

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI**

Appeal No.ST/744/2010

[Arising out of Order-in-Original No.08/2010 dt. 31.08.2010 passed by the Commissioner of Central Excise & Service Tax, Tiruchirapalli]

Oil and Natural Gas Corporation Ltd.

Appellant

Versus

Commissioner of Central Excise & Service Tax,
Tiruchirapalli

Respondent

Appearance :

Shri Raghavan Ramabhadran, Advocate
For the Appellant

Shri S. Govindarajan, AC (AR)
For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi, C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing / decision : 23.07.2018

FINAL ORDER No. 42114 / 2018

Per Bench

The appellants are a Public Sector Undertaking primarily engaged in the oil and gas exploration activities around Karaikkal region. Appellant inter alia extracts well fluids from the well head which is then transported to the production installations where the effluent water is separated from the well head. The crude oil that emerges is then sent to the refinery through pipeline. Effluent water

separated from the condensate is transported to the Effluent Treatment Plant (ETP) to fulfil pollution control norms. The present dispute revolves around three alleged taxable activities —

1. Service tax liability on freight paid towards transportation of crude oil and condensate within the operational area	Rs.79,90,126
2. Freight paid towards transportation of effluents out of operational area to ETP	Rs.11,24,258
3. Alleged short paid amount of service tax in respect of transportation services received for transport of various goods out of operational area	Rs.67,935
Total	Rs.91,82,319

Show cause notice dt. 20.04.2010 was issued to the appellants inter alia proposing recovery of the aforesaid amounts along with interest thereon and appropriation of Rs.71,14,271/- paid towards service tax liability and Rs.19,94,882/- paid towards interest liability. The SCN also proposed imposition of under various provisions of law. In adjudication, the original authority vide impugned order dt. 31.08.2010 confirmed these proposals and also imposed penalties under Section 77 & 78 of the Finance Act, 1994. Hence this appeal.

2. Today when the matter came up for hearing, on behalf of the appellant, Ld. counsel Shri Raghavan Ramabhadran made oral and written submissions which can be broadly summarized as under :

i) The appellants are not pressing the demand of tax made in respect of transportation of crude oil and condensate amounting to Rs.79,90,126/- and an amount of Rs.67,935/- in respect of outward transportation.

ii) Ld. advocate draws our attention to para 35 of the impugned order to point out that an amount of Rs.87,94,513/- and Rs.16,94,882/- paid by the appellants towards service tax and interest liabilities were appropriated by the original authority.

iii) In respect of freight paid towards transportation of effluents, Ld. Advocate submits that the said activity would not attract service tax liability under GTA service since the same cannot be treated as 'goods'. He draws our attention to the definition of "goods" as in section 65(50) of the Finance Act, 1994 which has the same meaning assigned to it in Section 2 (7) of the Sale of Goods Act, 1930 and submits that any material to fall within the definition of "goods", they should be known to market as material, commodity and articles that are being capable of sold. In this regard, he places reliance on the Tribunal decision in *Gujarat State Fertilizers & Chemicals Ltd. Vs CCE Vadodara* - 2015 (37) STR 1076 (Tri.-Ahmd.) and the Hon'ble Supreme Court judgment in *Escorts Ltd. Vs CCE Faridabad* - 2015 (319) ELT 406 (SC) and *UOI Vs Delhi Cloth and General Mills Co. Ltd.* - 1977 (1) ELT J199 (SC). He submits that for these reasons tax demand of Rs.11,24,258/- on transportation of effluents under GTA cannot sustain.

iv) In respect of other tax liabilities which appellants are not pressing, Ld. Advocate submits that there cannot be any penalty liability in those cases. He draws our attention to paras 26.2 of the OIO and paras 11 & 12 of the SCN to point out that right from the beginning, the appellants have been taking a stand that crude oil, condensate as well as effluent water have no marketability and therefore their transport will not attract service tax under GTA. This being so, tax

liability in respect of transport of crude oil and condensate was not discharged only on a bonafide belief that the said activity is not taxable.

v) Ld. Advocate also makes a plea of revenue-neutrality to point out that in any case, whatever tax that would have been discharged on these activities would have been eligible to be taken as credit by the appellant.

3. On the other hand, Ld. A.R Shri S.Govindarajan supports the impugned order. In particular, he draws our attention to para 27.9 of the impugned order where the adjudicating authority has distinguished the argument of the appellants and the case laws relied upon by them on the grounds that those case laws relate to levy of Central Excise Duty. The explicit definition of 'goods' contained in Finance Act, 1994 covers the effluents in the instant case since the definition of 'goods' in Section 27 of Sale of Goods Act, 1930 only applies to service tax matters.

4. Heard both sides and have gone through facts.

5.1 As the appellants have conceded the tax liabilities of Rs.79,90,126/- in respect of freight paid for transportation of crude oil condensate as also the tax liability of Rs.67,935/- in respect of outward transportation, no interference is made in respect of these demands confirmed by the adjudicating authority in these matters. The said tax liabilities are therefore sustained. So ordered.

5.2 However, we find merit in the Ld. Advocate's argument that appellants were under bonafide belief that condensate *per se* would not come within the scope of 'goods' and hence there would be no tax liability under GTA on that score. Such bonafide belief is reflected in paras 11 & 12 of SCN and para 26.2 of OIO as pointed out by Ld. Advocate. It is also pertinent to note that these tax

liabilities have also been paid up by the appellants before issue of SCN. Hence we hold that there will not be any penalty in respect of freight paid towards transportation of condensate. In respect of amount of Rs.67,935/-, the amount being very small and also admittedly arising out of quantification dispute, the penalty in that respect is also set aside.

5.3 Coming to third issue of freight paid in respect of transportation of effluents, we find that this issue is squarely covered by the decision of Tribunal in the case of *Gujarat State Fertilizers & Chemicals Ltd. Vs CCE Vadodara* (supra), wherein this Tribunal has held as under :

“4.2 It is observed that for the purpose of Service Tax law the provisions contained in Section 2(7) of the Sale of Goods Act, 1930 has been borrowed for defining ‘goods’ when read with Section 65(50) of the Finance Act, 1994. The definition of ‘goods’ given in Section 2(7) of the Sale of Goods Act, 1930 is as follows :-

“(7) ‘goods’ means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be served before sale or under the contract of sale;”.

4.3 As per definition of ‘goods’ given in Section 65(50) of the Finance Act, 1994 the meaning of ‘goods’ for the purpose of Service Tax law has to be as assigned in Clause (7) of Section 2 of the Sale of Goods Act, 1930. As per the provisions of Section 2(7) of Sale of Goods Act, 1930 the goods has to be a category of ‘movable property’. Movable property in general trade parlance is considered as a property in goods which can fetch certain price. In the present facts and circumstances of the case the effluent discharge facility is for disposal of a waste which is not being purchased by any person but is only being disposed of by utilizing the services of the appellant. As the relevant facilities/services of transportation provided by appellant are not for the ‘goods’ as defined in Section 2(7) of the Sale of Goods Act, 1930, the same cannot be considered as a service provided for transportation of goods as per Section 65(105)(zzz) of the Finance Act, 1994 read with Section 2(7) of Sale of Goods Act, 1930. Appeal filed by the appellant is, therefore, required to be allowed.”

5.4 Though the Ld. A.R was at pains to draw our attention to adjudicating authority's conclusions that the meaning of 'goods' for the purpose of Finance Act, 1994 will have the meaning as defined in Sale of Goods Act, 1930, however that meaning has been further interpreted by the judgment of the Hon'ble Supreme Court in *Escorts Ltd.* (supra) relied upon by Ld.Advocate, as requiring to pass the test of marketability.

5.5 In the circumstances, following the above judgements, we hold that the transportation of effluents cannot be treated as transportation of "goods" and hence there cannot be any service tax liability under 'Goods Transport Agency' as defined in Section 65 (150b) of the Finance Act, 1994. This being so, the tax liability of Rs.11,24,258/- and the penalty imposed thereof cannot sustain and are set aside.

6. The appeal is allowed on above terms.

(dictated and pronounced in court)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S)
Member (Judicial)

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