CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Service Tax Appeal No. 85022 of 2014

(Arising out of Order-in-Original No. 14/ST/2013 dated 04.10.2013 passed by the Commissioner of Central Excise, Customs & Service tax, Nashik)

M/s. Shree Satpuda Tapi Parisar SSK Ltd. **…..Appellant**
Purushottamnagar, Tal. Shahada,
Dist. Nandurbar

Vs.

Commissioner of Central Excise, Customs & Service tax, Nashik **…..Respondent**
Kendriya Rajasva Bhavan, 2nd Floor Annex Bldg
R.G. Gadkari Chowk,
Old Agra Road,
Nashik

APPEARANCE:

Shri A.K. Sakpal, Advocate for the appellant
Shri Dilip Shinde, AC (AR) for the respondent

CORAM: **Hon'ble Mr C J Mathew, Member (Technical)**
Hon'ble Ajay Sharma, Member (Judicial)

FINAL ORDER No: A/85746/2019

DATE OF HEARING : 17.12.2018
DATE OF DECISION : 16.04.2019

PER: C J MATHEW

In this appeal of M/s Shree Satpuda Tapi Parisar Sahakari Sakhar Karkhana Ltd, manufacturer of sugar, molasses, ethyl alcohol, particle board and bagasse, against confirmation of demand of

₹55,34,316, along with attendant interest, and imposition of penalty under section 77 and section 78 of Finance Act, 1994, for the period from April 2007 to March 2010, the issue for determination is their claim that the activity sought to be taxed under section 65(105) (zzp) of Finance Act, 1994 has not been performed for their benefit and by persons referred to section 65 (50 b) of Finance Act, 1994. On perusal of the impugned order-in-original no. 14/ST/2013 dated 4th October 2013, it is seen that Commissioner of Central Excise, Customs & Service Tax, Nashik has determined the tax liability by reference to the taxable service and definition of provider as fitting the relationship between the appellant and M/s Satpuda Tapi Parisar Sarva Seva Bhavi Sangh, a trust established by, and for, enhancement of agricultural productivity, and the culling out of that accounted as 'freight' in the balance sheet for the relevant years without corresponding evidence of having discharged tax liability.

2. It is the contention of Learned Counsel for appellant that, under the sugarcane procurement system formalised by the government, the responsibility for delivery of cane at the factory devolved on the farmer and that they had merely been facilitating the above referred Trust to discharge its function in concord with the payment system mandated by the government. It is further submitted that the carriage of cane was not restricted to motor vehicles and that the vehicles were also operated by individuals. It is also his contention that no particular benefit would have derived to the appellant by not discharging the tax liability if it be due; their eligibility for CENVAT credit eliminates any motive. Reliance is placed on the decision of the Tribunal in *Punjab Chemicals & Crop Protection Ltd v. Commissioner of Central Excise, Chandigarh [2017 (47) STR 345 (Tri-Chan)]*. Further reliance is placed on the decision of the Tribunal in *Commissioner of Central Excise, Tirunelveli v. Global Software Solutions (P) Ltd [2011 (24)*

STR 707 (Tri-Chennai)] and in *Wave Industries Pvt Ltd v. Commissioner of Customs, Central Excise & Service Tax, Noida [2017 (47) STR 105 (Tri-All)]*.

3. Learned Authorised Representative urges that the impugned order be upheld as the appellant had discharged the cost of freight and that, in terms of the scheme of levy of tax on 'goods transport agency service', the tax liability devolves on the recipient to the extent of one quarter of the consideration charged for the rendering of the service. He contends that the claim of the appellant that the provider of the service did not conform to the definition in section 65 (50 b) of Finance Act, 1994 by non-issuance of 'consignment note' is not acceptable as it has clearly been laid down by the Tribunal in *ML Agro Products Ltd v. Commissioner of Customs, Central Excise & Service Tax, Guntur [2017 (6) GSTL 94 (Tri-Hyd)]* that there being no prescribed format of 'consignment note', the entry of mandated particulars would suffice to make any receipt issued by the transporter to be in conformity with this description. Drawing attention to the decision of the Tribunal in *Kisan Sahakari Chini Mills Ltd v. Commissioner of Central Excise, Meerut-II [2014 (34) STR 254 (Tri-Del)]*, Learned Authorised Representative suggests that any service rendered by a road transporter, unless specifically exempted, suffices to bring the activity under tax.

4. There is no doubt that the tax liability on consideration for 'goods transport agency service' falls upon the recipient of the service. It is also not in doubt that the individual truck operator is outside the pale of the taxable service in section 65 (105) (zzp) of Finance Act, 1994 as it is not the transport *per se* that is liable to tax but only such transportation as organised through an entity which takes responsibility for the safe delivery of the goods instead of the transporter; the undertaking of such responsibility is evidenced by the

issue of ‘consignment note’ and a truck operator, taking such responsibility upon itself, is not the object of the tax. The tax-paying recipient is, undoubtedly, entitled to avail the CENVAT credit of such tax incidence. In *re Kisan Sahakari Chini Mills Ltd*, liability was not in question as the recipient of service was, admittedly, the appellant therein with the cane farmers required to deliver the harvested cane at the collection centre and the dispute pertained to the transportation from the collection centre to the factory. Here, it is the claim of the appellant that it was the farmer who had to discharge the freight and that, considering the prevailing agricultural situation, the facility of transacting with the farmers through the Trust involved certain advance financing which does not bring it within the ambit of the taxable service fastened on them.

5. If the payments made by the appellant were in the nature of financing of the cost of delivery to be deducted subsequently from the dues owed to the cane farmers, it would not have been labelled as ‘freight’ in the books of accounts. At the same time, we are deprived of any certainty that the disputed amount was, indeed, obtained from the final accounts as asserted in the impugned order. We can certainly advert that none of the documents on record are amenable to description as ‘consignment notes’; in the circumstances, the nature, and extent of, expenditure incurred as ‘freight’ needs further scrutiny before it can be subjected to tax with the sure conviction that these were consideration for road transport contracted by the appellant.

6. In the absence of any evidence on record, it would be appropriate for such verification to be done by the original authority to whom the appellant may make a detailed submissions as to the composition of ‘freight’ appearing in the balance sheets. The adjudicating authority will, upon said submission, examine the purpose of expenditure before applying the provisions of section 66 of Finance

Act, 1994. It is also seen that the order has failed to consider the submissions made on revenue neutrality and its impact on invoking the extended period. The decisions of the Tribunal are relevant in that context.

7. In order that this exercise may be carried out, we set aside the impugned order and remanded the matter back to the adjudicating authority for a fresh decision.

(Pronounced in Court on 16.04.2019)

(C J Mathew)
Member (Technical)

(Ajay Sharma)
Member (Judicial)

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