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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75042 of 2017

(Arising out of Order-in-Appeal No. 242/ST/HAL/2016 dated 27.09.2016 passed by the Commissioner of Central Excise (Appeal-I), Kolkata, 169, A.J.C. Bose Road, Bamboo Villa, 4th Floor, Kolkata – 700 014)

M/s. Ripley & Co. Limited **: Appellant**
Old Cpt Campus, Block-L, Chiranjibpur, Haldia,
District: East Midnapur, West Bengal – 721 657

VERSUS

Commissioner of Central Excise and Service Tax **: Respondent**
Haldia Commissionerate,
25, Princep Street, 3rd Floor,
Kolkata – 700 072

APPEARANCE:

Shri Debtosh Dey, Authorized Representative, for the Appellant

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

CORAM:

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

FINAL ORDER NO. 77189 / 2025

DATE OF HEARING: 04.08.2025

DATE OF DECISION: 07.08.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

M/s Ripley & Co. Ltd. C.P.T. Complex, Block-L, Chiranjibpur, Haldia, Purba Medinipur, (hereinafter referred to as the "appellant") is a provider of 'Port Service', 'Cargo Handling Service' and 'Transportation of Goods by Road Service'. They are holding proper Service Tax Registration bearing No. AABCR4683AST002.

1.1. During the course of Audit conducted on the records maintained by the appellant for the financial year 2009-10, it was observed that the appellant had short paid Service Tax, totally amounting to Rs.23,01,511/- under the category of 'port services'.

1.2. On scrutiny of Cenvatable invoices, it was noticed by the Audit team that the appellant had taken credit of Service Tax paid on supervision charges as input service relating to Kolkata Port although the said credit could not be termed as input credit in respect of output service for Haldia Port. The Audit has, therefore, observed that the appellant was liable to reverse the CENVAT Credit of Service Tax amounting to Rs.1,81,251.00/-, including cess, availed by them.

1.3. On the basis of these observations, a Show Cause Notice was issued to the appellant demanding service tax along with interest and penalty. The Notice also proposed recovery of the irregular credit availed by the appellant along with interest and penalty.

1.4. The said Notice was adjudicated by the Additional Commissioner vide Order-in-Original No. 48/Additional Commissioner /ST/ Haldia/Adjn/2015 dated 30.09.2015, wherein the demands of Service Tax, along with interest and penalty, has been confirmed.

1.5. On appeal, the Ld. Commissioner (Appeals), vide the impugned Order-in-Appeal No. 242/ST/HAL/2016 dated 27.09.2016, upheld the demands of Service Tax, along with interest and penalties, confirmed in the above Order-in-Original.

1.6. Aggrieved against the confirmation of the demands, the appellant has filed this appeal.

2. The Ld. Authorized Representative of the appellant has summarized the demands upheld in the impugned order by the Ld. Commissioner (Appeals), Central Excise (Appeal-1), as under.:

Annexures (Ref Pages 91-99 of Paper Book)	**Activities**	**Service taxes (in Rs)**
A	Plot-to-plot shifting of export cargo (iron ore) inside port and cargo handling	13,62,116
B	Equipment Assistance within port for export cargo (iron ore)	4,49,376
C	Cargo-pool labour for vessel loading of export cargo (iron ore) within port	1,16,063
D	Unloading rake of export cargo (iron ore) and/or GTA service	69,443
E	Unloading lorry inside port for export cargo (iron ore)	3,04,513
	Total	23,01,511
F	Cenvat of Kolkata unit used for Haldia unit through inadvertence	1,81,251

2.1. Regarding the demand of 23,01,511/- confirmed under the category of 'Port Services', the appellant submits that prior to 30.06.2010, services rendered by Port or its authorized agent alone liable to service tax under the category of 'Port Services'. It is pointed out by the appellant in this regard that the scope of 'Port Service' was expanded to cover all activities under taken within the port area only w.e.f. 30.06.2010 and the same has been clarified vide Finance Ministry's Circular D.O.F. No. 334/1/2010-TRU dated 26.02.2010; that in the present case, the appellant was the agent of exporters/ importers and not authorized by the Port to undertake port services till the above date. As the demand in this case pertains to the period prior to 30.06.2010, the appellant submits that the demand of service tax confirmed for the Financial Year 2010-11 is not sustainable. In support of this view, the appellant relied on the decision of the Hon'ble Supreme Court in the case of *Commissioner of Central Excise Vs Konkan Marine Agencies on 11.01.2023.*

2.2. The appellant further submits that the services rendered by them are appropriately classifiable under the category of 'Cargo Handling Service, as defined under Section 65(23) of the said Finance Act, 1994. It is stated by them that handling of export cargo has been specifically excluded from the purview of service tax as defined under Section 65(23) of the said Act. Accordingly, the appellant contends that the demand of service tax confirmed under the category of 'Port Service' for the Financial Year 2010-11 is not sustainable.

2.3. Regarding the order for reversal of CENVAT credit of Rs.1,81,251/- pertaining to the Kolkata unit used for Haldia unit through inadvertence, the appellant submits that they have accepted their mistake and reversed the inadmissible CENVAT Credit amounting to Rs. 1,81,251/ in their CENVAT Credit account. Thus, the appellant prays that no penalty be imposed on them for the irregular credit availed by them inadvertently.

2.4. Regarding invocation of extended period of limitation to raise the demand, the appellant has submitted that in this case, the period of demand relates to the financial year 2009-10 but the Show

Cause Notice was issued only on 21.04.2014. Further, it is submitted that the instant Show Cause Notice has been issued on the basis of Audit Report in the year 2010 when all the documents were produced by them and the same were scrutinized by the audit officers. As there is no suppression of fact with intention to evade payment of service tax has been established in this case and the matter relates to interpretation of classification of service as provided in Section 65A of the Finance Act, 1994, it is their contention that the demands confirmed by invoking the extended period of limitation are not sustainable. For the same reason, they reiterate that no penalty is imposable on them in this case.

3. The Ld. Authorized Representative of the Revenue reiterated the findings in the impugned order.

4. Heard both sides and perused the appeal records.

5. Regarding the demand of Rs.23,01,511/- confirmed under the category of 'Port Services', we find that prior to 01.07.2010, Port Service has a restrictive definition. For ready reference, the said definition is reproduced below:

> *"Port Service means any service rendered by a port or other port or any person authorized by such port or other port, in any manner, in relation to a vessel or goods".*

5.1. We observe that the above said definition was amended with effect from 01.07.2010 and as per the amended definition, any service provided to any person by any other person in relation to port services in a port in any manner is liable to service tax. Therefore, we observe the services rendered by port or any person authorized by the port only were liable to service tax before 01.07.2010 and the services provided by any person other than the port and the persons authorized by the port cannot be classified as 'port service'. In the present case, it is a fact that the appellant was the agent of exporters/ importers and not authorized by the Port to undertake 'port services' till the above date. As the demand in this case pertains to the period prior to 30.06.2010, we are of the view that the demand of Service Tax confirmed under the category of 'Port services' is not sustainable.

5.2. In support of this view, we rely on the judgement of the Hon'ble Supreme Court in the case of *Commissioner of Central Excise, Mangalore v. M/s. Konkan Marine Agencies in Civil Appeal No. 1765 of 2009 dated 11.01.2023.* The relevant portion of the said decision is reproduced below:

> *"The Customs Excise & Service Tax Appellate Tribunal had allowed the assesses appeal in this case on the ground that the definition of taxable services was expanded with effect from 1.7.2010. So the Customs Excise & Service Tax Appellate Tribunal had relied upon its previous ruling in Velgi P. And Sons (Agencies) Pvt. Ltd. vs. Commissioner 2007 (8) STR236.*
>
> *The Revenue, which is the appellant in this case, did not dispute that the order in Velgi P. And Sons (Agencies) Pvt. Ltd. vs. Commissioner 2007 (8) STR236 was carried in appeal informing this Court vide order dated 24.03.2008 in CA No. 2429-30/2008 had dismissed the appeal and confirmed the order of the CESTAT. One of the grounds which persuaded the CESTAT to hold what it did was that the period of demand was prior to the amendment to the definition in this case for the period 2002-2003 to 2006 i.e. much before 01.07.2010.*
>
> *In view of these and following order made by this Court in CA Nos. 2429-30/2008, the present appeal has to suffer the same fate; it is accordingly dismissed.*

> *The Customs Excise & Service Tax Appellate Tribunal had allowed the assesses appeal in this case on the ground that the definition of taxable services was expanded with effect from 1.7.2010. So the Customs Excise & Service Tax Appellate Tribunal had relied upon its previous ruling in Velgi P. And Sons (Agencies) Pvt. Ltd. vs. Commissioner 2007 (8) STR236. The Revenue, which is the appellant in this case, did not dispute that the order in Velgi P. And Sons (Agencies) Pvt. Ltd. vs. Commissioner 2007 (8) STR236 was carried in appeal informing this Court vide order dated 24.03.2008 in CA No. 2420-30/2008 had dismissed the appeal and confirmed the order of the CESTAT. One of the grounds which persuaded the CESTAT to hold what it did was that the period of demand was prior to the amendment to the definition in this case for the period 2004-2005 to 2006-2007 i.e. much before 01.07.2010.*
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> *In view of these and following order made by this Court in CA Nos. 2429-30/2008, the present appeal has to suffer the same fate; it is accordingly dismissed."*

5.3. We observe that the services rendered by the appellant are appropriately classifiable under the category of 'Cargo Handling Service', as defined under Section 65(23) of the said Finance Act, 1994. We also find that handling of export cargo has been specifically excluded from the purview of service tax under the category of 'Cargo Handling Service', as defined under Section 65(23) of the said act. Accordingly, we hold that the demand of Service Tax confirmed under the category of 'Port Service' for the Financial Year 2010-11 in this case is not sustainable and hence, we set aside the same. As the demand itself is not sustainable, the question of demanding interest and imposing penalty on this demand does not arise.

6. Regarding the order for reversal of CENVAT credit of Rs.1,81,251/- pertaining to Kolkata unit used for Haldia unit through inadvertence, we observe that the appellant have accepted their mistake and reversed inadmissible CENVAT Credit amounting to Rs.1,81,251/ in their CENVAT Credit Account. However, the appellant shall be liable to pay interest for the credit so irregularly availed from the date of availment till the date of reversal, if not already paid.

6.1. In this regard, we observe that suppression of facts with intention to avail irregular credit has not been established in this case. Accordingly, we hold that no penalty is imposable on them for the irregular credit availed by them inadvertently and hence, we set aside the same.

7. Regarding invocation of extended period of limitation to confirm the demand, it is observed that in this case, the period of demand relates to the financial year 2009-10 but the Show Cause Notice has been issued only on 21.04.2014. Further, we take note of the fact that the Show Cause Notice has been issued on the basis of Audit Report in the year 2010 when all the documents were produced by the appellant and the same were scrutinized by the audit officers. Thus, it is evident that there is no suppression of fact with intention to evade payment of Service Tax on the part of the appellant established in this case, for invoking the extended period of limitation. Accordingly, we hold that the demands confirmed by invoking extended period of limitation are not sustainable and hence we hold that the demand is liable to be set aside on the ground of limitation also.

8. In view of the above discussions, we pass the following order: -

(i) The demand of Service Tax of Rs.23,01,511/- confirmed in the impugned order is set aside.

(ii) The penalties imposed are also set aside.

(iii) On the reversal of the inadmissible CENVAT credit amounting to Rs.1,81,251/-, the appellant shall be liable to pay interest, from the date of availment till the date of reversal, if not already paid. No penalty is imposable in this regard.

9. The appeal is disposed of in the above manner.

(Order pronounced in the open court on **07.08.2025**)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

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

Sdd