8.2. We find that as per the Work Order, the main activity of the appellant is that of "transporting of iron ore and coal", which includes charges on account of loading/unloading thereof and no separate charges have been paid to the appellant for such loading and unloading. Thus, the main activity of the appellant is transportation of goods, as emanates from the Work Order.

9. A similar issue was dealt with by this Tribunal in the case of *M/s. Usha Martin Ltd. (supra)* wherein the Tribunal had observed as under: -

> *"6. As per the work orders, the main activity is transportation of goods. One of the contract is extracted herein below for better appreciation:*
>
> *....*

On going through the said contract, the scope of the work is transport of their materials from Goods Despatch Yard to their Works issued by Appellant No. (1) to Appellant No. (2). It is clear from the works itself that the main activity of the Appellants is transportation of materials, not loading and un-loading and transportation is the main service.

7. In that circumstances, we hold that as the main activity of the appellants is transportation of goods, therefore, merits classification of the above said service in question is Goods Transport Service. Therefore, the demand under Cargo Handling Service is not sustainable, hence, whole of the demand confirmed against Appellant No.(2) is set aside and consequently, the penalty imposed on the appellants are also set aside.

8. In view of this, the appeals are allowed with consequential relief, if any."

10. As it is clear from the Work Order that the main activity undertaken by the appellant is transportation of goods, therefore, we hold that the merit classification of the service in question is under 'Goods Transport Agency' (GTA) service and not 'cargo handling service'.

10.1. As, in the impugned order, the whole of the demand has been confirmed against the appellant under the category of 'cargo handling service', we find that the same is not sustainable in the eyes of law and accordingly, the whole of the demand confirmed vide the impugned order is set aside.

11. In the facts and circumstances of the case, we hold that no penalty is imposable on the appellant.

12. In view of this, we set aside the impugned order and allow the appeal with consequential relief, if any, as per law.

(Operative part of the order was pronounced in open court)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd