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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75153 of 2022

(Arising out of Order-in-Original No. 05/CCE/S.TAX/RKL/2021-22 dated 12.10.2021 passed by the Commissioner of GST & CX Commissionerate, Rourkela, KK-42, Civil Township, Rourkela-769004)

M/s. Balaji Project, **: Appellant**
Gurudwara Road, Mahanta Basti,
AT. P. O.- Barbil, DIST-Keonjhar,
Odisha-758035

VERSUS

The Commissioner of GST & Central Excise, GST & CX Commissionerate, **: Respondent**
Rourkela, KK-42, Civil Township,
Rourkela-769004, Odisha

APPEARANCE:

Shri Kartik Kurmy, Advocate for the Appellant
Shri S. Dutta, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO.76193/ 2026

DATE OF HEARING: 02.09.2026
DATE OF PRONOUNCEMENT: 21.09.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The present Appeal has been filed by M/s. Balaji Project, Gurudwara Road, Mahanta Basti, AT. P. O.- Barbil, DIST-Keonjhar Odisha (herein after referred as the Appellant) against the Order-in-Original Dated 12-10-2021, read with Corrigendum dated 28-12-2021, passed by the Ld. Commissioner, Rourkela Commissionerate. By the impugned Order, the Ld. Commissioner has confirmed Service Tax demand of

Rs.8,14,51,307/- (including E.Cess/SHE Cess) for the period **2014-2015** under the proviso to Section 73(1) of the Finance Act,1994 along with interest U/s 75 *ibid*. Penalty of **Rs.8,14,51,307/-** under section 78 and a penalty of Rs.10,000/- under section 77(2) of the Finance Act was also imposed.

2. Brief facts of the case are that the Appellant is engaged in the provision of "Goods Transport Agency Service" and "Cargo Handling Services". The Appellant was registered under Chapter V of the Finance Act, 1994, vide Registration bearing **No.AAGFB6129FST001** w.e.f. 07-07-2007 in the State of Odisha with Barbil-I Range, Keonjhar Division. The Appellant thereupon surrendered their registration certificate No.AAGFB6129FST001 vide letter dated 17-10-2007, addressed to the Jurisdictional Range Authority at Barbil, Odisha under dated acknowledgement. No services were ever provided under the said Odisha registration during 2014-15.

2.1. The Appellant obtained Centralised Registration bearing **No.AAGFB6129FST002** w.e.f. 15-10-2007 from the Asst. Commissioner, Service Tax Division-III, Service Tax Commissionerate, Kolkata and started paying service tax under the said centralized registration.

2.2. A **Show Cause Notice dated 29-09-2020**, was issued to the Appellant alleging that as per the **ITR/FORM-26AS** the Appellant has received a sum of Rs.65,89,91,162/- whereas they have not filed ST-3 return under Registration No.AAGFB6129FST001 (Odisha Registration) in the State of Odisha. It is alleged that the Appellant has received consideration for providing taxable service but has not discharged their service tax liability. Accordingly, the Notice demanded service tax of **Rs.8,14,51,307/-** under proviso to Section 73(1) of the Act read with Section 72 along with interest under Section 75 and penalty under Section 77(1)(c), Section 77(2) and Section 78 of the Finance Act. The tax was not demanded under "Cargo Handling Services" in the said show cause notice. The said Notice was adjudicated by the Ld. Commissioner, Rourkela Commissionerate, confirming the demands of service tax along with interest and penalties.

2.3. Aggrieved against the confirmation od the demands of service tax along with interest and penalties, the Appellant has filed this appeal.

3. The Appellant states that during the year 2014-15 under the said Centralised Registration No.AAGFB6129FST002 at Kolkata, they provided services raised bills, paid taxes and filed their ST-3 returns.

3.1. The Appellant states that during the period under dispute i.e. 2014-15 they had provided "Transportation of Goods Services" and "Rake/Wagon Loading Service" of the value of Rs.54,51,68,107/- and Rs.11,43,91,359/- respectively under the centralized registration. The Appellant states that on the "Rake Loading/Wagon Loading Service" of the value of **Rs.11,43,91,359/-** they have discharged service tax of **Rs.1,41,49,414/-** under the Centralized Registration at Kolkata and disclosed the same in the ST-3 returns for the half year April, 2014 to September, 2014 (Page.222 Vol.I) and October, 2014 to March, 2015 (Page.231 Vol.I) filed with

Superintendent, Range-III, South Division, Service Tax-II Commissionerate, Kolkata where centralized registration was taken. In this regard, the Appellant states that in the show cause notice no tax has been demanded under the category of "Cargo Handling Services" and hence, the demand under the said category is outside the scope of show cause notice.

3.2. The Appellant states that in respect of **transportation contracts** for transportation upto **39 K.M. to 50 K.M.** they did not collect and pay service tax under the *bonafide* impressions that the said services falls in the negative list under Section 66D(1)(p) or are taxable under the category of *"Goods Transport Agency Services"* defined U/s 65B(26) and the liability to pay service tax lay on the service recipient in terms of Sec.68(2) of the Act read with Rule 2(p)(d)(i)(B) of the Service Tax Rules,1994 and in either case the Appellant is not liable to pay service tax.

3.3. The Appellant states that in the instant that case "**separate work orders"** were awarded by the clients for "Transportation Work" and "Rake Loading/Wagon Loading Work". Accordingly, the Appellant raised **"separate Bill"** for Transportation Work and Rake Loading/Wagon Loading Work. The Appellant states that on the rake loading/wagon loading activities, they have already discharged service tax under their Centralized Registration No.AAGFB6129FST002 at Kolkata. In the impugned Order, service tax is again demanded on the self same transaction by the Ld. Commissioner amounting to double taxation. The Appellant states that during the period under dispute i.e. 2014-15 under the aforesaid work orders, they provided wagon loading services and transportation services of the value of Rs.11,43,91,359/- and Rs.54,51,68,107/- respectively

3.4. Regarding the demand of service tax of Rs.6,73,01,893/- on the value of Rs.54,51,68,107/-, related to related to transportation contract for transportation upto distance of **39 K.M. to 50 K.M.,** the Appellant submits that the said activity cannot be classified under 'Cargo Handling Service". The Appellant submits that the contracts executed them in the instant case are for "Transporting" and "loading" under **separate contract** for which separate bills have been raised. While dealing with same/similar fact this Hon'ble Tribunal has held in favour of the assessee. in the case of ***Jain Carrying Corporation Vs. CCE reported in 2014 (12) TMI 506 (CESTAT) (Para 1, 2, 3 & 9)***, it is held by the Hon'ble Tribunal that the contract may be a composite contract but the services stands clearly mentioned separately with separate rates for the same as indicated against each and every service which is affirmed by the Hon'ble Apex Court in ***CCE Vs. Jain Carrying Corporation reported in 2015 (39) S.T.R. J370 (S.C.)***. Similar views have been expressed in the case of ***Jai Jawan Coal Carriers Pvt. Ltd. Vs. CST 2015 (37) S.T.R. 509 (Tri. Del.) (Para 6)***

3.5. The Appellant relies on the following decisions:-

(i) ***Mata Dadhimati Transport Vs. CCE 2026 (1) TMI 850 (Tri. Cal) (Para 2, 2.2, 2.3, 2.4, 2.5, 2.6 & 6.7)***

(ii) ***S.K. Mineral Handling Pvt. Ltd. Vs. CCE 2021 (9) TMI 1585 (Tri. Cal) (Para 3, 4, 6, 8, 13, 14, 15 & 16);***

(iii) ***Calcutta Industrial Supply Corp. Vs. CCE (2024) Centax 219 (Tri. Cal.) (Para 7, 8 & 9)***

3.6. The Appellant submits that activities of "Transportation Service" cannot be classified under the category of "Cargo Handling Services" by any process of interpretation. The Appellant further submits that **"Cargo Handling Services"** provided by "Cargo Handling Agents" is a **specialized services** in loading, unloading, packing and unpacking of fragile, perishable, high value, odd dimension etc. cargoes. In the instant case, it is not department's case that the Appellant has the specialization and/or has provided any specialized services of loading, unloading, packing or unpacking of any "Cargo". Under the Act only Goods Transport Agency Services which issues consignment notes are taxable in the hands of service recipient who are corporate entities (in the instant case) under the reverse charge mechanism in terms of Rule 2(1)(d)(i)(B) of the Service Tax Rules, 1994 read with Notification No.30/2012-ST dated 12-06-2012.

3.7. It is further submitted that the transportation services without consignment falls in the negative list under Section 66D(p), hence, not taxable under the Act. The Appellant relies on the following decision in their support. The Appellant relies on following decision:-

(i) ***Chartered Logistics Ltd. Vs. CCE (2024) 16 Centax 473 (Tri. Ahmd.) (Para 6.5)*** affirmed by Supreme Court in ***CCE Vs. Chartered Logistics Ltd. (2024) 16 Centax 474 (S.C)***

3.8. The Appellant submits that the finding of the Ld. Commissioner that the Work Orders awarded to them are actually composite contracts and it has been artificially vivisected/bifurcated to bifurcate the composite activities of Cargo Handling Service is illegal, arbitrary and perverse. As per the said finding all contracts with all the service recipient are artificially bifurcated. <u>The Ld. Commissioner failed to appreciate and consider the trade practice where all the service recipient have awarded contract in the same manner which shows prevalent practice in the trade</u>. Under the circumstances no adverse inference can be drawn against them. For the sake of arguments even if the contention of Ld. Commissioner is accepted that the contracts for transportation and loading are artificially bifurcated by the client, nothing would turn against the Appellant in as much as in the work order for transportation and rake loading taken together comprehensively would be classifiable under transport services.

3.9. The Ld. Commissioner failed to appreciate that the contract in the instant case even if considered comprehensively would be essentially for transportation and all other elements of the contracts are incidental and ancillary applying the test of essentiality set out under Section 66F(3)(a) of the Act. <u>It is not departments case, neither made out in the show cause notice nor in the impugned order that the contract are not naturally bundled</u>. That being the undisputed position of fact, applying the principle of classification of composite contract under Section 66F(3)(a), the entire contract would fall under transportation service.

3.10. The Appellant further submits that in the instant case, out of total gross value of Rs.65,95,589,466/-, value of Rs.54,51,68,107/- (83%) relates to transportation and value of Rs.11,43,91,359/- (17%) relates to loading activity which also shows that the loading activity is incidental to transportation activity._It is submitted that applying the principles of essentiality set out under Section 66F, the purported composite contract would be essentially for transportation and incidentally for rake loading/wagon loading. For example in work order awarded by M/s Essel Mining and Industries Ltd., the rates of transportation is **Rs.524/-** PMT and the rate of loading is **Rs.125/-** PMT and if both the work orders are taken together 19% of the rates would constituted rake loading and 81% constitutes transportation. Similar is the case of other service recipient where also the transportation contracts are essential and loading contracts are incidental. In the impugned order under Paragraph 13.2.1 and Paragraph 13.6.7, it is categorically admitted by Ld. Commissioner that the transportation is upto 40 K.M. and the loading is only at one single point, hence, the principal service involved in the instant case is transportation of goods and not rake loading/wagon loading.

3.11. The Board vide ***Circular No.104/07/2008-ST dated 06-08-2008*** under Para 3 and 4 has clarified that composite services may include various intermediate or ancillary services provided in relation to principal service of road transport of goods like loading/unloading, packing/unpacking, transhipment, warehousing etc., which are provided in the course of transportation by road and are not provided as independent activities but are the means for successful provision of the principal service i.e. transportation of goods by road. In such cases the composite services should not be broken into compartments and classified as separate services. Any ancillary/intermediate service provided in relation to transportation of goods and the charges thereof are included in the invoice would form part of Goods Transport Services and not Cargo Handling Services. The Board has issued another ***Circular No.186/5/2015-ST dated 05-10-2015*** as similar likes. Going by the aforesaid Circulars also the case of the department fails in so far as it seeks to classify the purported composite contract of transportation with incidental loading and ancillary services under the category of Cargo Handling Services whereas as per the said circular it is classifiable under GTA Service. The Appellant relies on the following judgments:-

(i) ***Maa Kalika Transport Pvt. Ltd. Vs. CCE (2023) Centax 273 (Tri. Cal.) (Para 13, 14)***

(ii) ***Ambey Mining Pvt. Ltd. Vs. CST (2024) Centax 430 (Tri. Cal.) (Para 6.3)***

3.12. Thus, the Appellant submits that the findings entered by the Ld. Commissioner in the impugned Order are illegal, arbitrary and perverse and that they cannot stand the scrutiny of law. Accordingly, the Appellant prayed for setting aside the demands of service tax along with interest and penalties confirmed in the impugned order.

3.13. The Appellant further submits that the entire demand in the instant case is barred by normal period of limitation. The demand in the instant case relates to the period **2014-15** whereas the Show Cause Notice was issued on **dated 29-09-2020** i.e.

much after the expiry of normal period of limitation of 30 months. The normal period of limitation of 30 months expired on latest by 30-09-2017 whereas the Show Cause Notice is issued on 29-09-2020. In this regard, the Appellant submits that the ST-3 returns for April, 2014 to September, 2014 was filed on dated 23-03-2015 (Page No.222 Vol-I) and ST-3 returns for October, 2014 to March, 2015 was filed on dated 26-05-2015 (Page No.231 Vol-I). Thus, the entire demand in the instant case is barred by normal period of limitation. Further, the Appellant submits that the entire proceeding in the instant case has been initiated on the basis of scrutiny of ST-3 returns, ITR, Form 26AS. As the facts were known to both the parties, the demand is barred by limitation as held in the case of ***Anand Nishikawa Co. Ltd. Vs. CCE 2005 (188) E.L.T. 149 (S.C.) (Para 27)***. The Appellant further submits that the dispute in the instant case relates to classification of services and in a series of cases it has been held that invocation of extended period of limitation/imposition of penalty is unwarranted when the dispute relates to classification of services. In this regard, the Appellant relied on the decision in the case of ***International Merchandising Company, LLC, Vs. CST, reported in 2022 (12) TMI 556 – SC [Para 24],*** wherein it has been held by the Hon'ble Apex Court that the extended period of limitation cannot be invoked and penalty would not be attracted when the dispute relates to one of interpretation of statute. Thus, the Appellant submits that the demands of service tax confirmed by invoking the extended period of limitation is not sustainable.

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

5. Heard both sides and perused the documents presented before us.

6. Regarding the service tax demand of Rs.1,41,49,414/- confirmed in the impugned order, we find that during the period under dispute, the Appellant had provided the "Rake/Wagon Loading Service" and received Rs.11,43,91,359/-. We find that the Appellant had a Centralized Registration No.AAGFB6129FST002 at Kolkata during that period and discharged service tax on the said value under the said Centralized registration, In the impugned Order, we find that service tax has been demanded again on the self-same transaction by the Ld. Commissioner, under the Registration No.AAGFB6129FST001 with the Rourkela Commissionerate. We find that the said Odisha Registration Certificate was surrendered by the Appellant vide letter dated 17-10-2017 . Accordingly, we find that the Appellant has rightly discharged their service tax liability under the Centralized Registration No.AAGFB6129FST002 at Kolkata. However, the Ld. Adjudicating authority has again demanded service tax from the Appellant without taking into account the service tax of Rs.1,41,49,414/-paid by the Appellant under the Centralized Registration. Thus, we find that demanding service tax again on the rake loading/wagon loading activities amounts to double taxation. As the Appellant has already discharged service tax on the taxable value of Rs.11,43,91,359/- received towards rendering of "Rake/Wagon Loading Service", we hold that the Appellant has discharged service tax on the said

service and service tax cannot be demanded again for the same service.

7. Regarding the demand of service tax of Rs.6,73,01,893/- on the value of Rs.54,51,68,107/-, related to related to transportation contract, we find that the department has classified the said activity under the category of 'Cargo Handling Service" and demanded service tax from the Appellant. In this regard, we find that the Appellant have executed separate contracts for "Transporting" and "loading" and separate bills have been raised. We observe that **"Cargo Handling Services"** provided by "Cargo Handling Agents" is a **specialized services** in loading, unloading, packing and unpacking of fragile, perishable, high value, odd dimension etc. cargoes. In the instant case, there is no evidence brought on record by the Revenue to establish that the Appellant has provided any specialized services of loading, unloading, packing or unpacking of any "Cargo".

7.1. In the case of ***Jain Carrying Corporation Vs. CCE reported in 2014 (12) TMI 506 (CESTAT) (Para 1, 2, 3 & 9)***, it has been held by the Tribunal that the contract may be a composite contract but the services stands clearly mentioned separately with separate rates for the same as indicated against each and every service which is affirmed by the Hon'ble Apex Court in ***CCE Vs. Jain Carrying Corporation reported in 2015 (39) S.T.R. J370 (S.C.)***. Similar views have been expressed in the case of ***Jai Jawan Coal Carriers Pvt. Ltd. Vs. CST 2015 (37) S.T.R. 509 (Tri. Del.) (Para 6)***. In support of the above view, we rely on the following decisions:-

(i) ***Mata Dadhimati Transport Vs. CCE 2026 (1) TMI 850 (Tri. Cal) (Para 2, 2.2, 2.3, 2.4, 2.5, 2.6 & 6.7)***

(ii) ***S.K. Mineral Handling Pvt. Ltd. Vs. CCE 2021 (9) TMI 1585 (Tri. Cal) (Para 3, 4, 6, 8, 13, 14, 15 & 16);***

(iii) ***Calcutta Industrial Supply Corp. Vs. CCE (2024) Centax 219 (Tri. Cal.) (Para 7, 8 & 9)***

7.2. We find that the activity undertaken by the Appellant is essentially for transportation and all other elements of the contracts are incidental or ancillary to the transportation service undertaken by them. In the instant case, we find that out of total gross value of Rs.65,95,589,466/- received by the Appellant towards rendering of the composite service of Transportation, value of Rs.54,51,68,107/- (83%) relates to transportation and value of Rs.11,43,91,359/- (17%) relates to loading activity. We have also perused some of the Work Orders executed by the Appellant. For example, in the work order awarded by M/s Essel Mining and Industries Ltd., the rates of transportation is **<u>Rs.524/-</u>** PMT and the rate of loading is **<u>Rs.125/-</u>** PMT and if both the work orders are taken together 19% of the rates would constituted rake loading and 81% constitutes transportation. Similar is the case of other service recipient where also the transportation contracts are essential and loading contracts are incidental. In the impugned order under Paragraph 13.2.1 and Paragraph 13.6.7, the Ld. Commissioner has categorically admitted that the transportation is upto 40 K.M. and the loading is only at one single point. Hence, we find that the principal service involved in the instant case is transportation of goods and not rake loading/wagon loading. Thus, we find that the activities of "Transportation Service" carried out by the Appellant cannot be classified under the category of "Cargo Handling Services".

7.3. We also observe that the Board vide ***Circular No.104/07/2008-ST dated 06-08-2008*** under Para 3 and 4 has clarified that composite services may include various intermediate or ancillary services provided in relation to principal service of road transport of goods like loading/unloading, packing/unpacking, transhipment, warehousing etc., which are provided in the course of transportation by road and are not provided as independent activities but are the means for successful provision of the principal service i.e. transportation of goods by road. In such cases, the composite services should not be broken into compartments and classified as separate services. Any ancillary/intermediate service provided in relation to transportation of goods and the charges thereof are included in the invoice would form part of Goods Transport Services and not Cargo Handling Services. The Board has issued another ***Circular No.186/5/2015-ST dated 05-10-2015*** as similar likes. Going by the aforesaid Circulars, we hold that the activity undertaken by the Appellant is essentially in the nature of transportation with incidental loading and ancillary services. As per the clarification issued by said circular cited supra, the said services are appropriately classifiable under GTA Service. We find that this view is also supported by the following judgments:-

(i) ***Maa Kalika Transport Pvt. Ltd. Vs. CCE (2023) Centax 273 (Tri. Cal.) (Para 13, 14)***

(ii) ***Ambey Mining Pvt. Ltd. Vs. CST (2024) Centax 430 (Tri. Cal.) (Para 6.3)***

7.4. In this regard, we observe that under the Finance Act, 1994, only Goods Transport Agency Services which issues consignment notes are taxable in the hands of service recipient who are corporate entities (in the instant case) under the reverse charge mechanism in terms of Rule 2(1)(d)(i)(B) of the Service Tax Rules, 1994 read with Notification No.30/2012-ST dated 12-06-2012. The transportation services without consignment falls in the negative list under Section 66D(p) and hence, not taxable under the Act. In support of this view, we rely on the following decisions:-

(i) ***Chartered Logistics Ltd. Vs. CCE (2024) 16 Centax 473 (Tri. Ahmd.) (Para 6.5)*** affirmed by Supreme Court in ***CCE Vs. Chartered Logistics Ltd. (2024) 16 Centax 474 (S.C)***.

7.5. Thus, by applying the principles of essentiality set out under Section 66F, we hold that the purported composite contract would be essentially for transportation and incidentally for rake loading/wagon loading. Accordingly, we hold that the said services cannot be classified under the category of Cargo Handling Services and hence the demand of service tax of Rs.6,73,01,893/- confirmed in the impugned order on the value of Rs.54,51,68,107/-, under the category of Cargo Handling Services is legally not sustainable and hence we set aside the same.

7.6. We also find merit in the submission of the Appellant that the entire demand in the instant case is barred by normal period of limitation. We find that the demand in the instant case relates to the period

2014-15 whereas the Show Cause Notice was issued on **dated 29-09-2020** i.e. much after the expiry of normal period of limitation of 30 months. The normal period of limitation of 30 months expired on latest by 30-09-2017 whereas the Show Cause Notice is issued on 29-09-2020. In this regard, we find that proceedings against the Appellant has been initiated on the basis of the information available in ITR and Form 26AS. As the facts were known to both the parties, the demand is barred by limitation as held in the case of ***Anand Nishikawa Co. Ltd. Vs. CCE 2005 (188) E.L.T. 149 (S.C.) (Para 27)***. We also find that the dispute in the instant case relates to classification of services and in a series of cases it has been held that invocation of extended period of limitation/imposition of penalty is unwarranted when the dispute relates to classification of services. In this regard, we rely on the decision in the case of ***International Merchandising Company, LLC, Vs. CST, reported in 2022 (12) TMI 556 – SC [Para 24],*** wherein it has been held by the Hon'ble Apex Court that the extended period of limitation cannot be invoked and penalty would not be attracted when the dispute relates to one of interpretation of statute. Thus, we hold that the demands of service tax confirmed by invoking the extended period of limitation is not sustainable and accordingly, we hold that the demands are liable to be set aside on the ground of limitation also.

7.7. As the demands of service tax are not sustained, the question of demanding interest or imposing penalty does not arise and hence we set aside the same.

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

(i) We hold that the demand of Rs.1,41,49,414/- confirmed in the impugned order, on the taxable value of Rs.11,43,91,359/- is not sustainable, as the Appellant has already discharged the service tax of Rs.1,41,49,414/-, payable for the "Rake/Wagon Loading Service" under the Centralized Registration No.AAGFB6129FST002 at Kolkata during the relevant period.

(ii) Regarding the demand of service tax of Rs.6,73,01,893/-. we hold that the said services rendered by the Appellant are appropriately classifiable as 'Transportation' service and the same cannot be classified under the category of Cargo Handling Services. Hence, the demand of service tax of Rs.6,73,01,893/- confirmed in the impugned order on the value of Rs.54,51,68,107/-, under the category of Cargo Handling Services is legally not sustainable and hence we set aside the same.

(iii) The demand of interest and penalty in the impugned order are set aside.

(iv) The demands of service tax confirmed by invoking the extended period of limitation is not sustainable and accordingly we set aside the demands of service tax along with interest and penalties confirmed in the impugned order, on the ground of limitation also.

(v)The appeal filed by the Appellant is disposed of on the above terms.

(Order Pronounced in Open court on 21.09.2026)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP