CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

Service Tax Appeal No. 86595 of 2017

[Arising out of Order-in-Appeal No. NGP/EXCUS/000/APPL/608-609/16-17 dated 28.02.2017 passed by the Commissioner of Central Excise & Customs (Appeals), Nagpur]

M/s. Dinshaws Dairy Foods Ltd. ....Appellant
Plot No. K-41 & K-42,
Five Star Industrial Area,
M.I.D.C, Butibori,
Dist. - Nagpur-441 122

VERSUS

Commissioner of Central Excise, Nagpur-I ....Respondent
Kendriya Utpad Shulk Bhavan,
Telengkhedi Road, Post Box No. 81,
Civil Lines, Nagpur-440 001

AND

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APPERANCE:

Shri Durgesh Nadkarni, Advocate for the Appellant

Shri Ajay Kumar Shrivastava, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 85717-85718/2024

Date of Hearing: 11.06.2024
Date of Decision: 24.07.2024

PER: DR. SUVENDU KUMAR PATI

Confirmation of demand of Service Tax on 'reverse charge mechanism' for availing 'goods transport agency services' on the Appellant, a manufacturer of ice-cream, by the Commissioner (Appeals) is assailed in this appeal.

2. Fact of the case, in a nut shell, is that Appellants is a manufacture of ice-cream falling under Chapter Heading 21050000 of the first schedule of the Central Excise Tariff Act, 1985. During scrutiny of its record by the Respondent-Department, it was noticed that Appellant was receiving transportation services from different enterprises and roadways for transportation of its finished products from the place of manufacturer to the depots/distributors/dealer points and the service providers were raising bills on the Appellant on per kilometre basis against which no Service Tax was paid by the Appellant for any period of time pre or post negative list. Contention of the Respondent-Department is that Section 65(44) of the Finance Act read with Section 26B(26) of the Finance Act, 1994 dealing with "Goods Transport Agency" service as well as Notification No. 26 & 30/2012-ST dated 20.06.2012 have put liability of payment of

Service Tax @25% of the taxable value of amount paid to "Goods Transport Agency" on 'reverse charge mechanism' on the service recipient. Appellant was put to show-cause notices on dated 08.10.2014 for an amount of ₹23,82,700/- with interest and penalty for the period from July, 2012 to December, 2013 and statement of demand dated 08.09.2015 for an amount of ₹23,30,491/- associated with interest and penalty also. Appellant unsuccessfully contested the demand before the Additional Commissioner and preferred an appeal, against his common order passed for both the periods, before the Commissioner (Appeals) that yielded no fruitful result. Being aggrieved by the order passed by the Commissioner (Appeals) on 31.12.2015 jointly for both the Order-in-Originals, Appellant is before this forum, seeking necessary relief by filing these two appeals.

3. During course of hearing of the appeal learned Counsel for the Appellant Mr. Durgesh Nadkarni submitted that issue is no more *res integra* in view of consistent decision passed by this Tribunal in Appellant's own case for the period from January, 2005 to June, 2009 and from July, 2009 to June, 2012 respectively on 03.02.2023 and 27.03.2018 and in both the orders, it was categorically held that vehicle hired by the Appellant on kilometre basis and bills raised by the transporter on monthly basis for refrigerated vans hired by Appellant to supply ice-cream at the destination points, without any specific distinction of quantity of goods, would not fall under the category of receiver of "Goods Transport Agency" service with

reference to decision passed by this Tribunal including decision in *South Eastern Coalfields Ltd.* as reported in *2017 (47) STR 93 (T)* and *Nandganj Sihori Sugar Co. Ltd.* as reported in *2014 (34) STR 850 (T).* He further submitted that mere transportation of goods in motor vehicle would not be a "Goods Transport Agency" service but learned Additional Commissioner had distinguished the same decision of the Tribunal and the said Order-in-Original received approval by the Commissioner (Appeals) who, on the other hand relied on the decision of this Tribunal passed on *Sree Balaji Transport Vs. Commissioner of Customs, Central Excise & Service Tax, Tirupati* as reported in *2015 (38) STR 651 (Tri.- Bang.)* to justify that the demand was sustainable but the said judgment was considered by this Tribunal in Appellant's earlier decision dated 27.03.0218 [reported in *2018 (13) GSTL 170 (Tri.-Mumbai)*] and relief was granted to the Appellant apart from the fact that decision of this Tribunal passed in the case of *South Eastern Coalfields Ltd.* and *Nandganj Sihori Sugar Co. Ltd.*, *cited supra* holds the filed on the issue, for which the order passed by the Commissioner (Appeals) is unsustainable.

4. In response to such submission learned Authorised Representative Mr. Ajay Kumar Shrivastava has argued in support of the reasoning and rationality of the order passed by the Commissioner (Appeals) and pointed out that those two appeals had decided the issue prevailing then, prior to introduction of negative list *vis. a vis.* introduction of Notification No. 26 & 30/2012 and in

view of clear change in provision of law, the binding precedent of the decisions passed for the pre-period can't be applied to nullify the reasoned order passed by the Commissioner in confirming tax liability on 'reverse charge mechanism' on goods transport services on the Appellant, for which he sought for no interference by the Tribunal in the order passed by the Commissioner (Appeals).

5. We have perused the appeal file, relevant provisions of law, relied upon decisions and the written note received from learned Counsel for the Appellant on 10.05.2024. At the outset, it is to be placed on the record that negative list introduced under Section 66D w.e.f. 01.07.2012 has clearly excluded under Sub-Clause (p) services by way of transportation of goods by road but not services of a "Goods Transport Agency". Therefore, if such services are provided by "Goods Transport Agency" then the same is subjected to Service Tax. "Goods Transport Agency" itself is defined under Section 65(50b) of the Finance Act, 1994, which means service in relation to transport of goods by road by any person and issue of consignment note, by whatever name called and Rule, 4B of the Service Tax Rules provides for mandatory issue of consignment notes by "Goods Transport Agency" while providing service in relation to transportation of goods by road in a goods carriage except when wholly exempted under Section 93 of the Act. Its explanation provides description of consignment note, it reads:-

> *"Explanation.- For the purposes of this rule and the second proviso to rule 4A, "consignment note"*

> *means a document, issued by a goods transport agency against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered, and contains the name of the consignor and consignee, registration number of the goods carriage in which the goods are transported, details of the goods transported, details of the place of origin and destination, person liable for paying service tax whether consignor, consignee or the goods transport agency."*

Going by the above description, it can be conveniently said that no consignment note was issued by the goods transporter to the Appellant as per the description mentioned above, neither in the invoices raised by the transporter as provided in the second proviso to Rule 4A nor by way of separate consignment note in the form of a document as described in the explanation reproduced above and those provisions have not undergone any change in the second amendment of 2012 made to Service Tax Rules, 1994 effective from 01.07.2012. On the other hand, as has been noted in the order of this Tribunal passed previously and more particularly on dated 27.03.2018 and 03.02.2023, procurement of vehicle or hiring of vehicle on kilometre basis without any connection with the destination or quantity cannot bring the nature of service offered through contractual engagement of the vehicles by its owners into the purview of "Goods Transport Agency" service, so as to impose Service Tax on 'reverse charge mechanism' on the service recipient and in carrying forward the judicial precedent set by this Tribunal, the following order is passed–

THE ORDER

6. The appeals are allowed and the order passed by the Commissioner of Central Excise & Customs (Appeals), Nagpur vide Order-in-Appeal No. NGP/EXCUS/000/APPL/608-609/16-17 dated 28.02.2017 is hereby set aside with consequential relief, if any.

(Order pronounced in the open court on 24.07.2024)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

Prasad