

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad**

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No. 10603 of 2015-DB

(Arising out of OIA-VAD-EXCUS-001-APP-618-14-15 dated 06/01/2015 passed by Commissioner of Central Excise, Customs and Service Tax-ANAND)

Dhariwal Industries Limited

.....Appellant

N H No. 08, Fazalpur,
Post Rayka, Vadodara, Gujarat

VERSUS

C.C.E. & C.-Anand

.....Respondent

Office of the Commissioner, Central Excise, Customs & Service Tax,
Central Excise Building, Nr. Juna Dadar, Behind Old Bus Depot Anand,
Gujarat - 388001

APPEARANCE:

Shri Mayur Shroff, Advocate appeared for the Appellant

Shri Prashant Tripathi, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. A/ 12248 /2023

DATE OF HEARING: 13.09.2023

DATE OF DECISION: 11.10.2023

RAMESH NAIR

The issue involved in the present case is that:-

(i) Whether the appellant is liable to pay the service tax on the GTA under reverse charge mechanism in the fact that the service provider i.e. Transport Agency has already paid the service tax on the GTA Service.

(ii) Whether the appellant is entitled for the cenvat credit in respect of the service tax paid by the transport agency.

The case of the department is that since as per law the appellant as recipient of GTA service is liable to pay service tax on GTA under RCM under Rule 2 (i) (d) (v) of Service Tax Rules, 1994. The service tax paid by the goods transport agency is nothing but deposit therefore, the appellant is liable to pay the service tax. On the same ground that the deposit made by the goods transport

agency not being a service tax on GTA, the appellant is not entitled for the cenvat credit.

2. Shri Mayur Shroff, Learned Counsel appearing on behalf of the appellant submits that even though the appellant is legally liable to pay the service tax but when admittedly service tax was discharged by the transport agency, demanding service tax from the appellant is double liability of service tax on the same service which is not legal and correct.

2.1 He further submits that since the transport agency has discharged the service tax and the assessment of payment of service tax has not been challenged, the credit of said amount is legally admissible to the appellant. He placed reliance on the following judgments:-

- Mahanadi Coal fields Ltd. Vs. Commissioner 2020 (43) GSTL 263 (Tri-Kolkata)
- Elkos Pens Ltd. Vs. Commissioner of Service Tax, Kolkata-I - 2019 (24) GSTL 652 (Tri-Kolkata)
- Umasons Auto Compo Pvt. Ltd. Vs. Commissioner of C.Ex Aurangabad-2016 (46) STR (Tri. Mumbai)
- Transpek Silox Industries Pvt. Ltd. 2018 (17) GSTL 434 (Tri- Ahmd.)
- Zyeta Interiors Pvt. Ltd. Vs. Vice Chairman Settlement Commission, Chennai- 2022 (58) GSTL 151 (Kar.)
- Nagraja Printing Mills Vs. Commissioner of Central Excise, Salem-2010 (19) STR 828 (Tri.-Chennai)
- General Manager, J.K. Sugar Ltd. Vs. Commissioner of C. Ex., Meerut-II-2016 (43) STR 292 (Tri.-All)
- Commissioner of Service Tax, Meerut-II Vs. Geeta Industries Pvt. Ltd.-2011 (22) STR 293 (Tri.- Del.)
- Angiplast Pvt. Ltd. Vs. Commissioner of Service Tax, Ahmedabad - 2013 (32) STR 628 (Tri-Ahmd.)
- Reliance Securities Ltd. Vs. Commissioner of Service Tax, Mumbai-II-2019 (20) GSTL 265 (Tri. Mumbai)

- Commissioner of Central Excise, Ludhiana Vs. Ralson India Ltd. 2008 (10) STR 505 (P & H)
- SACI Allied Products Ltd. Vs. Commissioner of C. Ex., Meerut 2009 (183) ELT 225 (S.C.)-2005 (183) ELT 225 (S.C.)
- Commissioner of Customs Mumbai Vs. Toyo Engineering India Ltd. 2006 (201) ELT 513 (S.C.)
- Reckitt & Colman of India Ltd vs. Collector of Central Excise – 1996 (88) ELT 641 (SC)
- Prince Khadi Woollen Handloom Prod. Coop. Indl. Society vs. CCE 1196 (88) ELT 637 (SC)
- Commissioner of C.Ex., Chandigarh vs. Shital International – 2010 (259) ELT 165 (SC)
- Collector of Central Excise vs. HMM Limited – 1995 (76) ELT 497 (SC)
- CCE, Belgaum vs. Vasavadutta Cements Ltd – 2018 (11) GSTL 3 (SC)

3. Shri Prashant Tripathi, learned Counsel appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. We find that the department case of demand of service tax on appellant and disallowance of cenvat credit is on the ground that even though the transport agency has discharged the service tax since they are not liable to pay the service tax, the payment made by them is deposit. Consequently the appellant is liable to pay the service tax on GTA on reverse charge mechanism as well as the amount paid by the transport agency being deposit, the appellant is not entitled for cenvat credit. We find that even though legally the appellant is liable to pay the service tax but in the facts of the present case the transport agency has admittedly paid such service tax. The assessment of payment of service tax by the transport agency has not been disputed by their jurisdictional officer, therefore no question can be raised as regard the service tax payment and assessment thereof at the end of the transport agency. If this be so, then the payment of service tax by the goods transport agency was made good as payment of service tax therefore, the demand against the appellant for the same service

will amount to demand of service tax twice on the same service which in any case is not permissible. The Revenue is concerned about the service tax which the Government has already received, the same amount cannot be demanded twice. On the above fact, once the payment of service tax was made by the transport agency which has not been altered by taking any action by the department, the cenvat credit of the said amount is also rightly available to the appellant. In catena of case laws cited by the learned counsel, it has been held that even the service tax on GTA has been discharged by the transport agency, the person who paid the freight is not liable to pay service tax on the same service. Some of the judgments are reproduced below:-

- Elkos Pens Ltd. Vs. Commissioner of Service Tax, Kolkata-I - 2019 (24) GSTL 652 (Tri-Kolkata)

"5. *I find that the issue to be decided in the present appeal is whether the GTA service recipient is liable to pay service tax under the RCM, the Service Tax Rules. The said service tax has been paid to the exchequer by the service provider, who collected the same from the service receiver.*

6. *I find that the service tax has been confirmed against the appellant who are availing the services on the goods transport agency during the periods from 2007-08 to 2011-12. It is on record that the service tax on the said services stands paid by the transporter. It is the case of the Revenue that it was the liability of the appellant to pay the Service Tax under the reverse charge mechanism and the Service Tax paid by the transporter who provided the services, cannot be treated as a valid payment. However, the Revenue has not refunded the Service Tax paid by the transporters to them.*

7. *I find that the Central Board of Indirect Taxes and Customs vide TRU Clarification [***] F.No. 341/18/2004-TRU(PT), dated 17-12-2004 has clarified that if service tax due on transportation of a consignment has been paid or is payable by a person liable to pay Service Tax, Service Tax should not be charged for the same amount from any other person, to avoid double taxation.*

8. *In view of the above discussions, it is my considered view, that once tax has already been paid on the services, it was not open to the Department to confirm the same against the appellant, in respect of the same services. I accordingly, set aside the impugned order and allow the appeal with consequential relief, to the appellant."*

- Umasons Auto Compo Pvt. Ltd. Vs. Commissioner of C.Ex Aurangabad-2016 (46) STR (Tri. Mumbai)

"Heard both sides.

2. *The appellant filed the appeal against the impugned order passed by the Commissioner (Appeals), whereby the Commissioner (Appeals) upheld the adjudication order whereby the demand of Service Tax was confirmed. The demand is confirmed on the ground that the appellant being recipient of GTA service is liable to pay Service Tax.*

3. *The Contention of the appellant is that the appellant had paid the Service Tax to the provider of GTA service and the provider has paid to the Revenue and the appellant has availed credit of the same. As the Service Tax has already been paid by the provider of GTA service and Revenue is demanding the same tax from the recipient. Therefore, the demand is not sustainable. The appellant also relies upon the decision of the Tribunal in the case of Navyug Alloys Pvt. Ltd. v. CCE & C, Vadodara-II reported in [2009 \(13\) S.T.R. 421](#) (Tri.-Ahmd.).*

4. *The Revenue relies upon the findings of the lower authorities and submitted that as per the provisions of the Finance Act, recipient is liable to pay Service Tax in respect of GTA service and if the same has been by the service provider, he can seek refund of the amount.*

5. *I find that there is no dispute regarding payment of Service Tax by the provider of GTA service. Once the amount of Service Tax is accepted by the Revenue from the provider of GTA service, it cannot be again demanded from the recipient of the GTA service. In view of this, the impugned order is set aside and the appeal is allowed"*

- Transpek Silox Industries Pvt. Ltd. 2018 (17) GSTL 434 (Tri- Ahmd.)

"The appellant is in appeal against the impugned order wherein demand was confirmed of Service Tax on account of 'Manpower Recruitment Agency Service' in terms of the Notification No. 30/2012-S.T., dated 20-6-2012.

2. *The facts of the case are that in the month of July 2012 the appellant availed the Service of 'Manpower Recruitment Service' and as per Notification No. 30/2012-S.T., dated 20-6-2012, the appellant was required to pay 75% of the Service Tax and the supplier was required to pay 25% of the Service Tax. In one case, the appellant did not pay Service Tax and supplier also did not pay Service Tax. On pointing out by the Revenue, the appellant immediately paid Service Tax and in one case the supplier itself has paid 100% Service Tax instead of 25% Service Tax and the appellant did not pay Service Tax. Therefore, a case has been booked against the appellant demanding Service Tax in terms of Notification No. 30/2012-S.T., dated 20-6-2012 @ 75% of the Service Tax on the value of manpower recruitments service received by them. Aggrieved by the said order, the appellant is before me.*

3. *The Ld. Counsel for the appellant submitted as the supplier of the service, itself has paid 100% Service Tax, therefore, no demand is sustainable against the appellant as the whole Service Tax on the said service has already recovered by the Revenue and no double tax can be demanded from the appellant.*

3. *To support his contention, he relied on the decision of this Tribunal in the case of Omeri India Pvt. Ltd. vide Order No. A/13212/2017, dated 12-10-2017 by CESTAT, Ahmedabad.*

4. *On the other hand, the Ld. AR reiterated findings of the impugned order.*

5. *Heard the parties and considered the submissions.*

6. *I find that as per Notification No. 30/2012-S.T., dated 20-6-2012 there is no dispute that the appellant was required to pay 75% of the Service Tax on 'Manpower Recruitment Agency Service' availed. For the initial period, on pointing out by the Revenue the appellant immediately paid Service Tax. In that circumstance, the said demand is not sustainable against the appellant. For the another invoice on which the appellant did not pay Service Tax but the service provider paid the 100% of Service Tax. In that circumstance, the appellant is not required to pay 75% of the Service Tax in terms of Notification No. 30/2012-S.T., dated 20-6-2012. I also observed that if the payment has made by the appellant, the same shall become double taxation against the appellant which is not permissible in the law. In that circumstance, the demand of Service Tax in terms of Notification No. 30/2012-S.T., dated 20-6-2012 is not sustainable against the appellant.*

7. *In the result, the impugned order is not sustainable, therefore, the same is set aside, therefore, the appeal is allowed."*

- *Nagraja Printing Mills Vs. Commissioner of Central Excise, Salem-2010 (19) STR 828 (Tri.-Chennai)*

"The assessee herein contend that the entire Service tax amount of Rs. 3,052/- confirmed against them on the ground that they were the 'consignee' and hence liable to pay Service tax on GTA services, has already been paid by the GTA to whom the assessee made payment along with freight. This submission is borne out by documentary evidence. The lower appellate authority before whom this plea was raised has not controverted the submission of payment of tax by the GTA. In the circumstances, I agree with the assessee that the present demand against them cannot be sustained, as it would amount to double payment, set aside the impugned order and allow the appeal."

- *General Manager, J.K. Sugar Ltd. Vs. Commissioner of C. Ex., Meerut-II-2016 (43) STR 292 (Tri.-All)*

5. *Having considered the rival contentions, I find that under the scheme of the Act, under Section 68(1), it is provided that every person providing taxable service to any person shall pay service tax at the rate specified in Section 66, in such manner and within such period as may be prescribed. Further in sub-section (2) of Section 68 it is provided that notwithstanding anything contained in sub-section (1), in respect of such taxable services as may be notified (with effect from 1-7-2012) by the Central Govt., in the official Gazette, the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified and all the provisions of this chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service. I find that the words "in respect of such taxable service as may be notified", have been inserted in sub-section (2) with effect from 1-7-2012 by the Finance Act, 2012. Thus I hold that prior to 1-7-2012, under the provisions of Section 68(1), the tax already has been deposited by the GTA in the facts of the present case. I further hold that Rule 2(1)(d)(v) of Service Tax Rules does not override the provisions of the Act. Moreover I find that it has been clarified by C.B.E. & C. in Circular No. 97/8-2007-S.T., dated 23-8-2007 - clarifying that service tax may be paid either by the consignee or by the consignor or by the GTA, where the consignee is a manufacturer and the service in question*

is input service for them, in such case manufacturer would be eligible to take the Cenvat credit of the same. Accordingly I hold that the appellant have taken Cenvat credit in accordance with law. I further find that invoice is a prescribed document under Rule 9(1)(f) of Cenvat Credit Rules, 2004 on which credit can be taken. Accordingly I set aside the impugned order and allow the appeal. The appellant will be entitled to consequential benefit, if any, in accordance with law."

- Commissioner of Service Tax, Meerut-II Vs. Geeta Industries Pvt. Ltd.-2011 (22) STR 293 (Tri.- Del.)

"Revenue came in appeal because the service recipient of Goods Transport Agency has not paid the service tax while the transporter itself had paid the service tax. This appeal is to realize service tax from the recipient itself.

2. *Learned DR is praying for reversal of the order of the learned first appellate authority. Learned Counsel support the order of the learned Commissioner (Appeals).*

3. *Heard both sides and perused the record.*

4. *There is no dispute that service in question has suffered tax. The only dispute is the person who shall pay the service tax. When the treasury has not been affected by virtue of collection of service tax from the service provider as is the case of the Revenue and there is no legal infirmity in the decision of the learned Commissioner (Appeals) there cannot be double taxation of same service. But it is fact that realization of the service tax has been made from the service provider while the recipient of service of GTA has liability under the law. Finding no loss of revenue, as has been held by the learned Commissioner (Appeals), Revenue's appeal is dismissed."*

4.2 In view of the above judgments it has been settled that once the service provider discharged the service tax where the service recipient is liable to pay the service tax, demand of service tax on the same service from the service recipient shall not sustain on the ground that the particular service which already suffered the service tax cannot be suffer the service tax twice on the same service. Accordingly, the service tax paid by the transport agency in the facts of the present case is the payment of service tax and not deposit. Therefore, no demand can be raised from the appellant, for the same reason once the amount paid by the transport agency being service tax amount, the appellant is eligible for cenvat credit.

5. Accordingly, on both the count the impugned order is not sustainable. Hence, the same is set aside. Appeal is allowed.

(Pronounced in the open court on 11.10.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)

Geeta