

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
CHENNAI**

REGIONAL BENCH – COURT NO. I

**Service Tax Appeal No. 40923 of 2014**

(Arising out of Order-in-Appeal No. 68/2014-ST dated 18.02.2014 passed by the Commissioner of Central Excise (Appeals), No. 1, Foulk's Compound, Anai Road, Salem – 636 001)

**M/s. The Rasipuram Agricultural Producers : Appellant**  
**Co-operative Marketing Society Limited**  
(S. No 318), No. 18, Chinna Mettu Street,  
Rasipuram - 637 408

**VERSUS**

**Commissioner of Central Excise and Service Tax : Respondent**  
No. 1, Foulk's Compound, Anai Road,  
Salem – 636 001

**APPEARANCE:**

Shri M.N. Bharathi, Advocate for the Appellant

Shri N. Satyanarayanan, Assistant Commissioner for the Respondent

**CORAM:**

**HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)**  
**HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 40654 / 2023**

DATE OF HEARING: 31.07.2023

DATE OF DECISION: 04.08.2023

**Order : [Per Hon'ble Mr. P. Dinesha]**

This appeal is filed by the appellant against the impugned Order-in-Appeal No. 68/2014-ST dated 18.02.2014 passed by the Commissioner of Central Excise (Appeals), Salem.

2. Brief facts leading to the present dispute are that the appellant is a co-operative society, are conducting auction of various commodities for which they receive consideration in the form of commission / service charges. They also provide place for storage of goods, apart from

providing post-auction services like collection or distribution of auctioned prices, etc.

3.1 It appears that the Revenue entertained a doubt that the above services of the appellant were covered under 'auctioneer's service' as defined under Section 65(7a) and Section 65(105)(zzzr) of the Finance Act, 1994.

3.2 It appeared to the Revenue that the appellant, though did not arrange any transport facility, but however, had paid freight in respect of movement of ration goods (Public Distribution System) for Fair Price Shops and also for purchase of goods to the society, but did not pay any Service Tax towards GTA service, as defined under Section 65(50b) read with Section 65(105)(zzp) of the Finance Act, 1994.

3.3 It also appeared to the Revenue that the appellant-society was lending jewel loan facility to its members on an appraising charge of Rs.3/- per thousand on the amount of loan, subject to a minimum of Rs.10/- and a maximum of Rs.100/-, per loan. The Revenue also appears to have noticed that the appellant was getting the jewel loan from M/s. Salem District Central Co-operative Bank, Salem and lending the amount to their members on interest basis, on which service charges were collected towards processing fee. This, according to the Revenue, was covered under 'business support service' within the meaning of Section 65(104c) read with Section 65(105)(zzzq) *ibid*.

4. Consequently, a Show Cause Notice dated 06.03.2012 was issued proposing, *inter alia*, to demand Service Tax on the above three services.

5. It appears that the appellant filed a detailed reply denying tax liability, but however, in adjudication, the Assistant Commissioner vide Order-in-Original Sl. No. 3/2013 dated 15.10.2013 rejected the explanation of the assessee insofar as auctioneer's service and GTA service were concerned, along with appropriate interest and penalties, thereby confirming the demands as proposed in

the Show Cause Notice. However, the adjudicating authority dropped the demand raised under business support service.

6. Aggrieved by the above demands, it appears that the appellant filed an appeal before the first appellate authority, but however, the first appellate authority also having rejected the appeal vide impugned Order-in-Appeal No. 68/2014-ST dated 18.02.2014, the appellant has preferred the present appeal before this forum.

7. Heard Shri M.N. Bharathi, Ld. Advocate for the appellant and Shri N. Satyanarayanan, Ld. Assistant Commissioner.

8. The Ld. Advocate would submit at the outset that the issue involved in the case on hand is no more *res integra* as the same has been settled by this very Chennai Bench of the CESTAT in the appellant's own case for a different period vide Final Order Nos. 40739-40740 of 2021 dated 26.02.2021 as reported in *2021 (52) G.S.T.L. 84 (Tribunal - Chennai)*.

9. *Per contra*, the Ld. Assistant Commissioner supported the findings of the lower authorities.

10. We have considered the rival contentions and we have gone through the orders relied upon during the course of arguments.

11. We find that the following issues crop up for our consideration: -

(1) Whether the demand of Service Tax under 'auctioneer's service' is correct?

(2) Whether the demand of Service Tax under 'GTA service' is sustainable? and

(3) Whether the consequential penalties imposed under Sections 76, 77(1)(a) and 77(2) of the Finance Act, 1994 are justified?

12.1 We find that this very Bench in the appellant's own case for an earlier period has, in its Final Order (*supra*), set aside the demands insofar as auctioneer's service and business support service are concerned, but however, has sustained the demand under GTA service for the normal period, if any. The relevant portion of the order reads as under: -

*"13. The appellant was carrying on the work of lifting and delivering the goods to the ration shops under the Public Distribution System. They were carrying goods in the nature of wheat, rice, pulses, sugar etc. An amendment by Notification No. 4/2010, dated 27-2-2010 was brought forth in Notification No. 33/2004, dated 3-12-2004 whereby the transportation of food grains or pulses was also exempted from levy of service tax. This amendment is by way of substitution. The appellant has also argued that during the relevant period when GTA services was introduced (w.e.f. 1-1-2005), the understanding was that when individual truck owners are engaged the activity would not fall under definition of GTA and that there was no liability to pay service tax. He has also relied upon the Budget speech of the then Finance Minister while introducing the Bill wherein it was said, "there is no intention to levy service tax on truck owners or truck operators". There were several litigations on this issue and the Tribunal in the case of Lakshminarayana Mining Co. v. Commissioner of Service Tax, Bangalore - 2009 (16) S.T.R. 691 (Tri. - Bang.) held the issue in favour of assessee and it was upheld by Hon'ble Karnataka High Court as reported in 2012 (26) S.T.R. 517 (Kar.). From this angle as the issue was interpretational in nature and also for the reason that there were notifications exempting service tax for carrying food items which underwent amendment later, it cannot be said that the appellant has suppressed facts to evade payment of service tax. In fact, they were carrying food items as part of PDS. Such transportation would be clearly accounted with Government and it cannot be said that appellant has wilfully suppressed any facts. In the show cause notice apart from a bald allegation that appellant has suppressed facts, there is no evidence of any positive act of suppression established by the department. For these reasons, we hold that the demand invoking extended period cannot sustain. On the same grounds, the penalties imposed under Sections 76 and 78 of the Finance Act, 1994, in our view, is unwarranted. We make it clear that the appellant would be liable to pay service tax along with interest under GTA services for the normal period if any. The demand under GTA services for the extended period alone is set aside.*

14. *From the foregoing discussions, we hold that the demand under Auctioneering Service and Business Support Service cannot sustain. Appeal No. ST/40220/2017 is allowed with consequential relief. Appeal No. ST/40809/2013 is partly allowed with consequential relief."*

12.2 In view of the above, and also since the Revenue did not place any deviating circumstances on record, following the above order we set aside the impugned order insofar as auctioneer's service is concerned. But however, the demand of Service Tax, if any, in respect of GTA service, is sustained for the normal period alone.

13.1 The appellant has also prayed for waiving the penalties imposed on them on the ground that the issue being one of interpretation of law, the non-payment of Service Tax was under a *bona fide* belief, thus arguing that there was no suppression or intention to evade duty on their part. It has also been urged by the appellant that the Revenue has not discharged any proof to warrant the levy of penalty.

13.2 In the facts and circumstances of the present case, and also following the ratio of the Final Order of this Bench (*supra*) in the appellant's own case, we deem it fit to set aside the imposition of penalty under Section 76 of the Finance Act, 1994. However, the proportionate penalties insofar as GTA service alone is concerned, imposed under Section 77(1)(a) and 77(2) *ibid.*, for non-obtaining Service Tax Registration as stipulated under Section 69 and for non-furnishing of statutory ST-3 returns as required under Section 70 respectively, are sustained.

14. The appeal is disposed of on the above terms.

(Order pronounced in the open court on **04.08.2023**)

Sd/-  
**(M. AJIT KUMAR)**  
MEMBER (TECHNICAL)  
Sdd

Sd/-  
**(P. DINESHA)**  
MEMBER (JUDICIAL)