

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.238 of 2011

(On behalf of Appellant)

(Arising out of Order-in-Original No.11/S.Tax/Commr./2011 dated 30.03.2011 passed by Commissioner of Central Excise & Service Tax, Jamshedpur)

M/s Usha Martin Limited (Appellant No.1)

Adityapur Industrial Area, Gamharia, Dist.-Saraikella, Pin-832108

Appellant

VERSUS

**Commissioner of Central Excise, Customs & Service Tax,
Jamshedpur**

143, New Baradwari, Sakchi, Jamshedpur-831001

Respondent

WITH

Service Tax Appeal No.307 of 2011

(On behalf of Appellant)

(Arising out of Order-in-Original No.11/S.Tax/Commr./2011 dated 30.03.2011 passed by Commissioner of Central Excise & Service Tax, Jamshedpur)

M/s Bhadoria Transport Company (Appellant No.2)

1st Floor, Holiday Inn Plaza, Tata Kandla Main Road, Adityapur, Jamshedpur

Appellant

VERSUS

**Commissioner of Central Excise, Customs & Service Tax,
Jamshedpur**

143, New Baradwari, Sakchi, Jamshedpur-831001

Respondent

APPEARANCE :

Dr.Samir Chakraborty, Sr.Advocate, Shri Arvind Baheti, Chartered Accountant & Shri Abhijit Biswas, Advocate for the Appellant

Shri Mihir Ranjan, Special Counsel for the Respondent

CORAM:

HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO...77154-77155/2023

DATE OF HEARING : 21.09.2023

DATE OF DECISION : 21.09.2023

Per Ashok Jindal :

Both the appeals are arising out of a common order, therefore, both are disposed off by a common order.

2. The facts of the case are that M/s Bhadoria Transport Company (Appellant No.2) was in business of transport of goods and during the impugned period, the Appellant No.2 entered into a contract and received work orders from Appellant No.1, M/s Usha Martin Limited, Gamharia, Jharkhand. The works undertaken for Appellant No.1 was transport of goods along with loading and shifting of materials from the Private Railway Siding to Stacking Yard. The Appellant No.2 was carrying out the aforesaid services and registered themselves as provider of Goods Transport Agency (GTA) Services and the Appellant No.1 was paying the service tax under the category of GTA service. The Appellant No.1 paid the service tax until May, 16, 2008 and where after, as per DGCEI and on direction of Appellant No.1, the Appellant No.2 paid the service tax under the category of Cargo Handling Service.

2.1 Pursuant to investigation carried out by DGCEI, a show-cause notice dated 23.04.2010 was issued for the period 1st October, 2004 to 31st March, 2009 alleging that during the impugned period, the Appellant No.2 has provided the services of loading and unloading of railway wagons along with transportation in some cases under composite work orders received from Appellant No.1, which allegedly were taxable under Cargo Handling Service w.e.f. 01.01.2005 and not under GTA service to Appellant No.1, on which allegedly service tax was payable, but not paid, except to the extent stated in the show-cause notice and thereafter, the Appellant No.1 has allegedly evaded

payment of service tax in contravention of the provisions of the Act by way of collusion, mis-statement etc. and thereafter, adjudication took place and the demand of service tax was confirmed against the Appellant No.1 and on Shri Dharamvir Bhadoria, Partner and penalty on the Appellant No.1 was also imposed.

2.2 Against the said order, the Appellants are before us.

3. The Id.Counsel for the Appellant No.2, submits that the service rendered by the Appellant No.2 to Appellant No.1, are correctly classifiable under GTA Service. He submits that from the work orders/contract, the main activity thereunder was the transportation of goods and other services, namely, loading and unloading, handling stacking and watching, were incidental to and formed an inextricable part of work of the main activity of transportation of the subject goods by road/rail through goods carrier. Therefore, the composite service, which consisted various ancillary services, such as, loading/unloading, packing/unpacking, transshipment, temporary warehousing etc., is GTA service in terms of the clarification of CBEC Board by Circular No.104/07/2008-ST dated 06.08.2008. He also relied on the decisions of this Tribunal in the case of DRS Logistics Private Limited Vs. Commissioner of Service Tax reported in 2017 (7) GSTL 352 (T), which has been affirmed by the Hon'ble Apex Court as reported in 2018 (18) GSTL J172 (SC). He also submits that the demands are also barred by limitation.

4. On the other hand, the Id.Special Counsel for the Revenue, supported the impugned order and submits that the adjudicating authority has held that the composite contract should not be broken into its components and classified separately. Therefore, the main provision is loading and un-loading and therefore, the merits classification is Cargo Handling Service.

5. Heard both the parties and considered the submissions.

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6. As per the work orders, the main activity is transportation of goods. One of the contract is extracted herein below for better appreciation :


usha martin
Usha Martin Limited

(Usha Alloys & Steels Division)

Post Box 147, Jamshedpur 831 001, India

Phone : (0657) 2407231/2233/356, 2408911, 2409074

Fax : (0657) 2200504

 Internet : www.ushamartin.com

 Email : nprasad@ushamartin.co.in

3A2

UMI/NP/TGS/J/5129/04 (Amendment – 4)

21.01.2005

M/s Bhadoria Transport Company,
M-9 (Old), Adityapur,
Jamshedpur – 831 013.

Dear Sir/s,

Sub: Our Order No: J/5129/03 dtd. 20/03/2004 for **Transportation of Material from Goods Despatch Yard (GDY)**

Please refer to our discussions regarding the above subject, and we are pleased to award the above transportation contract as per the following terms & conditions:

Scope : Transportation of our following materials from Goods Despatch Yard (G.D.Y.) to our Works as mentioned below:
Validity : 09/11/2004 to 31.03.2005
Rate : As mentioned below:

Sl. No	Rate applicable	Iron ore/ Dolomite/ Limestone etc.	Coal	Coke
1.	If Rake quantity cleared in One day	Rs.73.00 PMT	Rs. 80.00 PMT	Rs. 109.00 PMT
2.	If Rake quantity cleared in Two days	Rs 70.00 PMT	Rs. 75.00 PMT	Rs. 102.00 PMT
3.	If Rake quantity cleared in Three days	Rs 67.00 PMT	Rs. 72.00 PMT	Rs. 99.00 PMT
4.	If Rake quantity cleared in >Three days	Rs 65.00 PMT	Rs. 70.00 PMT	Rs. 96.00 PMT

- Note :**
- Above rates are based on considering 24 Hour operation at GDY Siding. Further, in order to cope up with the increased movement of additional quantity of Raw Material through Railway Siding, you will have to deploy minimum 30 vehicles (Dumpers / Trucks) on regular basis.
 - In case the no. of trips in a day (from 6.00 AM to 6.00 AM) from GDY & TGS the following incentive given to you as per details given below :-
 - ◆ If the No. of trips in a day up to 49 Trips = Nil
 - ◆ If the No. of trips in a day from 50 to 99 Trips = Rs. 2/= Per MT
 - ◆ If the No. of trips in a day from 100 Trips and above = Rs. 5/= Per MT
 However this incentive will be available for lesser no. of trips/per day also if there is no left over material at TGS & GDY on these days. ~~This amendment is applicable w.e.f. 09/11/2004.~~
 The time allowed for shifting of Coke shall be 2 days for Stage-1, 3 days for Stage-2, 4 days for Stage-3 and more than 4 days for Stage-4 rates.

WORKS : PHASE V, ADITYAPUR INDUSTRIAL AREA, GAMHARIA, DIST. SARAIKELLA, PIN 832108, JHARKHAN
REGISTERED OFFICE : "MANGAL KALASH", 2A SHAKESPEARE SARANI, KOLKATA-700 071
PHONE : 2282-5441 / 5484 / 41 / 45 / 6739, FAX : (033) 2282-5306 / 2296 / 3866

On going through the said contract, the scope of the work is transport of their materials from Goods Despatch Yard to their Works issued by Appellant No. (1) to Appellant No. (2). It is clear from the works itself that the main activity of the Appellants is transportation of materials, not loading and un-loading and transportation is the main service.

7. In that circumstances, we hold that as the main activity of the appellants is transportation of goods, therefore, merits classification of the above said service in question is Goods Transport Service. Therefore, the demand under Cargo Handling Service is not sustainable, hence, whole of the demand confirmed against Appellant No.(2) is set aside and consequently, the penalty imposed on the appellants are also set aside.

8. In view of this, the appeals are allowed with consequential relief, if any.

(Operative part of the order was pronounced in the open Court)

Sd/-
(Ashok Jindal)
Member (Judicial)

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