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

REGIONAL BENCH – COURT NO. 2

Service Tax Appeal No. 75316 of 2016

(Arising out of Order-in-Original No. 26/Commr/ST-II/Kol/2015-16 dated 16.12.2015 passed by the Commissioner of Service Tax-II Commissionerate Kendriya Utpad Shulk Bhawan 180, Rajdanga Main Road Shantipally Kolkata-700107)

M/s. Mahavir Logistics Pvt. Ltd. **: Appellant**
Block-B, Parasramka, 40B/1, Shibnath Sastri
Sarani, New Alipore, Kolkata-700053

VERSUS

Commissioner of Service Tax-II, **: Respondent**
Commissionerate Kendriya Utpad Shulk Bhawan 180, Rajdanga
Main Road Shantipally Kolkata-700107

APPEARANCE:

Shri Ajay Sanwaria, Advocate
Shri Sukalpa Seal, Advocate for the Appellant
Shri P. Das, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.77842/ 2025

DATE OF HEARING: 28.11.2025
DATE OF PRONOUNCEMENT: 02.12.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

The present Appeal has been filed against Order-in-Original No. 26/Commr/ST-II/Kol/2015-16 dated 16-12-2015, passed by Ld. Commissioner of Service Tax-II, Kolkata Commissionerate, wherein the Ld. Commissioner has confirmed the demand of service tax of Rs. 2,00,55,624/- (Service tax demand amounting to Rs. 1,78,94,290/- + CENVAT demand amounting to Rs. 21,61,334/-) along with interest and equal amount of tax as penalty.

2. The Appellant submits that the demands confirmed in the impugned order can be categorized under the following main issues:

2.1 Issue 1- Applicability of service tax on loading/unloading, handling, transportation of goods services provided by the Appellant under the taxable category "Clearing and Forwarding Agent Services" for the F.Y. 2009-10 to F.Y. 2012-13 [Demand - 23,25,343/-]

In the instant case service tax has been demanded and confirmed on the services of loading/unloading, handling, transportation of goods from Railway siding to Haldia/Paradeep/Vizag port under the taxable category "Clearing and Forwarding Agent Services". The Appellant has categorized the said services as 'Cargo Handling services' and claimed exemption from service tax, as cargo handling service provided in connection with export cargo has been specifically exempted under the definition of 'Cargo Handling Service' as defined under Section 65(23) of the Finance Act.

2.2. In this regard, the Appellant submits that they were awarded a work order bearing No. **RML/2008-09/3970 dated 26.07.2008 issued by M/s. Rungta Mines Ltd**. The scope of work included unloading and handling of the material from Nimpura railway siding and then transporting the same by road to Haldia port and unloading thereof (inside the port premises). Similarly, **work order bearing no. A/1017/07-08 dated 22.08.2007, as amended from time to time, was issued by M/s Essel Mining & Industries Limited**. The scope of work included unloading and handling of the material from Panskura railway siding and then

transporting the same by road/railways to Haldia/Paradeep/Vizag port.

2.3. The Appellant submits that the aforesaid services rendered by them doesn't have any attributes of "Clearing and Forwarding Agency Services". The Appellant submits that the scope of the aforesaid taxable category was clarified vide issuance of **Trade Notice No. 87/97 dated 14.07.1997 of the Madurai-2 Commissionerate.** A perusal of the said clarification clearly reveals that Clearing & Forwarding Agent performs end to end logistics and distribution services on behalf of a principal which includes activities such as, receiving goods from manufacturer, stocking/warehousing goods, despatching goods to customers, maintaining records (i.e. stock register, invoices, despatch documents etc.), organizing transportation, liaison with transporters, customs and warehouses. The Clearing & Forwarding Services are generally covered by a Clearing & Forwarding Agreement which is in the nature of composite services not only limited to physical handling but also covering logistics, distribution, documentation and coordination. Further, Clearing & Forwarding services involves agency function on behalf of principal. Thus, Clearing & Forwarding services is much wider in scope involving various activities as enumerated above and not limited to pure loading/ unloading and simple transportation.

2.4. In the present case, a perusal of the work orders mentioned in para 2.2 supra reveal that the scope of work undertaken by the Appellant include loading/unloading and handling of the material from the railway siding and then transporting the same by road/railways to the port and unloading thereof.

Thus, the Appellant submits that the service undertaken by them is appropriately classifiable under the category of 'Cargo handling service' and the cargo handling service provided in connection with export cargo has been specifically exempted by definition of 'Cargo handling service' as defined under Section 65(23) of the Finance Act. Accordingly, the Appellant submits that the demand confirmed on this count is not sustainable.

3. Issue 2 - Applicability of service tax on transportation services under reverse charge mechanism when service tax payment made to the service provider (transporter) under forward charge for the F.Y. 2010-11 to F.Y. 2012-13 [Demand - 21,61,334/-]

3.1. In the instant case, the Appellant submits that the demand has been raised and confirmed on transportation work awarded to M/s. Shiv Construction and M/s. Neel Enterprise for transportation of clinker from Railway siding to the MCL cement factory. The impugned order has confirmed the demand on the premise that the liability to pay service tax is on the service recipient under reverse charge mechanism in terms of Section 68(2) of the Finance Act read with Rule 2(1)(d) of the Service Tax Rules, 1994. In this regard, the Appellant submits that they had awarded a contract to M/s. Shiv Construction and M/s. Neel Enterprise for transportation of clinker from Railway siding to the MCL cement factory. As per the terms and conditions of such orders, service tax was required to be charged extra with the invoice value. Since, the transporters were separately registered under the

provisions of the Finance Act, they raised bills on the Appellant for transportation charges and charged service tax thereon. The Appellant made payment to those transporters which included payment of service tax also. Despite the detailed reply given by the Appellant, explaining that the service tax has already been paid on the said transportation services, the Adjudicating Authority has confirmed the demand purely on technical grounds, on the premise that the liability to pay service tax on freight charges is upon the Appellant under reverse charge mechanism.

3.2. The Appellant submits that since the amount of service tax was charged on the invoices and paid/reimbursed by the Appellant to the transporter, no further service tax was required to be paid by the Appellant in as much as demanding service tax on the same service and value from the Appellant as a recipient of GTA service under reverse charge would tantamount to double taxation, which is not tenable in the eyes of the law. The Appellant further submits that **this issue has also been clarified by CBEC vide Circular No.341/18/2004-TRU dated 17.12.04,** wherein it has been *inter alia* clarified that once the transporter/service provider discharges service tax, it shall not be demanded from any other person to avoid double taxation. Accordingly, the Appellant submits that the demand of service tax confirmed on this issue in the impugned order is not sustainable. In support of this view, the Appellant relied on the decision of the Hon'ble Karnataka High Court in the case of ***M/s. Zyeta Interiors[2022 (4) TMI 774 –HC Karnataka.*** Similar views have been taken in the following cases:

a) ***Navyug Alloys Pvt. Ltd. vs. CCE [2009 (13) STR 421 (Tri. - Ahmd.)]***
b) ***CST Vs. Geeta Industries P. Ltd [2011 (22) STR293 (Tri. - Del.)]***
c) ***M/s Mandev Tubes Vs. CCE [2009 (16) STR 724 (Tri. - Ahmd.)]***
d) ***Pravesh Kumar Maurya vs. CCE (2024) 19 Centax 375 (Tri.-All)***

4. Issue 3- Irregular availment of Cenvat credit without making payment of service tax under reverse charge on transportation services for theF.Y. 2010-11 to F.Y. 2012-13 [Demand - 21,61,334/-]

4.1. It has been alleged that since the Appellant has not made payment of service tax on freight charges under reverse charge mechanism, they are ineligible to claim Cenvat Credit of input services in accordance with the provisions of Rule 4(7) of the Cenvat Credit Rules, 2004. In this regard, the Appellant submits that they had availed GTA services from M/s. Shiv Construction and M/s. Neel Enterprise (as referred above) for providing taxable output service and availed Cenvat credit amounting to Rs. 21,61,334/- on the strength of invoices/bills issued by the said transporters. In the instant case, service tax has been paid by the provider of the service and apart from the technicalities, the benefit of credit which is otherwise admissible under the law cannot be denied, particularly when there is no dispute about the admissibility of service being an "input service", used for providing taxable output service by the Appellant.

4.2. The Appellant submits that it is a well-settled position in law that procedural technicalities cannot stand in the way of availing Cenvat credit. Reliance in this regard is placed upon the judgment of the CESTAT Mumbai, in the matter of ***M/s. Rucha Engineers Pvt. Ltd. vs. CCE[2015 (39) STR 518 (Tri. - Mumbai)]***. Reliance is also placed in the case of ***Umasons Auto Compo Pvt. Ltd. vs. CCE&C [2014-TIOL-126-CESTAT-Mum.***

5. Issue 4 – Applicability of service tax on transportation services provided within the mining area under the taxable category "Mining Service"[Disputed demand of Rs. 1,34,07,613/- for the F.Y. 2010-11 to 2011-12]

In the instant case, service tax demand has been confirmed on the services of transportation of excavated iron ore/overburden from one place to another place inside the Karampada iron ore mines under the taxable category "Mining Service".

5.1. In this regard, the Appellant submits that that they were awarded a work order bearing no. SB/MLPL/10-11 dated 18.09.2010 and SB/MLPL/11-12 dated 15.03.2011 by M/s Shah Brothers for transportation of excavated iron ore/overburden from one place to another place in and outside the Karampada iron ore mines. The Appellant acting as a transporter issued the transport bills on their client M/s Shah Brothers and claimed exemption under Notification No. 34/2004-ST dated 03.12.2004, as the value of Transportation bill was less than Rs. 750/- It was also contended that the liability to pay service tax on transportation services, if any, is on

the service recipient i.e. M/s Shah Brothers under reverse charge mechanism.

5.2. Alternatively, and without prejudice to the above contentions, the Appellant submits that the demand has been confirmed under the taxable category "Mining Services" as defined under section 65(105)(zzzy) of the Finance Act, 1994. The Appellant submits that the services provided by the Appellant were limited to transportation of excavated iron ore/overburden from one place to another place in and outside the Karampada iron ore mines. Such activity is in the nature of transportation work and not mining activity.

5.3. In this regard, the Appellant cited the **CBEC Circular No. 232/2/2006-CX-4, dated12.11.2007**, wherein it has been clarified that transportation of coal or minerals from the pithead to a specified location within the mine or for transportation outside the mine are post-mining activities are chargeable to service tax under the relevant taxable services, i.e. 'Cargo Handling Service' and 'Goods Transport by Road.' From the clarification, it is clear that transportation of mineral from pithead to a specified location within the mine or outside the mine are chargeable to service tax under relevant taxable service i.e. Goods Transport by Road Service and not Mining Service.

5.4. The Appellant also cited the decision of Hon'ble Supreme Court in the case of ***Commissioner of Central Excise And Service Tax, Raipur vs Singh Transporters [2017 (7) TMI 494 – SC]*** wherein it has been held that the transportation of goods from pit-head to the railway

sidings is a post mining activity and is more appropriately classifiable under the taxable category transport of goods by road service[Section 65(105)(zzp)]and not under the taxable category "mining of mineral, oil or gas" [Section 65(105)(zzzy)].

5.5. Similar views have also been taken in the following cases:

- ***M/s Karamjeet Singh & Co. Ltd. vs. CCE & ST, Raipur [2017 (9) TMI 1125] – Tribunal, New Delhi***

- ***M/s Ambey Mining Private Limited vs. CST-II [2024 (3) TMI 1106]– Tribunal, Kolkata***

- ***M/s. BLA Infra-GKMWPL (JV) vs. CST, Bolpur[2025 (3) TMI 266]– Tribunal, Kolkata]***

- ***CST-I vs. M/s Tycoon Industries Private Limited [2022 (8) TMI 281]– Tribunal Kolkata***

- ***CCGST vs. M/s Baghel Brothers [2023 (4) TMI 1022] - Tribunal Kolkata***

5.6. Thus, relying on the decisions cited supra, the Appellant submits that the demand of service tax confirmed in the impugned order on this count is not sustainable.

6. The Appellant further submitted that extended period cannot be invoked in this case, as there was

no suppression with an intention to evade duty. The demand has been made on the basis of audited books of account and service tax return filed by the Appellant which is also a public document. As such, the charges for suppression on part of Appellant would fail. Reference in this regard is invited to the following decisions:

- ***M/s Environment Planning & Coordination Organization vs. PCCCS- 2025 (7) Tmi 150 – Tri – Delhi)***

- ***Kajaria Iron & Steel Co. Pvt. Ltd. vs. CCE[STA No. 75058 of 2024 – Tri-Kol]***

- ***Devraj Luxury Hotels Pvt. Ltd. vs. CCE [2022 (67) GSTL 76 (Tri-Del.)]***

6.1. Accordingly, the Appellant prayed for setting aside the demands confirmed in the impugned order along with interest and penalty.

7. The Ld. A.R. reiterated the findings in the impugned order.

8. Heard both sides and perused the appeal documents.

9. Regarding the demand of service tax of Rs.23,25,343/- confirmed under the category "Clearing and Forwarding Agent Services" for the F.Y. 2009-10 to F.Y. 2012-13, we find that the Appellant was awarded a work order bearing No. **RML/2008-09/3970 dated 26.07.2008 issued by M/s. Rungta Mines Ltd**. The scope of work included unloading and handling of the material from Nimpura railway siding and then transporting the same by road to Haldia port and unloading thereof

(inside the port premises). Similarly, we find that the **work order bearing no. A/1017/07-08 dated 22.08.2007, issued by M/s Essel Mining & Industries Limited** also deals with cargo handling related works. The scope of work included unloading and handling of the material from Panskura railway siding and then transporting the same by road/railways to Haldia/Paradeep/Vizag port. We find that the Ld. adjudicating authority has classified the said services under the category of "Clearing and Forwarding Agency Services" and confirmed the demand.

9.1. We find that the aforesaid services rendered by the appellant doesn't have any attributes of "Clearing and Forwarding Agency Services". The Appellant has claimed classification of the said services under the category of 'Cargo handling Services'. For ready reference, the definition of both the services are reproduced below:

As per Section 65(105)(j) of the Finance Act, the definition of "taxable service" includes

"**any services provided or to be provided "to any person, by a clearing and forwarding agent in relation to clearing and forwarding operations in any manner".**

As per Section 65(25) of the said Act, **"Clearing and Forwarding Agent"** means any person who is engaged in providing any service, either directly or indirectly connected with the clearing and forwarding operations in any manner to any other person and includes a consignment agent. The said definition is reproduced below for your ease of reference:

> *(25) "clearing and forwarding agent" means any person who is engaged in providing any*

service, either directly or indirectly, connected with the clearing and forwarding operations in any manner to any other person and includes a consignment agent;

9.2. We find that the scope of the aforesaid taxable category was clarified vide issuance of **Trade Notice No. 87/97 dated 14.07.1997 of the Madurai-2 Commissionerate,** wherein it has been clarified as under:

2. Clearing and Forwarding Agents

2.1 Clearing and forwarding agent has been defined as any person who is engaged in providing any service, eitherdirectly or indirectly, connected with clearing and forwarding operations in any manner to any other person and includes aconsigning agent. The taxable service has been defined as any service provided to a client, by C&F agent in relation toclearing and forwarding operations in any manner. The clearing and forwarding agents are engaged/appointed bymanufacturer of goods (both excisable and non-excisable goods), producers and distributors of goods and shall also includesuch agents appointed for agricultural and mineral goods.

2.2 Normally, there is a contract between the principal and the clearingand forwarding agent detailing the terms andconditions and also indicating the commission or remuneration to which the C&F agent is entitled. A clearing and

forwardingagent normally undertakes the following:

(a) Receiving the goods from the factories or premises of the principal or his agents;

(b) Warehousing these goods;

(c) Receiving despatch orders from the principal;

(d) Arranging despatch of goods as per the directions of the principal by engaging transport on his own or through theauthorised transporters of the principal;

(e) Maintaining records of the receipt and despatch of goods and the stock available at the warehouse;

(f) Preparing invoices on behalf of the principal

9.3. On conjoint reading of definition of Clearing & Forwarding Services under the Act and clarification issued vide the Trade Notice (as discussed above), it is amply clear that Clearing & Forwarding Agent performs end to end logistics and distribution services on behalf of a principal wherein the activities undertaken by them *inter alia* includes receiving goods from manufacturer, stocking/warehousing goods, despatching goods to customers, maintaining records (i.e. stock register, invoices, despatch documents etc.), organizing transportation, liaison with transporters, customs and warehouses. We find that Clearing & Forwarding

Services are generally covered by a Clearing & Forwarding Agreement which is in the nature of composite services not only limited to physical handling but also covering logistics, distribution, documentation and coordination. Further, Clearing & Forwarding services involves agency function on behalf of principal. Thus, we find that Clearing & Forwarding services is much wider in scope involving various activities as enumerated above and not limited to pure loading/ unloading and simple transportation.

9.4. On the contrary, Cargo Handling Services had been made taxable under Section 65(105)(zr) of the Act, to mean **'any services provided or to be provided to any person, by a cargo handling agency in relation to cargo handling services'.** Further, the term 'cargo handling services' has been defined under Section 65(23) of the Finance Act, to read as under:

> *(23) **"cargo handling service"** means loading, unloading, packing or unpacking of cargo and includes-*
>
> *(a) cargo handling services provided for freight in special containers or for non-containerised freight, services provided by a container freight terminal or any other freight terminal, for all modes of transport, and cargo handling service incidental to freight; and*
>
> *(b) service of packing together with transportation of cargo or goods, with or without*

one or more of other services like loading, unloading, unpacking,

but does not include handling of export cargo or passenger baggage or mere transportation of goods;

[Emphasis applied]

9.5. The scope of the aforesaid category has been clarified by **CBEC vide Circular F.No.B11/1/2002-TRU dated 01.08.2002**, the relevant part of which is reproduced herein below for ease of reference:

Cargo handling service

1. …………………….

2. As per clause (21), the term "cargo handling service" means loading, unloading, packing or unpacking of cargo and includes cargo handling services provided for freight in special containers or for non-containerised freight, services provided by a container freight terminal or any other freight terminal, for all modes of transport, and any other service incidental to freight, but does not include handling of export cargo or passenger baggage or mere transportation of cargo. The taxable service, as per sub-clause (zr) of clause (90), is any service provided, to any person, by a cargo handling agency in relation to cargo handling services.

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.*

3.1 The services provided in relation to export cargo and passenger baggage are excluded from tax net.

3.2 to 3.3 …………………

4. to 5……………………………………..

6. All goods meant for export are excluded from the scope of this levy. There may be cases where goods may be transhipped at a place other than the place of packing before reaching a place from where it is exported. For example goods are packed say at Agra for transportation to Bhopal where it is transhipped and ultimately reaches Mumbai, from where it is exported. A doubt has been raised as to whether service tax would be leviable on cargo

> ***handling service at Agra. <u>It is clarified service provided in relation to any cargo which is meant for export, would not be taxable irrespective of the fact that it reaches the place of export after transhipment. However, the relevant documents should show that the Goods are for export.</u>***
>
> *7. to 15 ………………………………*

9.6. From the aforesaid clarification, it is evident that Cargo Handling Service involves physical handling of cargo such as loading, unloading, packing or unpacking, cargo stacking/unstacking and transportation of goods. The same is purely operational/ physical activity where the focus is on handling of goods. Further, **handling of export cargo** has been categorically excluded from the definition and scope of 'Cargo Handling Services.'

9.7. In the instant case, we find that the Appellant has been awarded the contract by M/s Rungta Mines Ltd. and M/s Essel Mining & Industries Ltd. for unloading of iron ore fines at Nimpura and Panskura Railway siding and outward dispatch of the same to Haldia/Vizag/Paradeep/Kolkata port by road/railways respectively. We find that the above scope of work is squarely covered under the taxable category of 'Cargo Handling Services' and it would not be falling under the taxable category of Clearing and Forwarding services since the **Appellant is neither acting as an agent of the Principal nor is involved into any logistics, documentation and maintaining records, distribution and**

coordination services etc. The services provided by the Appellant mostly involved unloading the material from the railway sidings and then transporting the same by road/railway to Haldia port, for their eventual export on behalf of their clients. Further, the Appellant was not directly involved in any processing of any shipping paperwork or customs documents, ensuring compliance with trade and customs laws in relation to the said export since same was the role of a CHA. As such, we hold that the services would most appropriately classifiable as 'Cargo Handling Services' rather than "Clearing and Forwarding Services".

9.8. It is evident from the Section 65(23) of the Act, handling of export cargo is specifically excluded from the scope of 'Cargo Handling Services', for the purpose of levy of service tax. We find that the Appellant's activities primarily include loading, unloading, and handling of cargo at the railway siding and its transportation to the port for export purposes and such activities meant for **handling of export cargo** being specifically excluded from the scope of said taxable services.

9.9. Further, we observe that the provision of exclusion of 'export cargo' from the scope of taxable services 'Cargo Handling Services' under Sec 65 (23) continued till 30.06.2012 as Section 65 ceased to be in effect from 01.07.2012, pursuant to Notification No. 20/2012-ST, dated 05.06.12. As per Annexure-I of the SCN, the service tax liability arising on provision of said 'Cargo Handling Services' beyond 30.06.2012 is Rs. 1442/- only, which the Appellant

has already deposited along with interest vide challan no. 51966 dated 08.03.2016.

9.10. In support of our view to classify the said activities under the Appellant under the category of 'Cargo Handling Services' and to exclude handling of export cargo from its scope, we rely upon the decision in the case of ***Gajanand Agarwal vs. CCE, Kolkata [2009 (13) S.T.R. 138 (Tri.-Kolkata)]*** wherein the Tribunal has held that the classification of service under Cargo Handling Services is subject to two exceptions/exclusions: viz.,: (1) handling of export cargo or passenger baggage and (2) mere transportation of goods. These two activities are beyond the scope of such class from taxation for rationale behind them. Accordingly, cargo handling services provided in respect of domestic cargo only are liable to tax. Event of levy arises when service relating to or in relation to handling of cargo is provided by a cargo handling agency irrespective of mode of transport used for movement of such cargo. The relevant portion of the said decision is reproduced hereinbelow for ease of reference:

> *12. We have examined the sample agreement dated 22-7-03 produced for examination. That was executed between the first appellant and Mahanadi Coalfields Ltd. The sample work order dated 23-5-03 forming part of the agreement was also examined. That exhibits that the same forms part of the agreement. That further shows that there was hiring of pay loader for transferring of coal. The work order simply shows that there was a hiring of pay loader but the obligation of the appellants did not end with*

letting out of the pay loader. ***The appellants were required to carry out the object of loading of the quantity required by the work orders within the time frame and the rates were fixed for loading of the goods i.e. coal into Railway wagons****. The ld. Advocate in the course of hearing was asked to explain whether the appellants were to simply deliver the pay loader to the Mahanadi Coal Fields Ltd. or anything else to be done. He explained that the appellants were to operate the pay loader and payment of Rs. 2.47 per tonne was to be made by Mohanadi Coal Fields Ltd. for loading of coal through the pay loader into the Railway wagons at the respective side.* ***This clearly enables to conceive that plea of the appellant that letting out of the pay loader was not the primary object of the contract but the pay loader was an aid to perform the service of loading of cargo with certain contractual obligation defined by the contract executed by them. Accordingly, we are of the view that the plea of the appellant that the contract was for hiring of tangible goods is baseless. Once the activity carried out is found to be loading of cargo, such an activity is clearly covered by the category "cargo handling service".*** *The appellants reliance on the format of agreement and work order giving a different nomenclature shall not help the appellant denying its liability stating that the activity carried out by the Appellant was not 'cargo handling service' when a combined reading of Section 65(23), 65(105)(zr) of the Act is made.*

Plea of appellants that the impugned orders be set aside exonerating the Appellants from the liability of tax as well as penalty does not sound well at all.

15. Combined reading of provisions of section 65(105)(zr) and 65(23) of the Act throw light that cargo handling agencies are taxable entities. Cargo handling service provided by such entities attract the levy of service tax. Section 65(23) has a wide amplitude and has brought all like nature activities to its fold expressly and by inclusion of such like nature activities under the class 'cargo handling services'. However classification of service under this category is subject to two exceptions/exclusions: viz.,: (1) handling of export cargo or passenger baggage and (2) mere transportation of goods. These two activities are beyond the scope of such class from taxation for rationale behind them. Accordingly, cargo handling services provided in respect of domestic cargo only are liable to tax. Event of levy arises when service relating to or in relation to handling of cargo is provided by a cargo handling agency irrespective of mode of transport used for movement of such cargo. Precisely, following activities which are contemplated to be taxed as cargo handling service are :

(1) By express terms:

(A) Loading, unloading, packing or unpacking of cargo;

(2) By inclusive terms:

(B) Handling service relating to cargo :

(i) Provided for freight in special containers or for non-containerisedfreight;

(ii) Provided by a container freight terminal or, by any other freight terminal; and

(3) Cargo handling service provided which is incidental to freight.

16. What that appears to be necessity of law for taxation under the class cargo handling service is that the service provided should be relating to or in relation to cargo handling by a cargo handling agency. The service provided should be integrally or inseparably connected with handling of cargo or attributable thereto without being a mere activity of transportation of such cargo since transport service independent of cargo handling is an exception under the scheme of levy by Section 65(23) of the Act. ***Thus it can be said that loading, unloading, packing or unpacking of cargo and handling of cargo for freight in special containers or non-containerized freight and service provided by container freight terminal or other freight terminal for all modes of transport are subject matter of taxation under the class "cargo handling service". That apart, any activity incidental to freight of cargo is also liable to be taxed under such class. Mode of transport is irrelevant for incidence of levy once the service provided meets the test of handling of***

cargo in the manner envisaged by law. It is also not necessary that the cargo should only be meant for transport either by vessel in ships or aircrafts.

17. It was noticed from the agreement of the parties that time was essence of the contract. The nature of activity that was carried by the Appellants was to load the cargo i.e. coal in the Railway wagons. Such an activity squarely falls under the definition of cargo handling service! provided by Section 65(23) read with Section 65(105) of the Finance Act, 1944 (sic) (1994) and brings the appellants to the fold of law for such service provided. *Accordingly we decline to intervene to the orders passed by the Ld. First Appellate Authority except in the matter of penalty which we consider not imposable on the facts and circumstances of the case. We intervene to the Revisional order involved in Appeal case No. 41/06 and waive entire penalty imposed finding no justification of imposition since there was no willful suppression. We noticed that the appellants had no intention to cause evasion of revenue but at the infancy stage of implementation of law there appears to have confusion as to taxability. Accordingly, we waive the penalties levied under different Section of the law on all the appellants by the impugned orders. But we make it clear that when tax was leviable and realizable, the appellants shall be required to make payment of interest on the*

> *tax. Interest shall be calculated as per law in all cases and realised.*

9.11. Reliance is also placed on the judicial precedent of ***M/s Jai Jawan Coal Carriers Pvt. Ltd. vs. CST New Delhi [2014 (6) TMI 393-CESTAT New Delhi]****,* wherein Hon'ble CESTAT has held that the activities of shifting, loading, unloading of ores with the help of tippers, trucks, etc., and its subsequent unloading into railway wagons for its transportation is clearly classifiable as Cargo Handling Service.

9.12. We also rely on the decision in the case of ***M/s. Coal Handlers Private Limited Versus Commissioner of Central Excise, Range Kolkata – I[2015 (38) S.T.R. 897 (SC)*** wherein the Hon'ble Apex Court affirmed the decision of the Larger Bench of Tribunal in the case **of *L&T vs. CCE [2006 (3) STR 321 (Tri. - LB)]*** and held that Clearing and Forwarding services include those activities which pertain to clearing of the goods and thereafter forwarding those goods to a particular destination, at the instance and on the directions of the principal. In the process, it may include warehousing of the goods so cleared, receiving dispatch orders from the principal, arranging dispatch of the goods as per the instructions of the principal by engaging transport on his own or through the transporters of the principal, maintaining records of the receipt and dispatch of the goods and the stock available on the warehouses and preparing invoices on behalf of the principal.

9.13. In view of above decisions which are squarely applicable to the facts of the present case, we hold that the activities/services rendered by the Appellant can only get classified under the taxable category 'Cargo Handling Services.' However, since handling of export cargo has been specifically carved out from the purview of leviability of service tax under 'Cargo Handling services' we hold that there is no liability of service tax under the category of "Clearing and forwarding services".

9.14. Thus, we hold that the services rendered by the Appellant are appropriately classifiable under the taxable category 'Cargo Handling Services.' Since the said services were rendered by the Appellant in connection with export cargo, we hold that the Appellant is eligible for the exemption from service tax. Accordingly, we set aside the demand of service tax confirmed in the impugned order under the category of "Clearing and forwarding services".

10. Regarding the demand of service tax of 21,61,334/-, for the F.Y. 2010-11 to F.Y. 2012-13 on transportation services under reverse charge mechanism, we find that the demand has been raised and confirmed on transportation work awarded to M/s. Shiv Construction and M/s. Neel Enterprise for transportation of clinker from Railway siding to the MCL cement factory. The impugned order has confirmed the demand on the premise that the liability to pay service tax is on the service recipient under reverse charge mechanism in terms of Section 68(2) of the Finance Act read with Rule 2(1)(d) of the Service Tax Rules, 1994. In this regard, we find that the Appellant had awarded a contract to M/s. Shiv Construction and M/s. Neel Enterprise for transportation of clinker from Railway

siding to the MCL cement factory. As per the terms and conditions of such orders, service tax was required to be charged extra with the invoice value. Since, the transporters were separately registered under the provisions of the Finance Act, they raised bills on the Appellant for transportation charges and charged service tax thereon. The Appellant made payment to those transporters which included payment of service tax also. We find that the department has not contested these claims made by the appellant. We find that in spite of the explanation offered by the Appellant that the service tax has already been paid on the said transportation services, the Adjudicating Authority has confirmed the demand on the premise that the liability to pay service tax on freight charges is upon the Appellant under reverse charge mechanism.

10.1. We observe that the amount of service tax payable on the transportation service was charged on the invoices and paid/reimbursed by the Appellant to the transporter. Thus, we are of the view that no further service tax was required to be paid by the Appellant, as demanding service tax on the same service and value from the Appellant as a recipient of GTA service under reverse charge would tantamount to double taxation, which is not tenable in the eyes of the law.

10.2. We find that this **issue has been clarified by CBEC vide Circular No.341/18/2004-TRU dated 17.12.04,** wherein it has been *inter alia* clarified that once the transporter/service provider discharges service tax, it shall not be demanded from any other person to avoid double taxation. Accordingly, we hold that the demand of service tax confirmed on this issue in the impugned order is not sustainable.

In support of this view, we rely on the decision of the Hon'ble Karnataka High Court in the case of ***M/s. Zyeta Interiors[2022 (4) TMI 774 –HC Karnataka.*** The relevant extract of the said judgment is reproduced below: -

> *9. As regards the issue of double taxation, we find no exception. Whatever the ratio, the tax in its entirety has reached the hands of the ex-chequer. Merely for the reason that there was no strict adherence to the ratio as envisaged during the relevant point of time for payment of tax insofar as the assessee and the service provider, the assessee cannot be made liable to pay the double tax. What is significant to note is that the discharge of entire tax amount is not disputed. Thus, the reverse charge mechanism would not lead to double taxation. We find no grounds to interfere with this finding of the learned Single Judge. Moreover, the CBEC Circular No.341/18/2004-TRU [Pt.], dated 17.12.2004 also supports the case of the assessee in this regard."*

10.3. Further, reliance is also placed in the case of ***Dhariwal Industries Ltd. vs. CCE&C-Ahmedabad [2023 (10) TMI 595 CESTAT Ahmedabad]*** wherein the Tribunal has held that:

> "*even though legally the appellant is liable to pay the service tax but in the facts of the present case the transport agency has admittedly paid such service tax. The assessment of payment of service tax by the transport agency has not been disputed by their jurisdictional officer, therefore no*

question can be raised as regard the service tax payment and assessment thereof at the end of the transport agency. If this be so, then the payment of service tax by the goods transport agency was made good as payment of service tax therefore, the demand against the appellant for the same service will amount to demand of service tax twice on the same service which in any case is not permissible."

10.4. Similar views have been taken in the following cases:

e) ***Navyug Alloys Pvt. Ltd. vs. CCE [2009 (13) STR 421 (Tri. - Ahmd.)]***
f) ***CST Vs. Geeta Industries P. Ltd [2011 (22) STR293 (Tri. - Del.)]***
g) ***M/s Mandev Tubes Vs. CCE [2009 (16) STR 724 (Tri. - Ahmd.)]***
h) ***Pravesh Kumar Maurya vs. CCE (2024) 19 Centax 375 (Tri.-All)***

10.5. We also observe that there is no dispute that the transporter has charged service tax on the invoice and recovered the same from the Appellant. This also gets fortified from the fact that the demand has been confirmed solely on the technical ground. We also find that the Appellant has annexed a CA certificate certifying payment made to the transporter and a confirmation received from the transporter about service tax payment made to the Government exchequer. Accordingly, we hold that the demand of service tax confirmed against the appellant, in the impugned order under the category

of GTA services is not sustainable and hence we set aside the same.

11. Regarding the demand of service tax of 21,61,334/- on the ground of Irregular availment of Cenvat credit, we observe that the Cenvat credit has been denied on the ground that the appellant has not made payment of service tax on freight charges under reverse charge mechanism and hence they are ineligible to claim Cenvat Credit of input services in accordance with the provisions of Rule 4(7) of the Cenvat Credit Rules, 2004. In this regard, we find that the Appellant had availed GTA services from M/s. Shiv Construction and M/s. Neel Enterprise (as referred above) for providing taxable output service and availed Cenvat credit amounting to Rs. 21,61,334/- on the strength of invoices/bills issued by the said transporters. In the instant case, service tax has been paid by the provider of the service and apart from the technicalities, the benefit of credit which is otherwise admissible under the law cannot be denied, particularly when there is no dispute about the admissibility of service being an "input service", used for providing taxable output service by the Appellant.

11.1. In this regard, we observe that it is a well-settled position in law that procedural technicalities cannot stand in the way of availing Cenvat credit, which is otherwise eligible to the appellant. Reliance in this regard is placed on the decision of the CESTAT Mumbai, in the matter of ***M/s. Rucha Engineers Pvt. Ltd. vs. CCE[2015 (39) STR 518 (Tri. - Mumbai)]***. The relevant extract of the said judgment is reproduced below: -

> *6. On perusal of the records, I find that it is not disputed that on Goods Transport Agency Service which was availed by the appellant, service tax has been paid, and appellant has taken the credit of the service tax paid. It is immaterial who has paid the service tax. Ld. Commissioner (Appeals) has failed to appreciate the fact that the service has suffered service tax and any payment towards duty or service is entitled for input service credit/input credit. Therefore, the finding of the lower authorities that in the case of Goods Transport Agency Service, service tax is required to be paid by the service recipient is not tenable. Accordingly, impugned order deserves no merit, hence set aside. Appeal is allowed.*

11.2. Further, reliance is placed in the case of ***Umasons Auto Compo Pvt. Ltd. vs. CCE&C [2014-TIOL-126-CESTAT-Mum]*** wherein the Tribunal, Mumbai has held that where the recipient of GTA service had paid the service tax to the provider of service and the provider had paid to the revenue, and the appellant had availed the Cenvat credit, it was held that there is no dispute regarding payment of service tax by the provider of GTA service. Once the amount of service tax is accepted by the revenue from the provider of service, it cannot be again demanded from the recipient of the service and the credit availed by the recipient of the service cannot be denied. Similar views have been taken in the case of ***Dhariwal Industries Ltd (supra)***.

11.3. We also find that Cenvat credit has been availed on the basis of invoice issued by a service provider which is a proper document for availing Cenvat Credit under Rule 9(1) of the Cenvat Credit Rules. Further, Cenvat Credit can be availed immediately after receipt of tax invoice in terms of Rule 4(7) of the Cenvat Credit Rules. Moreover, the first proviso to Rule 4(7) which states that credit can be availed only after making payment of service tax under reverse charge will not be applicable in the instant case, for the reasons stated above.

11.4. As the Appellant fulfilled all the conditions required for availing the credit, we hold that the Appellant is eligible to avail the cenvat credit. Accordingly, we hold that the demand of service tax confirmed in the impugned order on this count is not sustainable and hence we set aside the same.

12. Issue 4 – Applicability of service tax on transportation services provided within the mining area under the taxable category "Mining Service" [Disputed demand of Rs. 1,34,07,613/-for the F.Y. 2010-11 to 2011-12]

In the instant case, we find that service tax demand has been confirmed on the services of transportation of excavated iron ore/overburden from one place to another place inside the Karampada iron ore mines under the taxable category "Mining Service". We find that the demand has been confirmed for the following reasons:

(i) The terms and conditions of the acceptance letter issued by M/s. Shah Brothers inter alia included "You will pay wages as per Minimum Wages Act and shall

follow rules and regulations of Mines Act and other Act and rules in force in a Mines”

(ii) Such transportation and other activities were limited within the mining area

(iii) Appellant did not provide consignment-wise bills showing the destination of the goods transport. was awarded a work order bearing no.

12.1. We find that the Appellant was awarded a contract vide SB/MLPL/10-11 dated 18.09.2010 and SB/MLPL/11-12 dated 15.03.2011 by M/s Shah Brothers for transportation of excavated iron ore/overburden from one place to another place in and outside the Karampada iron ore mines. The Appellant acting as a transporter issued the transport bills on their client M/s Shah Brothers and claimed exemption under Notification No. 34/2004-ST dated 03.12.2004, as the value of Transportation bill was less than Rs. 750/- We find that the Appellant has rendered the service of transportation only. In respect of transportation service, the liability to pay service tax, if any, is on the service recipient i.e. M/s Shah Brothers under reverse charge mechanism. Thus, we find that the demand of service tax made from the Appellant is not sustainable. Further, we find that the demand has been confirmed under the taxable category “Mining Services” as defined under section 65(105)(zzzy) of the Finance Act, 1994 which reads as under:

> *(zzzy) to any person, by any other person in relation to mining of mineral, oil or gas;*

12.2. We find that the Appellant has not undertaken any mining activity as defined in section 65(105)(zzzy) of the Finance Act. The services

provided by the Appellant were limited to transportation of excavated iron ore/overburden from one place to another place in and outside the Karampada iron ore mines. We are of the view that such activity is in the nature of transportation work and not mining activity. In support of this view, we rely on the **CBEC Circular No. 232/2/2006-CX-4, dated12.11.2007**, wherein it has been clarified that transportation of coal or minerals from the pithead to a specified location within the mine or for transportation outside the mine are post-mining activities and are chargeable to service tax under the relevant taxable services, i.e. 'Cargo Handling Service' and 'Goods Transport by Road.' The relevant extract from the said Circular has been reproduced below for ease of reference:

> ***05. Handling and transportation of coal/mineral from pithead to a specified location within the mine/factory or for transportation outside the mine:***
>
> *These activities are post-mining activities and are chargeable to service tax under the relevant taxable services, i.e., "Cargo Handling service" and "Goods Transport by Road". However, in case, such transportation is undertaken by mechanical systems, such as conveyor belt system, ropeway system, merry-go-round systems etc., and the same is not transported by road, no service tax would be chargeable. Service tax is, however, chargeable under cargo handling service, even if the loading, unloading and similar activities are done using mechanical systems.*

12.3. From the aforesaid clarification, it is amply clear that transportation of mineral from pithead to a specified location within the mine or outside the mine are chargeable to service tax under relevant taxable service i.e. Goods Transport by Road Service and not Mining Service.

12.4. In support of our view, we rely on the decision of Hon'ble Supreme Court in the case of ***Commissioner of Central Excise And Service Tax, Raipur vs Singh Transporters [2017 (7) TMI 494 – SC]*** wherein it has been held that the transportation of goods from pit-head to the railway sidings is a post mining activity and is more appropriately classifiable under the taxable category transport of goods by road service[Section 65(105)(zzp)]and not under the taxable category "mining of mineral, oil or gas" [Section 65(105)(zzzy)].

12.5. We also find that similar views have been taken in the following cases:

- ***M/s Karamjeet Singh & Co. Ltd. vs. CCE & ST, Raipur [2017 (9) TMI 1125] – Tribunal, New Delhi***

- ***M/s Ambey Mining Private Limited vs. CST-II [2024 (3) TMI 1106]– Tribunal, Kolkata***

- ***M/s. BLA Infra-GKMWPL (JV) vs. CST, Bolpur[2025 (3) TMI 266]– Tribunal, Kolkata]***

- ***CST-I vs. M/s Tycoon Industries Private Limited [2022 (8) TMI 281]– Tribunal Kolkata***

- ***CCGST vs. M/s Baghel Brothers [2023 (4) TMI 1022] - Tribunal Kolkata***

12.6. Thus, by relying on the ratios of the decisions cited supra, we hold that the demand of service tax confirmed under the category of 'Mining Service is not sustainable and hence we set aside the same.

13. We also find that demand has been confirmed by invoking extended period of limitation. In this regard, we find that there is no suppression with an intention to evade duty established in this case. The demand has been made on the basis of audited books of account and service tax return filed by the Appellant which is also a public document. As such, we hold that the charges for suppression on part of Appellant would not sustain. Thus, we hold that the demands confirmed by invoking the extended period of limitation is not sustainable and hence we set aside the same. For the same reason, we hold that no interest or penalty imposable on the Appellant and hence we set aside the demands of interest and penalties confirmed in the impugned order.

14. In the result, we set aside the impugned order and allow the appeal filed by the Appellant with consequential relief, if any, as per law.

(Order Pronounced in Open court on 02.12.2025)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP