

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

SERVICE TAX Appeal No. 10813 of 2013-DB

[Arising out of Order-in-Original/Appeal No 03-04-ST-COMMR-SURAT-II-2013 dated 14.02.2013 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-II]

Panoli Enviro Technology Limited

.... Appellant

Plot No. 619, GIDC, Panoli,
BHARUCH, GUJARAT

VERSUS

Commissioner of Central Excise & ST, SURAT-II Respondent

New C.Ex Building...Opp. Gandhi Baug,
Chowk Bazar, Surat, Gujarat-395001

APPEARANCE :

Shri Mrugesh G. Pandya, Advocate for the Appellant

Shri Rajesh K Agarwal, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)**

DATE OF HEARING : 22.06.2023

DATE OF DECISION: 24.07.2023

FINAL ORDER NO. 11566/2023

RAMESH NAIR :

The issue involved in the present case is that whether the transportation of effluent generated during effluent treatment of the appellant is liable to service tax under Goods Transport Agency Service (GTA) under Section 65(105)(zzp) read with Section 68 of Finance Act, 1994 read with Notification No. 36/2004-ST dated 31.12.2004 read with Rule 3(d)(v) of Service Tax Rules, 1994.

2. Shri Mrugesh G. Pandya, learned Counsel appearing on behalf of the appellant submits that in the present case, the transportation of effluent is involved, which is neither sold nor saleable in the market therefore, the transportation of goods which is other than goods defined in the Sale of

Goods Act, cannot be taxed under Goods Transport Agency service. In support, he placed reliance on the following decisions:-

(a) Gujarat State Fertilizers & Chemicals Limited vs. CCE - 2015 (37) STR 1076 (Tri. Ahmd.)

(b) Effluent Channel Project Limited, Vide Order No. A/12104/2018 dated 09.10.2018.

(c) Odyssey Organics P. Limited vs. Commissioner of Central Excise, Raigad - 2017 (47) S.T.R. (Tri-Bom.),

(d) Bharuch Enviro Infrastructure Limited vs. Commr. of C. Ex., Surat-II-2008 (12) S.T.R. 622 (Tri. Del.).

(e) Union of India vs. Delhi Cloth and General Mills Co. Ltd. - 1977 (1) E.L.T. (J 199) (S.C.).

(f) Newland Laboratories Limited vs. CCE&ST, Hyderabad-II - 2018 (10) TMI 549 - CESTAT Hyderabad

(g) Oil and Natural Gas Corporation Limited vs. Commissioner of Central Excise & Service Tax, Tiruchirapalli - 2018 (7) TMI 1671 - CESTAT Chennai

3. Shri Rajesh K Agarwal, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. On careful consideration of the submissions made by both the sides and perusal of record, we find that the facts in the present case is not under dispute that the goods which were transported for the appellant is effluent and the same is transported for throwing the same and the same is not sold or saleable in the market. As per definition in the Finance Act, 1994, the definition of "goods" as provided under Section 65(50) "goods" has the meaning assigned to it in clause (7) of section 2 of the Sale of Goods Act,

1930 (3 of 1930)". The definition of Goods Transport Agency as provided under Section 65 (50(b) which is as under:

"Goods Transport Agency" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called"

As per the combined reading of both the definitions given above, it is clear that only for such transportation which is for transport of goods defined under Section 65(50), will be covered under the service of Goods Transport Agency. In the present case, the transport of goods is in respect of effluent which is neither sold nor saleable in the market therefore, the same is not qualify as goods defined under Section 65(50). Accordingly, the transportation of effluent will not fall under the Goods Transport Agency service. This issue has been considered in various judgments as below:-

(a) In the case of Gujarat State Fertilizers & Chemicals Limited (supra) the Tribunal passed the following order:-

"This appeal has been filed by appellant M/s. Gujarat State Fertilizers & Chemicals Ltd., Vadodara, against OIA No. SRP/500/VDR-I/2013, dated 27-2-2013. The issue involved in the present appeal is whether appellant is liable to payment of Service Tax on the services of transportation of effluent through pipeline or conduit to M/s. Heavy Water Project (HWP) on some consideration under Section 65(105)(zzz) of the Finance Act, 1994.

2. Shri W. Christian (Advocate) appearing on behalf of the appellant argued that first appellate authority has wrongly held that the term 'goods' has not been defined under the Finance Act, 1994 or the Service Tax Rules. Ld. Advocate made the Bench go through Section 65(50) of the Finance Act, 1994 to drive home the point that 'goods' for the purpose of Service Tax law has been assigned the meaning as per Section 2(7) of the Sale of Goods Act, 1930 where goods have been defined. It is the case of the appellant that effluent waste is not a movable property and is a hazardous waste which cannot be considered as a movable property as per the definition of 'goods' given in Section 2(7) of the Sale of Goods Act, 1930 and cannot be treated as goods. He relied upon the following case laws in support of his arguments :-

- (i) *Neuland Lab. Ltd. v. CCE, Hyderabad* [[2010 \(20\) S.T.R. 802](#) (Tri.-Bang.)]
- (ii) *South India Viscose Ltd. v. CCE, Coimbatore* [1997 (22) RLT 135 (CEGAT)]
- (iii) *Gwalior Rayon Silk Mfg. (WVG) Co. Ltd. v. CCE, Indore* [[1985 \(21\) E.L.T. 832](#) (Tribunal)]
- (iv) *Tata Consultancy Services v. State of Andhra Pradesh* [[2004 \(178\) E.L.T. 22](#) (S.C.)].

2.1 It was also the case of the Id. Advocate that the demand is clearly time-barred in view of the correspondence exchanged between the appellant and the Department as brought out in Para 9(f) of the grounds of appeal.

3. Shri G.P. Thomas (AR) appearing on behalf of the Revenue argued that under the Service Tax law it is not necessary that an activity should be necessarily in relation to goods bought and sold in the market. Ld. AR thus defended the orders passed by the lower authorities.

4. Heard both sides and perused the case records. The issue involved in the present proceedings is whether a disposal facility provided by the appellant to M/s. Heavy Water Project, Vadodara, for disposal of a waste effluent material through appellant's pipeline, can be considered as providing of services under transportation of goods through pipeline or conduit' as per Section 65(105)(zzz) of the Finance Act, 1994. The relevant entry is reproduced below :-

"Section 65(105)(zzz)

(105) 'taxable service' means any service provided or to be provided

.....

.....

(zzz) to any person by any other person, in relation to transportation of goods other than water, through pipeline or other conduct;".

4. First appellate authority has held that a service provided by the appellant with a consideration amounts to providing of transportation services under Section 65(105)(zzz) of the Finance Act, 1994.

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. Appeal filed by the appellant is allowed by setting aside the OIA dated 27-2-2013 passed by the first appellate authority with consequential relief, if any.”

(b) In the case of Effluent Channel Project Limited (supra) this Tribunal, vide final Order No. A/12104/2018 dated 09.10.2018, passed the following order:-

“This appeal has been filed by M/s. Effluent Channel Project Limited against remand of Service Tax and imposition of penalties. Ld. Counsel for the appellant pointed out that they are engaged in transportation of waste effluent arising from the Industrial Units. He pointed out that demand of Service Tax has been made under the head of **Transportation of Goods other than Water through pipeline or other conduit service**. He argued that this service provided by them is not covered on the aforesaid service as industrial effluent cannot be treated as goods. He relied on the decision of Tribunal in case of GUJARAT STATE FERTILIZERS & CHEMICALS LTD. VS C.C.E., VADODARA-2015 (37) S.T.R. 1076 (Tri.- Ahmd.) and the decision of the Tribunal in case of ONGC in Appeal No. ST/744/2010 dated 23.07.2018. He also pointed out that the said decisions have been accepted have been merit and in appellant own case Commissioner (Appeals) as dropped the demand for the subsequent period following the said decision of Tribunal. The said order has also been accepted by Revenue. Ld. AR realise on the impugned order. He stated that even if effluents do not have any commercial value. The do not cease to be goods.

2. We have gone through the revival submissions, we find that the issue before us is if the service provided by the appellant is a taxable service. The prime contention of the appellant is that Industrial Effluent transported by them are not goods and therefore no service Tax can be charged under the head of “Transportation of Goods other than Water through pipeline or other conduit”. We find that the decision of Tribunal in case of GSFC (Supra) examines the identical issue hold in favour of appellant. The said decision has not been challenged and Revenue and Commissioner (Appeals) has dropped demand of subsequent period following the said decision.

3. In this circumstance, following the decision of Tribunal in case of GSFC. The demand is set aside and appeal is allowed.”

(c) In the case of Odyssey Organics P. Limited (supra) Mumbai bench of this Tribunal passed the following order:-

“3. On consideration of the submissions made by both sides we find that the issue in this appeal is regarding the demand of service tax from the appellant under the category of business auxiliary services for the period 2006-07. Both the lower authorities have held that the activity of the appellant in processing disposable waste water received from Apte Organic Pvt. Ltd and releasing the same through common drainage into common effluent treatment plant will amount to services rendered to a client for processing of goods.

4. It is undisputed that the appellant is treating the industrial waste which is a waste for the said Apte Organics. Appellant gets industrial waste from Apte Organics and treats the same before releasing the treated water into effluent treatment plant. We find that reliance placed by the counsel for appellant on the CBEC Letter No. 137/111/2007-CX4, dated 13th July, 2007 is correct and applicable in this case. In the said circular/letter CBEC had clarified that incineration/shredding of biomedical waste cannot be called as processing of goods and the said activity does not qualify as

processing of goods on behalf of the client. In the case in hand, the same analogy will apply inasmuch appellant is treating waste received from Apte Organics for which they get paid. We find strong force in the submissions made by the learned counsel that the ratio of the Tribunal's following decisions will apply in the case in hand :

- (a) *Bharuch Enviro Infrastructure Ltd.* - [2008 \(12\) S.T.R. 622](#)
- (b) *Globe Enviro Care Ltd.* - [2011 \(21\) S.T.R. 241](#)
- (c) *Ferro Scrap Nigam Ltd.* - [2014 \(36\) S.T.R. 955](#)

5. It is also to be noted and is a common knowledge that disposal of waste water in the common effluent treatment plant of Maharashtra pollution control board, needs to adhere specifications acceptable for such disposal, which are achieved by the treatment undertaken by the appellant. We notice that treatment of effluent waste cannot be considered as processing of the goods by any stretch of imagination, and we also note that the show cause notice does not invoke specific clause of the definition of Business Auxiliary Services for levy of tax.

6. In view of the foregoing, we hold that the impugned order is unsustainable and liable to be set aside and we do so. Impugned order is set aside and appeal is allowed."

5. In view of the above judgments it is settled that the goods for the purpose of Goods Transport Agency service should be qualified as 'goods' in terms of definition given under Section 65(50) of Finance Act, 1994. Therefore, in the present case the goods being effluent which is neither sold nor saleable, does not qualify in terms "goods". Therefore, transportation of the same does not fall under the four corners of Goods Transport Agency service, hence the same is not liable to service tax. Accordingly we set-aside the impugned order and allow the appeal.

(Pronounced in the open court on 24.07.2023)

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)