

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

REGIONAL BENCH - COURT NO.2

**Service Tax Appeal No.75931 of 2015
And
Service Tax Cross Objection No.75837 of 2015**

(Arising out of Order-in-Original No.04-06/S.Tax/Commr/2015 dated 02.06.2015
passed by Commissioner of Central Excise & Service Tax, Dhanbad.)

Commissioner of Central Excise & Service Tax, Dhanbad
(Bhistipara, Hirapur, Dhanbad-826001, Jharkhand.)

...Appellant

VERSUS

M/s. Bharat Coking Coal Limited

.....Respondent

(The General Manager (Finance), Taxation Department, Bharat Coking Coal Limited,
Koyla Bhawan, Koylanagar, Dhanbad, Jharkhand-826005.)

**WITH
Service Tax Appeal No.75932 of 2015
And
Service Tax Cross Objection No.75836 of 2015**

(Arising out of Order-in-Original No.04-06/S.Tax/Commr/2015 dated 02.06.2015
passed by Commissioner of Central Excise & Service Tax, Dhanbad.)

Commissioner of Central Excise & Service Tax, Dhanbad
(Bhistipara, Hirapur, Dhanbad-826001, Jharkhand.)

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(The General Manager (Finance), Taxation Department, Bharat Coking Coal Limited,
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Service Tax Appeal No.75933 of 2015**

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Commissioner of Central Excise & Service Tax, Dhanbad
(Bhistipara, Hirapur, Dhanbad-826001, Jharkhand.)

...Appellant

VERSUS

M/s. Eastern Coalfields Limited

.....Respondent

(Chitra, Deoghar, Jharkhand.)

APPEARANCE

Shri J.Chattopadhyay, Authorized Representative for the Appellant (s)
Shri Rajeev Agarwal, Advocate for the Respondent (s)

CORAM: HON'BLE SHRI P. K.CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI P.ANJANI KUMAR, MEMBER(TECHNICAL)

MISCELLANEOUS ORDER NO. 75259-75260/2022
FINAL ORDER NO. 75475-75477/2022

DATE OF HEARING : 17 June 2022
DATE OF DECISION : 17 August 2022

P.K.CHOUDHARY :

All the three appeals have been filed by Revenue against Order-in-Original No. 04-06/S. Tax/Commr/2015 dated 02.06.2015, whereby the Ld. Commissioner of Central Excise & Service Tax, Dhanbad, has set aside the demand of Service Tax proposed under the category of 'Transportation of Goods by Road (GTA) Services' for the period from January 2005-March 2009. Since all the three appeals have been filed against the common adjudication Order dated 02.06.2015, the same are taken up for disposal by this common Order.

2. The facts of the case in brief are that the Respondent coal companies are availing transportation services at their mines. No consignment notes as envisaged under Rule 4B of the Service Tax Rules, 1994, are being issued by the concerned transporters to the service recipient i.e., the coal companies. The Ld. Commissioner in paragraphs 20-22 of the impugned Order while taking note of the fact that since no consignment notes are issued by the transporters, has held that the said transportation services cannot be classified under the category of "GTA Services". On the basis of the said observation, the Ld. Commissioner has set aside the entire demand proposed under GTA Services in the hands of the coal companies under the Reverse Charge Mechanism.

3. Shri J. Chattopadhyay, Ld. Authorized Representative, appeared for the Revenue (Appellant) and Shri Rajeev Agarwal, Ld. Advocate, appeared for the Respondent assessee M/s. Bharat Coking Coal Ltd. None appeared for M/s. Eastern Coalfields Limited, Respondent.

4. Heard both sides and perused the appeal records.

5. We find that the issue is no longer res-integra inasmuch as the same has been decided by this Tribunal in the case of South Eastern Coalfields Limited vs. Commr, C. EX, Raipur 2017(47) S.T.R. 93 (Tri.-Del), wherein it has been held that the transportation services cannot be classified under GTA services where the consignment notes are not issued by the transporters.

Further, the issue has also been examined in detail in the case of Mahanadi Coalfields Limited Vs. Commr, C. EX & S.T., BBSR-1 2022 (57) G.S.T.L. 242 (Tri. – Kolkata). The relevant portion of the said decision is reproduced herein below:

"12. We also find that the same view has been consistently followed by the co-ordinate Benches of the Tribunal, the decisions which have been admitted for consideration before the Hon'ble Supreme Court in Revenue Appeals. We note that though the matter is pending before the Apex Court, the aforesaid Tribunal decisions have not been stayed and therefore, we do not find any reason to take a contrary view. In so far as the decision in Singh Transporter's case (Supra) is concerned, we agree with the arguments canvassed by the Ld. CA for the appellant that the mandatory requirement of issue of consignment note, in order to constitute "Goods Transport Agency" as has been specifically defined in the Act, was not the subject matter of examination so as to decide the taxability in the hands of assessee receiving goods transportation services and therefore, the aforesaid Apex Court's decision has no application in the instant case.

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."

14. In view of the above discussions and the decisions cited (supra) and taking into consideration the essential requirement of issuance of 'consignment note', in order to attract the definition of "Goods Transport Agency", we hold that the transport contractors rendering the coal transportation services in mines cannot be said to be "Goods Transport Agency" and therefore, their services cannot be made amendable to levy of service tax in the category of "transportation of goods by road services". Hence, the impugned demand of service tax, interest and penalty cannot sustain and therefore, the same is set aside."

In view of the above, we find that the findings made by the Ld. Commissioner cannot be interfered with and hence, the demand has been rightly dropped in the impugned adjudication orders.

Thus, the instant appeals filed by the Revenue are rejected. Cross Objections, filed by the Respondent M/s. Bharat Coking Coal Limited against Service Tax Appeal Nos.75931 & 75932 of 2015, also get disposed of.

(Order pronounced in the open court on 17 August 2022.)

Sd/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

Sd/
(P.ANJANI KUMAR)
MEMBER (TECHNICAL)