

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
CHENNAI**

REGIONAL BENCH – COURT NO. III

**SERVICE TAX APPEAL No. 42202 of 2014**

(Arising out of Order-in-Appeal No. 167/2014 dated 11.07.2014 passed by the Commissioner of Customs And Central Excise (Appeals) Salem-636 001)

**M/s. T. Kolandasamy,**  
168/93, Muthukumarasamy  
Main Street,  
Erode – 638 001

**: Appellant**

**VERSUS**

**The Commissioner of Central Excise,**  
No.1, Foulks Compound,  
Anai Road,  
Salem – 636 001

**: Respondent**

**APPEARANCE:**

Ms. S. Vishnu Priya, Advocate for the Appellant

Ms. O.M. Reena, Additional Commissioner (A.R.) for the Respondent

**CORAM:**

**HON'BLE MRS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)**  
**HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 41122/ 2023**

DATE OF HEARING: 08.12 .2023

DATE OF DECISION: 14.12.2023

**Order : [Per Ms. Sulekha Beevi C.S. ]**

Brief facts are that the appellant is engaged in providing taxable services falling under the category of 'Clearing and Forwarding' Agency services. During the verification of accounts for the period from April 2009 to March 2012 it was noticed by the department that they were providing services to M/s Ultra Tech Cements and M/s Zuari Cements. As a

clearing and forwarding agent they were undertaking loading of cement bags from railway wagons to truck, transporting them to sales point or godowns and also unloading. In regard to the services rendered to M/s Zuari Cements, the appellant had collected charges including freight (for transportation) and discharged service tax on the entire amount collected. In regard to the services rendered to M/s Ultra Tech the appellant had entered into two separate agreements. One agreement for C & F providing services other than transportation and another agreement for transportation of goods alone. Thus appellant discharged service tax on the amount collected from M/s Ultra Tech excluding the freight. Audit wing noted that the appellant had raised separate invoices as 'secondary bills' for the lorry freight charges without mentioning the service tax element. In respect of M/s Zuari Cement a single agreement was entered and a single bill was raised. Further though they commenced business of providing C & F services from April 2009, they had taken service tax registration only in August 2009. They also failed to file returns for the half years ending 30.09.2009, 31.03.2010, 30.09.2010 and 31.03.2011. On being pointed out, the appellant filed returns along with late fee of Rs. 85,000/-

1.1. As per Section 65 (105)(i) of the Finance Act, 1994 Clearing and forwarding service is taxable w.e.f. 16.07.1997 and the taxable service is defined as "any service provided or to be provided to any person, by a clearing and forwarding agent in relation to clearing and forwarding operations, in any manner". As per Section 65(25) clearing and

forwarding agent means 'any person who is engaged in providing any service, either directly or indirectly, connected with the clearing and forwarding operations in any manner to any other person and includes consignment agent.

1.2. As per Section 67 (1) of Finance Act, 1994, the value of taxable service is the gross amount charged by the service provider. In respect of services provided by appellant to M/s Ultra Tech Cements Ltd, clearance of cement from wagon, loading it in trucks, transporting them to destination and unloading them is provided by appellant as a clearing and forwarding agent. The entire operation falls within the service of clearing and forwarding service. Thus the appellant ought to have included the freight charges also in the taxable value for discharging the service tax liability. It appeared that there was short payment of service tax Rs. 25, 15, 658/- due to non-inclusion of freight charges in the taxable value. Show Cause Notice dated 01.05.2013 was issued for the period April 2009 to September 2011 invoking the extended period and proposing to demand the short paid service tax along with interest and for imposing penalties. After due process of law, the original authority confirmed the demand along with interest and imposed penalties. On appeal, the Commissioner (Appeals) upheld the same. Hence this appeal.

2. On behalf of the appellant, the Ld. Counsel Ms. S. Vishnu Priya appeared and argued the matter. It is submitted that in regard to clearing and forwarding service the appellant had discharged the entire service tax liability. In regard to GTA services

(freight charges), M/s ultra tech who is the service recipient has discharged the service tax. The letter issued by M/s ultra tech dated 27.06.2013 informing that they have paid the service tax on GTA services (as recipient of service) was submitted before the authorities below. However, this contention was not accepted.

2.1 The Ld. Counsel submitted that in respect of M/s Zuari Cement, there was only one agreement executed and therefore appellant had discharged service tax on the entire amount collected. However, in respect of M/s ultra Tech Cement, the client insisted on making two separate agreements and informed that they would discharge service tax on the freight charges. On bonafide belief that this was permissible as the freight charges fall under GTA services, the appellant had not included the freight charges for arriving at the taxable value. The appellant had used the facility of other transporters and at times also used their own trucks for transportation of goods. In some cases the appellant has indeed collected more charges than the actual freight. The appellant had not discharged the service tax on freight charges as it falls under GTA services and because M/s ultra Tech had agreed to pay the service tax. There was no intention to evade payment of service tax. The show cause notice issued invoking extended period is not sustainable as there is no evidence adduced that appellant has suppressed facts with intend to evade payment of service tax. The Ld. Counsel prayed that the appeal may be allowed.

3. The Ld. Authorized Representative Shri M. Ambe appeared and argued for the department. The Ld. Authorize Representative adverted to the definition of C & F services and submitted that, the appellant cannot segregate each activity involved in clearing forwarding services so as to exclude part of the consideration from the taxable value. In respect of M/s Zuari cements though appellant had included freight charges in the taxable value, they have bifurcated the charges in respect of M/s Ultra Tech Cements Ltd. Even if M/s Ultra Tech has discharged the service tax under GTA services, it does not absolve the appellant from paying service tax on the freight charges under C & F services. When both clearing and forwarding operations are undertaken by one person the freight charges have to be included in the taxable value as transportation services are part of forwarding operations. The short payment of service tax would not have come to light, if the audit wing had not verified the accounts. Hence, the suppression is very much clear. The appellant had taken registration belatedly and also failed to file return within the prescribed time. The demand of service tax, interest and penalties imposed is legal and proper. The Ld. Authorized Representative prayed that the appeal may be dismissed.

4. Heard both sides.

5. The issues that arises for consideration are :-  
(i) Whether the demand raised alleging that appellant had to include freight charges in the taxable value for C & F service is legal and proper.

(ii) Whether the demand raised invoking the extended period is sustainable or not.

6. The facts show that in respect of C & F services provided by appellant to M/s Ultra Tech Cement Ltd. the appellant had entered into two separate agreements. One for C & F services and the other for providing GTA services. It is asserted by the Ld. Counsel that the appellant is a proprietary concern and when M/s. Ultra Tech Ltd informed them that they wanted a separate agreement for GTA services and that they would discharge the service tax, the appellant agreed accordingly. The letter issued by M/s Ultra Tech Ltd dated 27.06.2013 establishes that the service tax has been paid on freight charges by M/s Ultra Tech Ltd. However, they are discharging service tax only as service recipient. Further it is also brought out that the appellant has collected mark up on the freight charges. They have also used their own trucks to provide transportation of goods. From these facts it would require to remand the matter to verify such details and to quantify the demand on such basis. However, the Ld. Counsel for appellant submitted that due to lapse of time the appellant is not able to provide details of mark up collected or the transportation provided by his own trucks. On such facts we are of the opinion that there is short payment of tax as the appellant has to include the freight charges in the taxable value for the reason that appellant had provided such services as part of Clearing and Forwarding Agency services. The issue on merits is answered against the appellant and in favour of Revenue.

6.1 The Ld. Counsel for appellant has argued on the grounds of limitation also. It is seen that the appellant had entered into separate agreements only because, the customer, M/s Ultra Tech intended to shoulder the liability to pay service tax on the freight charges. It is also seen that M/s. Ultra Tech Ltd has discharged the liability under GTA services, which would indicate that the appellant by bifurcating the contract had no intention to evade payment of service tax. The issue whether transportation services provided by assessee as a clearing and forwarding services would be part of C & F services was debatable and there were several decisions in favour of assessee as well as Revenue. In the case of *Medpro Pharma Pvt. Ltd. Vs Commissioner of Central Excise, Chennai 2006(6) TMI 2- CESTAT, New Delhi*, it was held that even an isolated activity of freight forwarding is covered under C & F operations. In the case of *Commissioner of Central Excise, Panchkula Vs M/s Kulcip Medicines (P) Ltd 2009 (2) TMI 89 Punjab & Haryana High Court*, while interpreting the definition of C & F service, it was held that the levy of tax would not be attracted if the clearing operations are separated from forwarding operations, as it involves only one of the two activities. Contrary, *CGST & CE Indore vs M/s Carry Fast Agency 2023 (9) TMI 770-CESTAT New Delhi*, it was held that if the activities of 'clearing' and 'forwarding' is rendered by same person and by separate agreements, the freight forwarding is to be included in the taxable value for C & F service. Thus the issue is interpretational in nature.

6.2 Apart from the allegation that the appellant had bifurcated the contracts there is no positive act,

of suppression alleged in the show cause notice. As already discussed, even though the contract is bifurcated, the appellant has not suppressed this fact from the department. The appellant had collected the freight charges by a separate invoice and this was properly accounted. So also they were under the bonafide belief that as M/s. Ultra Tech Cement Ltd was discharging the service tax under GTA, and that appellant is liable pay service tax on freight charges under C & F services. It also requires to be stated that they discharged appropriate service tax in regard to M/s. Zuari Cements Ltd. We therefore find that appellant has made out a strong case on the ground of limitation. The show cause notice issued invoking the extended period is cannot sustain. Ordered accordingly. For the same reasons we find that the penalties imposed requires to be set aside invoking Section 80 of the Finance Act, 1994 as it stood during the disputed period.

7. In the result, the impugned order is modified to the extent of the setting aside the demand and interest and penalties for the extended period. The demand of service tax and interest payable (if any) for the normal period is sustained. The penalties are entirely set aside. The appeal is partly allowed in above terms with consequential reliefs, if any.

(Order pronounced in the open court on **14.12.2023**)

**(VASA SESHAGIRI RAO)**  
MEMBER (TECHNICAL)

**(SULEKHA BEEVI C.S.)**  
MEMBER (JUDICIAL)