

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH - COURT NO.III

Service Tax Appeal No.51215 of 2018 (DB)

(Arising out of Order-in-Appeal No.207-10(SRM)ST/JDR/2018 dated 22.02.2018 passed by the Commissioner (Appeals), Central Excise & CGST, Jodhpur]

M/s. Vaishnav Marbles Private Limited

Appellant

G-41-42, RICCO Industrial Area,
Chittorgarh (Rajasthan)-312 001.

Versus

**Commissioner of Central Excise and
Central Goods and Service Tax,**

Respondent

142-B, Hiran Magri, Sector-11,
Udaipur (Rajasthan)-313 001.

WITH

Service Tax Appeal No.51216 of 2018 (DB)

(Arising out of Order-in-Appeal No.207-10(SRM)ST/JDR/2018 dated 22.02.2018 passed by the Commissioner (Appeals), Central Excise & CGST, Jodhpur]

M/s. Lalit Marmo & Granites Pvt. Ltd.

Appellant

E-1, RICCO Industrial Area,
Chittorgarh (Rajasthan)-312 001.

Versus

**Commissioner of Central Excise and
Central Goods and Service Tax,**

Respondent

142-B, Hiran Magri, Sector-11,
Udaipur (Rajasthan)-313 001.

AND

Service Tax Appeal No.52465 of 2018 (DB)

(Arising out of Order-in-Appeal No.207-10(SRM)ST/JDR/2018 dated 22.02.2018 passed by the Commissioner (Appeals), Central Excise & CGST, Jodhpur]

M/s. Sai Nath Natural Stones Pvt. Ltd.,

Appellant

F-112, RIICO Industrial Area,
Chittorgarh (Rajasthan)-312 001.

Versus

**Commissioner of Central Excise and
Central Goods and Service Tax,**142-B, Hiran Magri, Sector-11,
Udaipur (Rajasthan)-313 001.**Respondent****APPEARANCE:**

Ms. J. Kainat, Advocate for the Appellant

Ms. Jaya Kumari, Authorised Representative for the Respondent

CORAM:**HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)****HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)****FINAL ORDER NOs.55719-55721/2024****DATE OF HEARING: 15.04.2024****DATE OF DECISION: 30.04.2024****BINU TAMTA:**

1. Separate appeals have been filed against the order-in-appeal no.207-10 (SRM)ST/JDR/2018 dated 22.02.2018 by the appellants, namely M/s Vaishnav Marbles Pvt. Ltd., M/s Sai Nath Natural Stones and Lalit Marmo & Granites holding them liable to pay service tax under Reverse Charge Mechanism (RCM) under 'Goods Transport Agency' (GTA).

2. The appellants are engaged in the manufacture of marble slab and tiles for which they obtain marble blocks from various mines and also engage individual transporters and truck owners for transportation of marble blocks. Various show cause notices have been issued by the Department for the period 2005 to 2015 proposing demand of service tax under the category of GTA services. On adjudication, the demand has been confirmed. The appeal filed by the

appellant has been rejected, relying on the decision in **M.L. Agro Products Ltd versus CCE** ¹. Being aggrieved, the appellant has filed the present appeal before this Tribunal.

3. The submissions of the learned counsel for the appellant is that they have availed the services of transport operator and not of transport agency for inward transportation of raw material/goods to their factory, and in their case, the Goods Transport Agency is not in existence and no consignment note is issued, therefore, the services rendered by Goods Transport Operator, do not fall under the category of Goods Transport Agency. In series of decisions, it has been held that individual transporters or truck owners are not covered under GTA service and the recipient is not liable to pay service tax under Reverse Charge Mechanism. Further, the decision in **ML Agro Products** (supra) has been stayed by the Andhra Pradesh High Court vide order dated **8.12.2017** ²

4. The period covered in these appeals relates to both pre-negative era and the post negative era w.e.f. 1.07.2012. The relevant provisions for the period prior to 1.07.2012 are Section 65(50b) and 65(105)(ZZP) of the Finance Act, 1994, which defines the 'Goods Transport Agency' and the 'Taxable Service'. The new Section 65B (26) of the Finance Act came into existence with effect from 01.07.2012 deferring GTA.

1 2017 (6) GSTL 94 (Tri- Hyd)
2 2018 (14) GSTL J 71 (AP)].

5. The issue in the present appeal pertains to service tax liability under 'Goods Transport Agency' where no consignment note is issued. The issue is no longer *res integra* and has been consistently decided in favour of the assessee by the various co-ordinate Benches of the Tribunal, which are as under: -

- “(i)Shri Nath Tiles Pvt. Ltd.Vs. CCE ³
- (ii)Mahanadi Coalfields Ltd. Vs. CCE ⁴
- (iii)Beterman Engineering P.Ltd. Vs. CCE ⁵
- (iv)CCE Vs. Jaikumar Fulchand Ajmera ⁶
- (v)Rathi Tiles Pvt. Ltd. Vs. CCE⁷
- (vi)South Eastern Coal Fields Ltd. ⁸
- (vii)Shreenath Mhaskoba Sakhar Karkhana Ltd. Vs. CCE⁹
- (viii)CCE Vs. kanaka Durga Oil Products P.Ltd.¹⁰
- (ix)Chartered Logistics Limited Vs. CCE¹¹

6. The observations made in **Mahanadi Coalfields Ltd (supra)** are quoted below:

“9. In the instant case, the issue before us is whether the appellant, who is a recipient of goods transportation services in the mines, is liable to pay service tax under RCM. We find that the service tax liability will arise only if the definition of 'taxable service' as contained in Section 65(105)(zzb) of the Act, which was in force during the material period, is fulfilled. As per the said provision, during the period in

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- 3 2020-TIOL-1391-CESTAT-DEL]
 - 4 2022(57) GSTL 242 (Tri.)
 - 5 2022-TIOL-1008-CESTAT-KOL]
 - 6 2017 (48) STR 52 (T)
 - 7 2019-TIOL-253-CESTAT-Delhi
 - 8 2018(10)GSTL 50 (Tribunal)
 - 9 2017(3)GSTL 169(Tri.)
 - 10 2009(15) STR 399 (Tri.)
 - 11 (2024)16 Centax 473 (Tri-Ahmd.) dated 19.07.2023

dispute, the taxable service, in relation to transport of goods in a goods carriage, means any service provided or to be provided to a customer by a goods transport agency service. We note that the term 'goods transport agency' has been specifically defined in Section 65(50b) to mean any commercial concern which provides service in relation to transport of goods by road and issues consignment note, by whatever name called.

10. On perusal of the above statutory provisions, it is clearly evident that in order to constitute 'Goods Transport Agency', the provider of transportation service must issue the consignment notes or any other document by whatever name called. We find that the issue has already been examined in detail by the Tribunal, in Final Order dated 13-8-2014, in *South Eastern Coalfields Ltd. v. CCE, Raipur* [2016 \(41\) S.T.R. 636](#) (Tri. - Del.), the relevant portion is reproduced below :-

“5. If the transaction/service provided by the 24 transporters to the appellant fall within ambit of Goods Transport Agency service within the meaning of the aforesaid provisions, the appellant would be liable to tax though being recipient of the service is not contested by the appellant and it is conceded that under this taxable service, recipient of the service is liable to tax. The only issue canvassed is the one presented to the adjudication authority which did not commend acceptance namely, that since no consignment notes were issued by transporters, the services provided to the appellant fall outside the ambit of GTA.

6. The issue is no longer res integra. Learned Division Benches of this Tribunal in *Birla Ready Mix v. C.C.E., Noida* - [2013 \(30\) S.T.R. 99](#) (Tri. - Del.) and in Final Order Nos. ST/A/50679-50681/2014-CU(DB), dated 13-1-2014 [[2014 \(34\) S.T.R. 850](#) (Tribunal) and in *Nandganj Sihori Sugar Co. Ltd. and others v. C.C.E., Lucknow* unambiguously enunciated the principle that *qua* the definition of "Goods Transport Agency" enacted in Section 65(50b) of the Act, to fall within the ambit of the defined expression issuance of a consignment note is non-derogable ingredient.

7. In view of the law declared and the factual matrix of this appeal since where admittedly no consignment notes were issued by the 24 transporters for transportation of the appellant's coal, the Goods Transport Agency service cannot be held to have been rendered. That being the position the appellant is not liable to tax.”

13. We find it worth taking note of the observation made by the Tribunal in *JWC Logistics Pvt. Ltd.* (supra) as below :

“8. It is not the transportation of goods by road that is subject to tax but the services rendered by a goods transport agency in relation to the transportation of goods by road and road transport agency tasked with responsibilities that others connected with road transport are not, with consignment note being the point of difference. There is also no doubt that Rule 4B of the Service Tax Rules, 1994 lays down the contents of a consignment note.”

7. In a recent decision, the Ahmedabad Bench in **Chartered Logistics Ltd Vs. CCE**¹² dealt with the issue under consideration with reference to the post negative era and referring to the provisions of Section 66D (p)(i)A including in the negative list services by way of transportation of goods by road except the services of a goods transport agency and Section 65B(26) defining ‘Goods Transport Agency’ observed as under:

“**6.5** Accordingly, a person can be said to be Goods Transport Agency, if the person provides services in relation to the transportation of goods by road and issues the consignment note. From the above legal position, it clear that not all the person who transport of goods by road are qualified as Goods Transport Agency. **To qualify as services of GTA, the GTA should issue necessarily a consignment note then only services provided by the GTA are taxable under Finance Act, 1994.** In the present matter it is admitted fact that in case of supply of transportation of goods services to M/s FCPL. Appellant have not issued any consignment notes. M/s FCPL issued consignment notes/LRs to consignee/consignor of goods. In such circumstance Appellant is not qualified under the Goods Transport Agency as per the above definition of GTA. **Services of transportation of goods by a person other than GTA are clearly exempt under [Section 66D \(P\)\(i\)\(A\)](#) of the Finance Act, 1994.** By observing the above legal position we find that the services of appellant is clearly excluded from the taxable services since it is covered in the “Negative

12 2024 (16 Centax 473 (T-Ahmd.) dated 19.07.2023

List" Entry under [Section 66D \(p\)\(i\)](#) of the Finance Act, 1994."

8. From the aforesaid judgments, the settled principle of law is that even if a person has provided goods transport service but has not issued the consignment note, service tax from that person cannot be recovered under the category of GTA. The case of the appellant is on the same footing as he availed the services of individual transporters and truck owners and in the absence of issuing the consignment note, the appellant cannot be made liable to pay service tax under the category of GTA.

9. We do not find any reason to sustain the impugned order and the same is accordingly set aside. All the three appeals are allowed.

[Order pronounced on 30th April, 2024]

(Binu Tamta)
Member (Judicial)

(Hemambika R.Priya)
Member (Technical)

Ckp.