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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 76137 of 2024

(Arising out of Order-in-Appeal No. 233/GHY(A)/COM/ST/GHY/2024 dated 26.06.2024 passed by the Commissioner (Appeals), C.G.S.T., Central Excise & Customs, 3rd Floor, G.S.T. Bhawan, Kedar Road, Machkhowa, Guwahati – 781 001)

M/s. Arjun Chandra Barman **: Appellant**
Simalguri, Bongaigaon,
Assam – 783 381

VERSUS

Commissioner of C.G.S.T. and Central Excise **: Respondent**
Guwahati Commissionerate,
3rd Floor, G.S.T. Bhawan, Kedar Road, Machkhowa,
Guwahati – 781 001
[Pertaining to O/o. Asst. Commissioner, C.G.S.T. & C.Ex.,
Bongaigaon Division]

APPEARANCE:

Shri Narayan Kr. Agarwal, Chartered Accountant, for the Appellant

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

CORAM:

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

FINAL ORDER NO. 75418 / 2026

DATE OF HEARING / DECISION: 20.03.2026

ORDER:

The instant appeal has been filed by Arjun Chandra Barman, Simalguri, Bongaigaon, Assam – 783 381 (hereinafter referred to as the "appellant") against the Order-in-Appeal No. 233/GHY(A)/COM/ST/GHY/2024 dated 26.06.2024 wherein the demand of Service Tax of Rs.6,69,399/- (inclusive of cess), along with interest and penalties, as confirmed in the Order-in-Original No. 16/ACD/ST/DB/2023-24 dated 15.09.2023, has been upheld.

2. The facts of the case are that on the basis of the information available in the Income Tax Returns / Form 26AS and the periodical ST-3 Returns filed by the appellant during the Financial Year 2016-17, a Show Cause Notice has been issued to the appellant on 21.10.2021 proposing to demand Service Tax amounting to Rs.6,69,399/- (inclusive of cess), along with applicable interest, penalties and late fee thereon.

3. During adjudication proceedings, the Ld. Assistant Commissioner of C.G.S.T. and Central Excise, Bongaigaon Division vide his Order-in-Original No. 16/ACD/ST/DB/2023-24 dated 15.09.2023, confirmed the above demand of Service Tax, along with interest, and imposed penalties of Rs.10,000/- and Rs.6,69,399/- under Sections 77 and 78 of the Finance Act, 1994 respectively. The ld. adjudicating authority also confirmed the proposal for realization of applicable late fee under Section 70 of the Act.

3.1. The appellant challenged the above adjudication order before the Ld. Commissioner (Appeals), who, vide the impugned order dated 26.06.2024, has upheld the confirmed demands.

3.2. Aggrieved, the appellant is before the Tribunal.

4. The Ld. Counsel appearing on behalf of the appellant submits that the appellant owned four (04) trucks and engaged them in transportation of petroleum products and other goods, in his individual capacity; the Service Tax demand in the adjudication order has been calculated on the basis of the turnover reported by four parties in the Form 26AS statement. It is the case of the appellant that the transportation

service rendered by him, in his individual capacity, using his own vehicles, is exempt from the levy of Service Tax by virtue of Entry No. (p) of the Negative List of Services under Section 66D of the Finance Act, 1994.In this regard, the appellant cites the decision in the case of *Commissioner of Cus., C.Ex. & Service Tax, Raigad v. JWC Logistics Pvt. Ltd. [2019 (22) G.S.T.L. 237 (Tri. – Mum.)].* In view of the above submissions, the Ld. Counsel for the appellant contends that they are not liable to pay Service Tax for the services of transportation of goods as undertaken by them in the present case.

4.1. Without prejudice to the above, the Ld. Counsel for the appellant further submits that even if they are considered as a Goods Transport Agency (GTA), the liability to Service Tax lies on the recipients of service, being body corporates, under reverse charge mechanism, in terms of Rule 2(1)(d)(v) of the Service Tax Rules, 1994. Accordingly, he contends that the impugned demand confirmed against them is legally unsustainable on this ground as well.

5. On the other hand, the Ld. Authorized Representative of the Revenue submits that the appellant has not furnished any evidence to substantiate their claim that they have only provided the vehicles for transportation of goods in an individual capacity; that in the absence of any documentary evidence being produced by the appellant, the appellant's claim for exemption from Service Tax in respect of the services rendered cannot be accepted. Accordingly, he justifies the confirmation of the demands vide the impugned order.

6. Heard both sides and perused the case records.

7. I find that the instant Show Cause Notice was issued to the appellant demanding Service Tax of Rs.6,69,399/- (inclusive of cess) on the basis of the information received from the Income Tax Department i.e., Income Tax Returns / Form 26AS. I take note of the appellant's submission that for raising the above demand, no verification has been done as to the actual nature of taxable service rendered by the appellant, if any. It has been held by this Tribunal in a plethora of decisions that a demand raised solely on the basis of third party information in the form of Income Tax Returns / Form 26AS, without adducing any tangible and corroborative evidence so as to establish the taxable nature of service being rendered, is not sustainable in law. I find it relevant to refer to the decision in the case of *M/s. Nanu Shome& Co. v Commissioner of C.G.S.T &C.Ex., Siliguri [Final Order No. 75084 of 2026 dated 20.01.2026 in Service Tax Appeal No. 76615 of 2025 – CESTAT, Kolkata],* wherein it has been categorically held that the difference between the Income Tax Returns and ST-3 Returns cannot be the sole basis for raising the demand. Thus, in the absence of any documentary evidence being adduced by the Revenue to substantiate their allegations for raising the present demand, I am of the view that the demand confirmed in this case cannot be legally sustained.

8. Regarding the merits of the case, I observe that it is a fact on record that the appellant owned four vehicles and undertook transportation service using his own vehicles. The said transportation service rendered by the appellant thus gets exempt from payment of Service Tax vide Entry No. (p) of the Negative List of Services as provided under Section 66D of the Finance Act, 1994. For the sake of ready

reference, the said Entry No. (p) of Section 66D of the Act is reproduced below: -

> *"(p)services by way of transportation of goods -*
>
> *(i)by road except the services of -*
>
> *(A)a goods transportation agency; or*
>
> *(B)a courier agency;*
>
> *(ii)by an aircraft or a vessel from a place outside India up to the customs station of clearance in India; or*
>
> *(iii)by inland waterways;"*

8.1. A perusal of the above clearly indicates that the transportation of goods is liable to Service Tax only if it is rendered by a Goods Transportation Agency. There is no evidence brought on record to show that the appellant is a Goods Transport Agency issuing consignment notes, so as to attract the levy of Service Tax. The documentary evidence submitted by the appellant indicates that they are an individual who has supplied vehicles for supply of petroleum products and other materials in their individual capacity. Hence, in these facts and circumstances, I am of the considered view that the services of transportation of goods undertaken by the appellant in this case squarely falls within the ambit of the exemption provided in terms of Entry No. (p) of the Negative List of Services under Section 66D of the Finance Act, 1994.

8.2. This view is supported by the decision of the CESTAT, Mumbai in the case of *Commissioner of Cus., C.Ex. & Service Tax, Raigad v. JWC Logistics Pvt. Ltd. [2019 (22) G.S.T.L. 237 (Tri. – Mum.)]* wherein it has been observed that there is no substitute for consignment notes for the purpose of taxation of services under the category of 'goods transport agency service'. The relevant paragraphs of the said Order are reproduced below: -

> *"8. It is not the transportation of goods by road that is subject to tax but the services rendered by a goods transport agency in relation to the transportation of goods by road and road transport agency tasked with responsibilities that others connected with road transport are not, with consignment note being the point of difference. There is also no doubt that Rule 4B of the Service Tax Rules, 1994 lays down the contents of a consignment note.*
>
> *9. Revenue relies upon the invoices or monthly bills raised by M/s. V.B. Enterprises. An invoice, notwithstanding adequacy of details thereon is no substitute for a consignment note. An invoice creates liability of debt on the part of the recipient of the service. A consignment note, on the other hand, carries with it a certain legal burden, the issuing of a consignment note is a contractual undertaking made to the entity that handed over the goods to the agency of responsibility for safe delivery at the stipulated destination. A consignment note also creates binding responsibility for each consignment. In the absence of any evidence of such responsibility having devolved on M/s. V.A. Enterprises and the issue of monthly bills does not, ipso facto, creates such liability and the impugned order is not at fault for having held that tax liability does not arise.*
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> *10. In view of the findings recorded in the impugned order which the appeal of Revenue is unable to controvert, the impugned order must survive. Accordingly, the appeal of Revenue is dismissed. Cross-objections also disposed of."*

8.3. I find that the ratio laid down in the decision cited supra is squarely applicable to the facts and circumstances of the present case.

9. Thus, in view of the discussions in the preceding paragraphs and by applying the ratio of the decision cited supra, I hold that the transportation service rendered by the appellant in the present case is exempt from the levy of Service Tax as per Entry No. (p) of the Negative List of Services under Section 66D of the Act. Accordingly, the demand of Service Tax of Rs.6,69,399/-, along with interest, as confirmed in the impugned order cannot be legally sustained and hence, the same stands set aside.

9.1. Since the demand of Service Tax itself does not survive, no penalty is imposable on the appellant in the facts and circumstances of the present case. Accordingly, the imposition of penalties and levy of late fee confirmed vide the impugned order are also set aside.

10. In view of the above findings, the impugned order is set aside and the appeal is allowed, with consequential relief, if any, as per law.

(Dictated and pronounced in the open court)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd