# IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
# WEST ZONAL BENCH AT MUMBAI

**APPEAL NO: ST/86180/2015**

***Arising out of:*** Order-in-Appeal No. PUN-SVTAX-000-APP-0063-14-15 dated 13/03/2015

***Passed by:*** Commissioner of Service Tax (Appeals), Pune.

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| | ***Appellant – Represented by:*** |
| Pushpak Steel Industries Pvt Ltd | Mr. N.M. Bachhawat, Advocate |
| *versus* | |
| Commissioner of Central Excise & Service Tax Pune – III | ***Respondent – Represented by:*** Mr. Atul Sharma, Asstt. Commissioner (A.R.) |

**Date of hearing 07/05/2018**
**Date of pronouncement 07/05/2018**

**CORAM**

**Hon'ble Shri S K Mohanty, Member (Judicial)**
**Hon'ble Shri Raju, Member (Technical)**

**ORDER NO: A/86789 / 2018**

*Per: SK. Mohanty*

Brief facts of the case are that the appellant is engaged in the manufacture of excisable goods namely, MS Angles, MS Channels and MS Rounds, falling under Chapter 72 of the Central Excise Tariff Act, 1985. The appellant is also registered under the Service Tax statute for payment of service tax on the GTA service.

2. During the disputed period, while scrutinizing the records of the appellant, the audit wing of the Central Excise department observed that the appellant had arranged trucks for delivery of the said final products at customer's destination and for such activity, it had collected delivery charges from the customers. It is further been observed that out of the total delivery charges collected from the customers, the appellant paid lump sum amount for transportation of the goods and retained the balance amount, which were reflected in the books of accounts under the head 'Freight Reimbursement'. The department interpreted that such extra amount retained by the appellant for delivery of the goods at the premises of the buyer should be considered as a taxable service under the category of 'Business Support Service'. Accordingly, show cause proceedings were initiated against the appellant, which culminated into the adjudication order dated 02/09/2014, wherein service tax demand of Rs. 16,97,498/- was confirmed along with interest. Besides, equal amount of penalty was also imposed on the appellant under Section 78 of the Finance Act, 1994. On appeal, Learned Commissioner (Appeals) *vide* the impugned order dated 13/03/2015 has upheld the adjudged demand confirmed on the appellant. Being aggrieved with the impugned order, the appellant has filed the present appeal before the Tribunal.

3. Learned Advocate appearing for appellant submits that delivery charges collected from the buyer were reflected in the invoice separately and are in context with the manufacture and sale of the excisable goods.

Thus, he submits that such charges collected by the appellant should not be taxed as a taxable service under the category of ‘business support service’. He further submits that as a manufacturer of excisable goods, the appellant had only facilitated the buyers for delivery of the goods at their destination, which cannot be considered as a service inasmuch as by providing transportation facility, the appellant had never supported the business of the buyers. He also contended that the trucks used by the appellant were owned by it and cannot be liable to payment of service tax under ‘business support service’.

4. On the other hand, the learned Authorised Representative appearing for Revenue reiterates the findings recorded in the impugned order.

5. Heard both the sides and perused the records.

6. It is an admitted fact on record that the appellant is a manufacturer of excisable goods and discharges appropriate Central Excise duty liability on the goods manufactured and cleared by it outside the factory premises. Perusal of the purchase orders placed by the buyers on the appellant transpires that they placed orders for supply of the goods manufactured by the appellant. There were no separate agreements between the buyers and appellant for providing any service, over and above supply of goods. In other words, there is no involvement of a service provider and a service receiver relationship in the sale

transaction made between the parties. Further, we also find that the invoices issued by the appellant reflected the assessable value of goods, statutory levies, and transportation cost etc. Since transportation cost incurred was in context with delivery of goods at the buyers premises, it cannot be said that such facility extended by the appellant should be considered as a taxable service, leviable to service tax under the category of ‘business support service’. Further, the appellant, in the present case, had not supported the business of the buyers in any manner and arrangement of transportation was just to facilitate delivery of the duty paid excisable goods at the buyer’s premises. Thus, the activities undertaken by the appellant, in our considered view, do not confirm to the definition of taxable service, for the purpose of levy of service tax thereon.

7. In view of above discussion and analysis, we do not find any merits in the impugned order. Accordingly, after setting aside the same, we allow the appeal in favour of the appellant.

*(Dictated in Court)*

**(Raju)**
***Member (Technical)***

**(S K Mohanty)**
**Member (Judicial)**

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