IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Service Tax Appeal No. 76924 of 2019

(Arising out of Order-in-Original No. Commr./BBSR/ST/03/2019 dated 02.05.2019 passed by Commissioner of CGST & Central Excise, Bhubaneswear.)

M/s Laxmi Narayan Transport,
130, Bank Street, Jajpur Road, Jajpur-755019.

...Appellant (s)

VERSUS

Commissioner of CGST & Central Excise, Bhubaneswar.
Central Revenue Building, Rajaswa Vihar, Bhubaneswar-751007.

. ..**Respondent(s)**

APPERANCE :
Shri Jnanesh Mohanty & Ms. Shreya Mundhra, both Advocates for the Appellant
Shri S. S. Chattopadhyay, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)

FINAL ORDER No...76709/2023

DATE OF HEARING : 06.09.2023

DATE OF PRONOUNCEMENT: 21.09.2023

PER K. ANPAZHAKAN :

The primary issue involved in the present appeal pertains to classification of service, whether the services provided by the Appellant qualify as "cargo handling services" as contended by the Revenue or "Goods transport agency services" as contended by the Appellant.

2. Briefly stated facts of the case are that the Central Preventive unit(CPU) of Central Excise and GST Commissionerate, Bhubaneshwar, initiated an investigation against the Appellant, M/s Laxmi Narayan Transport, on the allegation that they have failed to discharge Service tax on the services provided to M/s. Sanjay Sahani Transport Agency (P.) Ltd. (SSTAPL) and M/s. Jindal Stainless Limited (JSL).

3. The transactions undertaken by the Appellant during the period under dispute can be divided into two categories:

Period – April 2012 to December 2014

3.1. During the period April 2012 to December 2014, M/s. SSTAPL was engaged by M/s. JSL for providing transportation services to M/s. JSL. M/s. SSTAPL, on whom work order was placed by M/s. JSL, outsourced the said service from the Appellant, by placing separate work orders stipulating the terms and conditions there in. The Work orders placed by M/s. SSTAPL to the Appellant was meant for 'Rake handling at Sukinda Railway station & Transportation of the same material from Sukinda railway siding to Jindal Stainless Limited at KNIC, Duburi, Orissa.

3.2. After successful completion of the job and necessary certification by M/s. JSL, the Appellant raised invoices on M/s. SSTAPL for "Transportation and Unloading of Coal from Sukinda Railway Siding to JSL, KNIC". The Appellant did not issue any 'Consignment Note' in the name of the consignee M/s. JSL. After loading of the goods into the Rakes, consignment notes containing all the necessary particulars were issued by M/s. SSTAPL in the name of M/s. JSL, the consignee. Service tax as applicable was duly discharged under reverse charge by M/s. JSL on the GTA Service.

Period – January 2015 to March 2017

3.3. The Appellant started providing Goods transport agency services directly to M/s. JSL w.e.f. January, 2015. 'Consignment notes' were issued for such GTA service provided by the Appellant to M/s. JSL and invoices were duly raised. Service tax under reverse charge was duly discharged by M/s. JSL on the GTA service. The Work order No. JSL/OPN/TRTP/LNT/DEC/1/2014-15 dated 02.12.2014 stipulates the scope of work as handling with transportation of inward and outward rake cargo from Sukinda and Jakhapura railway sidings to JSL plant and vice versa. The Work order No. JSL/OPN/TRPT/LNT/NOV/12/2015-16 dated November 5, 2015 stipulates the scope of work as transportation with handling of inward and outward rake cargo from JSL railway sidings to its plant and vice-versa. The contract charges are cumulative

on per metric tonne basis. Service tax thereon is liable to be paid by JSL.

4. A Show Cause Notice dated February 14, 2018 was issued to the Appellant demanding Service tax of Rs.3,16,39,804/- along with interest and penalty for the period 2012-13 to 2016-17, by invoking extended period of limitation. The said demand was computed on the basis of TDS Certificates in form 26AS issued by the Income tax department. The said Notice was adjudicated by the Commissioner vide impugned order dated 02.05.2019, wherein the demand of service tax made in the notice was confirmed along with interest and penalty, by classifying the service rendered by the Appellant as 'Cargo handling service'. Aggrieved against the impugned order, the Appellant has filed the present appeal.

5. In their grounds of appeal, the Appellant stated that they have provided bundled service to their clients. The impugned order has failed to appreciate the nature of bundled service provided to the recipients in terms of the work Orders issued to them. A perusal of the Work Orders clearly establishes that goods transport was the principal service and all other elements of the contracts are incidental and ancillary to the principal service. Applying the test of essentiality as set out under Section 66F(3)(a) of the Finance Act, 1994 ('the Act') the naturally bundled composite contract would be essentially for goods transportation service and not for Cargo handling service.

6. In support of their claim. the Appellant relied on the Board Circular No. 104/07/2008-S.T. dated 6-8-2008, wherein it has been clarified as under:

> *"3. Issue: GTA provides service to a person in relation to transportation of goods by road in a goods carriage. The service provided is a single composite service which may include various intermediary and ancillary services such as loading/unloading, packing/unpacking, transshipment, temporary warehousing. For the service provided, GTA issues a consignment note and the invoice issued by the GTA for providing the said service includes the value of intermediary and ancillary services. In such a case, whether the intermediary or ancillary activities is to be treated as part of GTA service and the abatement should be extended to the charges for such intermediary or ancillary service?*

Clarification: GTA provides a service in relation to transportation of goods by road which is a single composite service. GTA also issues consignment note. The composite service may include various intermediate and ancillary services provided in relation to the principal service of the road transport of goods. Such intermediate and ancillary services may include services like loading/unloading, packing/unpacking, transhipment, temporary warehousing etc., which are provided in the course of transportation by road. These services are not provided as independent activities but are the means for successful provision of the principal service, namely, the transportation of goods by road. The contention that a single composite service should not be broken into its components and classified as separate services is a well-accepted principle of classification. As clarified earlier vide F.No. 334/4/2006-TRU dated 28-2-2006 (para 3.2 and 3.3) and F. No. 334.1/2008-TRU dated 29-2-2008 (para 3.2 and 3.3), a composite service, even if it consists of more than one service, should be treated as a single service based on the main or principal service and accordingly classified. While taking a view, both the form and substance of the transaction are to be taken into account. The guiding principle is to identify the essential features of the transaction. The method of invoicing does not alter the single composite nature of the service and classification in such cases are based on essential character by applying the principle of classification enumerated in section 65 A. Thus, if any ancillary/intermediate service is provided in relation to transportation of goods, and the charges, if any, for such services are included in the invoice issued by the GTA, and not by any other person, such service would form part of GTA service and, therefore, the abatement of 75% would be available on it."

7. The Appellant also cited the Board Circular No. 186/5/2015-ST dated 05-10-2015 on similar lines. The clarifications cited above clearly establishes that when a composite contract is entered into between parties for transportation service including various intermediate or ancillary services provided in relation to the principal service of road transport of goods such as loading/unloading, packing/unpacking, transhipment etc., which are provided in the course of transportation, such contract cannot be vivisected. It will be treated as a contract for transportation only as the other services are naturally bundled together with the principal service of transportation.

8. The Appellant also relied on the following rulings in support of their contention:

- *DRS Logistics Pvt. Ltd. v. Commissioner 2017 (7) GSTL 352 (Tri.-Del) as affirmed by the Hon'ble Supreme Court in 2018 (18) GSTL J172 (SC)*

- *Maa Kalika Transport Private Limited v. Commissioner 2023 (8) Centax 273 (Tri.-Cal)*
- *Commissioner v. Arvind Singh Lal Singh 2017 (48) STR 63 (Tri.-Del)*
- *Gulshan Verma v. Commissioner 2017 (5) GSTL 47 (Tri.-Chan)*
- *Khandelwal Transport v. Commissioner 2019 (22) GSTL 102 (Tri.-Mum)*
- *CCE Ranchi v. HEC Ltd. 2018 (9) GSTL 403 (Tri.-Kolkata)*

9. Accordingly, by relying on the Board Circulars and the decisions cited above, they submitted that the Work Orders issued to the Appellant are essentially meant for transportation of goods and other activities are naturally bundled along with this principal service. Once the services rendered are classified as GTA Service, the liability of payment of service tax on these services was not on the Appellant, but on the service recipient. In the present case, it is an undisputed fact that the service recipient has duly discharged the Service tax as applicable thereon. Thus, the demand confirmed vide the impugned order is liable to be set aside.

10. The Appellant further submits that in respect of the services provided to SSTAPL, it is evident from the clauses in each Work order issued to the Appellant by SSTAPL and the invoices issued by the Appellant signify that the services fall under the category of Goods transportation and not Cargo handling service. However, since the consignment note in the present case has been issued by SSTAPL on JSL and not the Appellant, the said service qualifies as services of transportation falling under the negative list entry – Section 66D(p) *"services by way of transportation of goods (i) by road except the services of – (A) a goods transportation agency".* Thus, the said service duly qualifies under the negative list and lies outside the ambit of Service tax.

11. The Appellant submits that a composite contract cannot be vivisected artificially as intended in the impugned Order. In respect of Work Orders issued by SSTAPL, the activities like loading, unloading, obtaining delivery orders etc. are incidental or ancillary to the activity of transportation. The Work orders are composite ones and have not provided any separate charges for these activities. Thus, such composite contract cannot be vivisected to arrive at the value of service

for each activity artificially. Similarly, for the Work Order dated November 5, 2015, which is essentially for undertaking the activity of transportation along with loading and unloading, no vivisection has been made. Therefore, reliance placed on the clauses of one Work Order dated December 2, 2014 for all the transactions entered into by the Appellant and the finding that the activity of transportation is incidental to the activity of loading and unloading vide the impugned order is grossly untenable. The essence of the arrangement is to provide transportation services and not cargo handling and the breakup has been merely provided for the sake of convenience. The invoices raised on JSL are also composite in nature. In view of the same, the finding vide the impugned order is liable to be set aside.

12. Thus, by relying on the Board Circulars and the decisions cited above, they submitted that the Work orders are essentially meant for transportation of goods therefore, no Service tax is payable by them under the head 'cargo handling service'.

13. Service tax on the transaction has already been discharged by the recipient, i.e., JSL. Therefore, any subsequent liability at the end of the Appellant is grossly unjust and the impugned order is liable to be set aside for this reason as well. Thus, once the departmental authorities have accepted the payment made and raised no dispute thereon, subsequent liability on the said value of services at the end of the Appellant tantamounts to double tax, which is grossly untenable. Reliance in this regard is placed on ***Shokat Ali v. Commissioner 2019 (28) GSTL 63 (Tri.-Del).***The impugned order is liable to be set aside for this reason as well.

14. The Appellant also stated that the demand computed on the basis of Form 26AS is grossly untenable in as much as it considers receipts and is not based on the value of services provided, which is taxable under Service tax. The impugned order is liable to be set aside on this ground as well.

15. The Appellant further stated that extended period of limitation is not invocable in this case. They submitted that audit of the Appellant was duly conducted by the authorities for the FY 2012-13 to 2013-14

and concluded vide Audit report dated July 27, 2015, wherein the issue in dispute was not raised. Thereafter, the CPU authorities undertook investigation took a different view by classifying the impugned services under cargo handling service. It is a settled position of law that the authorities subsequently cannot adopt a different view once a view has already been accepted during the audit proceedings. Reliance in this regard is placed on *Commissioner v. MTR Foods Ltd. 2012 (282) E.L.T. 196 (Kar.).*In view thereof, it is submitted that the authorities were aware of the facts and that no suppression was undertaken by the Appellant.

16. In view of the above submissions, the Appellant prayed for setting aside the demands confirmed in the impugned order.

17. The Ld. A.R. reiterated the findings in the impugned order.

18. Heard both sides and perused the appeal records.

19. We observe that the dispute in the present appeal revolves around the issue as to whether the services provided by the Appellant qualify as "cargo handling services" as contended by the Revenue or "Goods transport agency services" as contended by the Appellant. From the records of the case, we find that during the period April 2012 to December 2014, the appellant was engaged by M/s. SSTAPL as a sub-contractor to provide transportation service to M/s. JSL and for the period January 2015 to March 2017, the Appellant started providing Goods transport agency services directly to M/s. JSL. During both the periods, M/s JSL has paid service tax under GTA service as recipient of service. The contention of the department is that service tax is liable to be paid under 'Cargo handling service' by the Appellant and not by M/s JSL under GTA service. Thus, the Work Orders received by the Appellant from M/s SSTAPL and M/s JSL has to be analysed separately to determine the nature of the service rendered by the Appellant during these periods.

20. The Appellant claimed that the Work orders placed by M/s. SSTAPL was meant for 'Rake handling at Sukinda Railway station & Transportation of the same material from Sukinda railway siding to Jindal Stainless Limited at KNIC, Duburi, Orissa. We observe that the

scope of work as per the Work order dated October 15, 2011, placed by M/s.SSTAPL with the Appellant entails the following:

- Liasioning with railway authorities / SSTAPL representative to get prior intimation about arrival of material rake for JSL, Collection of RR & weighment list, Supervision of volumetric assessment, offloading of material from wagon, cleaning of wagon & removing the material from railway track, heaping the same by P.Loader at railway siding and release of wagons without any wharfage or demurrage and loading of trucks at siding.
- Transportation of material to the pre-designated area of JSL plant at KNIC, Duburi after weighment at JSL Weigh bridge and unloading at such specified area in proper stacks/heaps/bins as directed by JSL.
- Covering the loaded trucks with Tarpaulin, proper tyeing at all corners so as to avoid any en-route pollution and spillage, compliance for obtaining and submission of road permit, undertaking required liasioning with local public enroute to ensure smooth movement of cargo, maintain proper record of trucks loaded and unloaded at JSL site.
- The contract value is on per metric tonne basis. Service tax thereon is liable to be paid by JSL. The bills were to be submitted rake wise on fortnightly basis.
- The Appellant has to enclose consignment note of SSTAPL for making entry of the trucks carrying cargo into JSL premises.

21. A perusal of the nature of the work performed by the Appellant to SSTAPL, as per the Work Order details referred above reveals that it is primarily transportation of the material from Sukinda railway siding to Jindal Stainless Limited at KNIC, Duburi, Orissa. All other works performed by the Appellant as per the work order such as Liasioning with railway authorities / SSTAPL representative to get prior intimation about arrival of material rake for JSL, Collection of RR & weighment list, Supervision of volumetric assessment, offloading of material from wagon, cleaning of wagon & removing the material from railway track, heaping the same by the Loader at railway siding and release of wagons without any wharfage or demurrage and loading of trucks at siding,

were incidental or ancilliary to the principal work of transportation of the material

22. We find that after successful completion of the job and necessary certification by M/s. JSL, the Appellant raised invoices on M/s. SSTAPL for "Transportation and Unloading of Coal from Sukinda Railway Siding to JSL, KNIC". The Appellant did not issue any 'Consignment Note' in the name of the consignee M/s. JSL. After loading of the goods into the Rakes, 'Consignment notes' were issued by M/s SSATPL to M/s. JSL, the consignee. Service tax as applicable was duly discharged under reverse charge by M/s. JSL on the GTA Service. It is evident from the clauses in each of the Work order issued to the Appellant by SSTAPL that the services fall under the category of Goods transportation and not Cargo handling service. However, since the consignment note in the present case has been issued by SSTAPL on JSL and not the Appellant, the said service qualifies as services of transportation falling under the negative list entry – Section 66D(p) *"services by way of transportation of goods (i) by road except the services of – (A) a goods transportation agency".* Thus, we hold that the said service rendered by the Appellant to SSTAPL duly qualifies under the negative list and lies outside the ambit of Service tax. Accordingly, we hold that appropriate service tax in this case has been rightly paid by the consignee under GTA service as recipient of service. Hence the demand raised on the Appellant under 'Cargo handling service' during the period April 2012 to December 2014 is not sustainable.

23. During the period January 2015 to March 2017, the Appellant started providing the services directly to M/s. JSL w.e.f. January, 2015. The Appellant issued 'Consignment notes' to M/s. JSL and invoices were raised directly to M/s.JSL**.** Service tax under reverse charge was duly discharged by M/s. JSL on the GTA service.

24. We observe that the Work order No. JSL/OPN/TRTP/LNT/DEC/1/2014-15 dated 02.12.2014, issued by M/s JSL to the Appellant stipulates the scope of work as handling with transportation of inward and outward rake cargo from Sukinda and

Jakhapura railway sidings to JSL plant and vice versa. The said scope encapsulates as follows:

- Proper coordination with railway authorities/JSL Executives to get prior intimation about inward and outward rakes for JSL, receive rake placement memo and submit the same for loading/unloading/cargo shifting, collection of RR, rake/wagon unloading/loading work, remove material from railway track.
- Depute sufficient number of vehicles and transport the inward / outward rate cargo from JSL railway siding to JSL plant site or vice versa including loading and unloading of vehicles at both ends, cover vehicle for rake cargo transportation properly to ensure no en-route theft and pilferage.
- Undertake safety and security norms, immediate reconciliation of vehicles after shifting completion of every rake, compliance for obtaining and submission of road permit.
- The contract charges are bifurcated for handling and transportation on per metric tonne basis. Service tax thereon is liable to be paid by JSL. The rake wise bill is to be submitted on weekly basis.

25. From the Work order details furnished above we observe that the principal work is related to transportation with handling of inward and outward rake cargo from JSL railway sidings to its plant and vice-versa. The contract charges are cumulative on per metric tonne basis. The rake wise bill is to be submitted on weekly basis.

26. We observe that Board has issued Circular No. 186/5/2015-ST dated 05-10-2015, clarifying the issue, which is reproduced below:

> *"3. Goods Transport Agency (GTA) has been defined to mean any person who provides service to a person in relation to transport of goods by road and issues consignment note, by whatever name called. The service provided is a composite service which may include various ancillary services such as loading/unloading, packing/unpacking, transshipment, temporary storage etc., which are provided in the course of transportation of goods by road. These ancillary services may be provided by GTA himself or may be sub-contracted by the GTA. In either case, for the service provided, GTA issues a consignment note and the invoice issued by the*

> *GTA for providing the said service includes the value of ancillary services provided in the course of transportation of goods by road. These services are not provided as independent activities but are the means for successful provision of the principal service, namely, the transportation of goods by road.*
>
> *4. A single composite service need not be broken into its components and considered as constituting separate services, if it is provided as such in the ordinary course of business. Thus, a composite service, even if it consists of more than one service, should be treated as a single service based on the main or principal service. While taking a view, both the form and substance of the transaction are to be taken into account. The guiding principle is to identify the essential features of the transaction. The interpretation of specified descriptions of services in such cases shall be based on the principle of interpretation enumerated in section 66 F of the Finance Act, 1994. Thus, if ancillary services are provided in the course of transportation of goods by road and the charges for such services are included in the invoice issued by the GTA, and not by any other person, such services would form part of GTA service and, therefore, the abatement of 70%, presently applicable to GTA service, would be available on it."*

27. We observe that the clarifications cited above clearly establishes that when a composite contract is entered into between parties for transportation service including various intermediate or ancillary services provided in relation to the principal service of road transport of goods such as loading/unloading, packing/unpacking, transhipment etc., which are provided in the course of transportation, such contract cannot be vivisected. It will be treated as a contract for transportation only as the other services are naturally bundled together with the principal service of transportation.

28. The Appellant has relied upon various decisions in support of their contention that a single contract cannot be vivisected for the purpose of demanding service tax. We find that the decisions cited by the Appellant supports their case.

29. Another point raised in the impugned order is that separate charges have been given for the GTA service and other facilitation works performed by the Appellant in the Work orders. We observe that the charges are indicated separately only for the sake of convenience. This will not change the nature of service performed. In this regard, the Appellant relied on the decision in the case of ***Naresh Kumar & Co. Pvt. Ltd. v. Commissioner 2023 (6) TMI 304 - CESTAT Kolkata*** wherein it was held that:

> *"The scope of the work order has to be read and interpreted in the context in which it has been awarded and the specification of separate rates for each sub-*

> *activity would not render each sub-activity to be a different taxable service.* ***Therefore, separate rates for the various intermediate activities for carrying out this composite service have been provided in the work order. We therefore hold that stand of the Revenue is flawed in treating each sub-service/activity as a separate taxable service, based on separate rates for each of them, without ascertaining the essence of the contract."***

30. Another finding in the the impugned order is that Service tax has been discharged by the Appellant under 'Cargo handling service' in all cases except where JSL. We find this observation is basisially flawed. The nature of services provided by them to each client has to be examined with respect to each work order separately. In the present case, the services provided by the Appellant to their other clients such as M/s. Maithan Ispat, Visa Steel and Bhushan Steel comprised of only handling charges and not transportation. Thus, the finding vide the impugned order that Service tax has been discharged in all cases except where JSL is involved is distinguishable on facts itself and therefore grossly incorrect.

31. In view of the above findings, we hold that the service provided by the Appellant during the period January 2015 to March 2017, directly to M/s. JSL w.e.f. January, 2015, was GTA service and not 'Cargo Handling service'. Accordingly, we hold that the Appellant is not liable to pay service tax under the category of 'Cargo handling service' and service tax on the said GTA service has been rightly paid by the recipient M/s. JSL. Hence, the demand confirmed against the Appellant for this period is not sustainable.

32. The Appellant has raised the issue of limitation also. The Appellant submitted that audit was duly conducted by the authorities for the FY 2012-13 to 2013-14 and the issue in dispute was not raised. Thereafter, the CPU authorities undertook investigation took a different view by classifying the impugned services under cargo handling service. We observe that it is a settled position of law that the authorities subsequently cannot adopt a different view once a view has already been accepted during the audit proceedings. Thus, we hold that there is no suppression of fact involved in this case and hence the demand confirmed by invoking extended period of limitation is not sustainable.

Accordingly, we hold that the demand confirmed in the impugned order is liable to be set aside on the ground of limitation also.

33. In view of the above discussion, we hold that the service rendered by the Appellant to M/s SSTAPL as a sub-contractor as well as M/s JSL directly, was transportation of goods service and not cargo handling service. Accordingly, we set aside the demand confirmed in the impugned order under 'cargo handling service' on merit as well as on limitation. Since, the demand itself is not sustainable the question of demanding interest and imposing penalty does not arise.

34. In view of the above discussion, we allow the appeal filed by the Appellant.

(Pronounced in the open court on. 21.09.2023.…)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

Tushar Kr.