

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.76667 of 2016

(Arising out of Order-in-Original No.BSR-EXCUS-002-COM-003-16-17 dated 29.06.2016 passed by Commissioner of CGST & Central Excise, Bhubaneswar)

M/s Ghanshyam Misra & Sons Pvt. Ltd.

(P.O.-Gorumahisani, Mayurbhanj, Odisha)

Appellant

VERSUS

Commissioner of CGST & Central Excise, Bhubaneswar

(C.R.Building, Rajaswa Vihar, Bhubaneswar-751007)

Respondent

APPEARANCE :

Shri Jagabandhu Sahoo, Sr.Advocate & Shri Ronit Ghosh, Advocate for the Appellant

Shri S.K.Jha, Authorized Representative for the Respondent

CORAM:

HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.76713/2025

DATE OF HEARING : 03 JULY 2025

DATE OF DECISION : 03 JULY 2025

Per Ashok Jindal :

The appellant is in appeal against the impugned order demanding Service Tax under the category of goods transportation service.

2. The facts of the case are that the appellant was also registered under the category of "Transport of Goods by Road Service". It has engaged as Goods Transport Agency for transporter, namely M/s Cargo Solution Pvt. Ltd, Bhubaneswar and some other transporter for Iron Ore transporting and over-burdens/waste material siding. At that time the appellant submitted the individual over-burdens carrying charges is less than Rs. 750/- per trip and as such they are exempt from paying

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service tax under notification No. 34/2004-ST dated 03.12.2004. The appellant was requested to submit the relevant records of the documents in support of their above stand but the appellant was not able to produce copies of ledger for the period from April, 2008 to September,2012 showing the payment made to the individual transporters for carrying of over-burden and some sample copies of work orders relating to transportation of Iron Ore where in it was noticed that transportation charges shown against over-burden charges is less than Rs. 750/- per trip.

3. Further, the appellant submitted that they were not engaged in any Goods Transport Agency for carrying of over-burden rather they deployed the local transport owners on cash/agreement basis. The appellant also failed to submit any consignment note/lorry receipt of individual trip and in the ledger account indicating the calculation of the consideration charges in respect of overburden/waste material siding has been made according to the number of trips made.

4. In these terms, a demand/Show Cause Notice was issued for recovery of Service Tax and the Adjudicating Authority dropped the proceedings against the Respondents holding that they have satisfied all the requirement conditions of the Notification No.34/2004-ST dated 03.12.2004. The said order was reviewed by the department and in review proceedings, it was alleged that the appellant has treated the whole consignment to the effort in contract to summon loads and accommodated in individual trucks and prepared the work order in such a way that GTA will be charged Rs.750/- or less per trip. Therefore, it was held that the single individual trip could not covered under

definition of an individual consignment and demand of Service Tax was confirmed by setting aside the adjudication order.

5. Aggrieved from the said order, the appellant is before us.

6. The Ld. Counsel appearing on behalf of the appellant submits that as per the work order the rate was Rs. 350/ per trip and appellant was paying Rs. 350/- per trip to the transporters therefore, they are not liable to pay Service Tax and the Adjudicating Authority has rightly dropped the proceedings against the appellant but in review order the observation made by the Ld. Commissioner (Appeal) is contrary to the facts of the case. In that circumstances impugned order is to be set aside.

7. On the other hand Ld.Authorized Representative supported the impugned order.

8. Heard the both the parties and considered the submissions.

9. We find that the appellant's own case, the present issue has been dealt with by this Tribunal vide Final Order No.75880/2025 dated 20.03.2025, wherein the Tribunal has observed as under :

"9. We have gone through the sample work orders produced by the appellant during the course of hearing thus same are extracted below:

S.Tax Appeal No.76667 of 2016**Dulal Chandra Mazumdar** 36.AT & P.O. GORUMAHISANI
DIST. MAYURBHANJ, ORISSA
PIN. 757042

ACCEPTANCE LETTER

Date: 14th April 2008To
M/s Ghanashyam Misra & Sons (P) Ltd.
At P.O. Gorumahisani,
Mayurbhanj,
Odisha.

Dear Sir,

With reference to our telephonic discussion of Over Burden Carring Charges from your upper siding Mines to plot. We here with quote our best offer with following terms and conditions.

➤ Description of goods	:	Iron Ore
➤ Work area	:	Within our Mines area
➤ Rate	:	Rs. 350/- (Rupees three hundred fifty only) per trip .
➤ Payment	:	Please make your payment on Weekly basis at site to truck owner subject to our staff/ driver or on a/c payee transfer to our designed account.
➤ Service	:	No service tax will be liable
➤ TDS	:	A: Per rules & regulations.
➤ Validity	:	This offer/ acceptance will be valid until our change.

We hope our offer will suit you and give opportunities to work with your esteemed organization.

Thanks and Regards

For Dulal Chandra Mazumdar

Dulal Ch. Mazumdar

Signature

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10. And later on invoices has been raised on the appellant, the same is extracted herein below for better appreciation of the facts:

DULAL CHANDRA MAZUMDAR
AT & P.O. GORUMAHISANI
DIST. MAYURBHANJ, ORISSA
PIN. 757042

TO

M/S. GHANASHYAM MISRA & SONS (P) LTD
GORUMAHISANI IRON ORE MINES
P.O. GORUMAHISANI
DIST. MAYURBHANJ, ORISSA.

BILL NO. DCM/GMS/ 04/2008-09

DATE.02.08.2008.

Quantity M.T.	Particulars	Rate per M.T.	Amount. Rs. /P.
3522 Trips	Over burden carrying charges for the month of July 2008.	Rs.350.00 Per trip	12,32,700.00
	Rupees-Twelve Lac Thirty Two Thousand Seven Hundred Sixty Only.		12,32,700.00

Dulal Ch. Mazumdar .

(Dulal Chandra Mazumdar)
Signature.

True copy
attached
Sent

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11. On going through the said documents, we find that for a month appellant has made 3522 trips and per trip Rs.350/- was the transportation charges which is well beyond Rs.750/-in terms of Notification No.34/2004 ST dated 03.12.2004. In that circumstances, we hold that the appellant is entitled for exemption under Notification No.34/2004 ST dated 03.12.2004. Therefore, no Service Tax is payable by the appellant.

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

10. Accordingly, following the said decision of this Tribunal, we hold that the appellants are not liable to pay service tax.

11. Therefore, we hold that no service tax is payable by the appellant.

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

(Dictated and pronounced in the open court)

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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