

**CUSTOMS, EXCISE AND SERVICE TAX APPELLAT TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Division Bench – Court No. - I

**Service Tax Appeal No.2585 of 2011
And
Service Tax Cross Objection No.30050 of 2020**

(Arising out of Order-in-Original No.07/2011(RS) dated 07.06.2011 passed by Commissioner of Central Excise & Customs, Visakhapatnam-II Commissionerate, Visakhapatnam.)

**Commissioner of Customs, Central Excise & Service Tax,
Visakhapatnam-II Commissionerate**
(Central Excise Building, Port Area, Visakhapatnam-500035.)

...Appellant

VERSUS

M/s. Sarvaraya Sugars Limited

.....Respondent

(Chelluru-533261, Rayavaram Mandal, East Godavari Dt., Andhra Pradesh.)

APPEARANCE

Shri L.V. Rao, Authorized Representative for the Appellant (s)

Shri Ajay Kumar Gupta, Advocate for the Respondent (s)

**CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI P.V.SUBBA RAO, MEMBER(TECHNICAL)**

FINAL ORDER NO. 30067/2022

DATE OF HEARING : 8 March 2022
DATE OF DECISION : 09th June 2022

P.K.CHOUDHARY :

Briefly stated the facts of the case are that the Respondent herein is a sugar mill and is receiving sugar cane harvest from farmers by using transport services. The payment to the transporters is made by the Respondent from the amounts adjusted against the price of sugarcane payable to the suppliers/farmers at the minimum support

price of the sugarcane in terms of clause 2(g) of the Sugarcane Control Order, 1966, which is for supply of sugar cane at the factory gate. Basis the above, a Show Cause Notice dated 16.04.2010 was issued to the Respondent for non payment of service tax on the freight charges paid by them to the transporters under the GTA service head for the period from January 2005 to March 2010. The same was adjudicated by the Ld. Adjudicating authority vide Order-in-Original dated 07.06.2011 and the demand along with interest and penalty was dropped on the ground that the Respondent cannot be treated as service recipient of the GTA services as the same was on account of the farmers and only payment was made by the Respondent as the price was fixed upto delivery to the Respondent's factory. Hence the present Appeal by the department.

2. Heard both sides through video conferencing and perused the appeal records.

3. We find that the issue whether the Respondents can be termed recipient of GTA services in such cases has been decided by the Tribunal in the case of NANDGANJ SIHORI SUGAR CO. LTD. Versus COMMISSIONER OF C. EX., LUCKNOW [2014 (34) S.T.R. 850 (Tri. - Del.)] wherein on similar grounds it was held as-

"5. The appellant incurred expenditure on transportation of sugarcane from the cane collection centers to their sugarcane mills and these charges were adjusted against the payment for sugarcane made to the farmers. The point of dispute is as to whether the transporters are Goods Transport Agency as defined under Section 65(50b) of the Finance Act, 1994 and whether the appellant as recipient of the service provided by the transporters would be liable to pay Service Tax in terms of the provisions of Rule 2(l)(d)(v) of Service Tax Rules.

6. In terms of Section 65(105)(zzp), the taxable service means "any service provided to a customer, by a Goods Transport Agency, in relation to transport of goods by road in a goods carriage. "In terms of

Section 65(50a) *ibid* 'Goods Carriage' has the meaning assigned to it in clause 14 of Section 2 of the Motor Vehicle Act, 1988. In terms of Section 65(50b), 'Goods Transport Agency' means any commercial concern which provides service in relation to transport of goods by road and issues consignment note, by whatever name called. **The Service Tax has been demanded from the Appellants as service recipient under Rule 2(I)(d)(v) of the Service Tax Act, 1994 read with Notification No. 35/2004-S.T., dated 3-12-2004, on the payments made by them to transporters against the fortnightly bills being presented by them.** While admittedly no consignment notes or GRs have been issued by the transports, according to the Department the Transporter's bills are in the nature of the consignment notes. Under Rule 4B of the Service Tax Rules, 1994, "any Goods Transport Agency which provide service in relation to transport of goods by road in a goods carriage shall issue a consignment note to the customer. In term of Explanation to Rule 4B, 'Consignment Note' means - a document issued by Goods Transport Agency against the receipt of goods for the purpose of its transport by road in a goods carriage, which is serially numbered and contains the name of consignor and consignee, registration number of the goods carriage in which goods are transported, details of goods transported, details of the place of origin and destination, person liable for paying Service Tax whether consignor, consignee or Goods Transport Agency. Thus mere transportation of the goods in a Motor Vehicle is not the service provided by a Goods Transport Agency. A Goods Transport Agency in terms of its definition under Section 65(50b) provides service in relation to transportation of goods under a consignment note which should have the particulars as prescribed in explanation to Rule 4B. In the present case admittedly no consignment notes have been issued. The fortnightly bills cannot be treated as consignment notes, as a consignment note issued by Goods Transport Agency represent its liability to transport the consignment handed over to it to the destination and deliver the same to the consignee and merely a bill issued for transportation of goods cannot be treated as Consignment Note. The fact of non-issue of consignment to M/s. Nandganj is admitted in the show cause notice itself. In case of M/s. Bajpur though

it is not mentioned in the show cause notice, this plea has been made by the Appellant and the same has not been refuted. The transportation of goods by individual truck owners without issue of consignment note, GR's & billties, etc. as prescribed in Rule 4B of the Service Tax Rules, would be simple transportation and not the service of Goods Transport Agency which involves not only undertaking the transportation of the goods handed over to it but also undertaking delivery of the goods to the consignee and also temporary storage of the goods till delivery. When the transporters did not issue consignment notes or GRs or Challans or any documents containing the particular as prescribed in Explanation to Rule 4B of the Service Tax Rules, 1994, the Transporters cannot be called 'Goods Transport Agency' and, hence, in these cases, the service of transportation of sugarcane provided by the transporters would not be covered by Section 65(105)(zzp). In view of this we hold that there will be no Service Tax liability on the appellant sugarcane mills, as they have not received the service from a Goods Transport Agency. In view of this the impugned orders are not sustainable and the same are set aside. The appeals filed by M/s. Nandganj and M/s. Bajpur are allowed. As regards the Revenue's appeal, since it has been held that there is no Service Tax liability of the Appellants, there would be no merit in it and the same is dismissed."

4. We find that in the instant case also the Respondent have pleaded that there was no issuance of any consignment notes by the transporters and they cannot be stated to have received GTA services to attract Service Tax liability on RCM basis. The said plea was also taken by the Respondent in their reply to the Show Cause Notice. However the Ld. Adjudicating authority has decided the matter on the ground that the Respondent cannot be stated to be the recipient of transport services.

In view of the above discussions, we do not find any reason to interfere with the impugned order and therefore the order is sustained.

The Appeal filed by the department is dismissed. Cross objection, filed by the Respondent, also gets disposed of.

(Order pronounced in the open court on 09/06/2022)

(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

(P.V.SUBBA RAO)
MEMBER (TECHNICAL)

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