Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No. 10115 of 2023- DB

Service Tax (Stay) Application No. 10068 of 2023

(Arising out of OIA-BHV-EXCUS-000-APP-073-2022 dated 01/11/2022 passed by Commissioner of Central Excise, Customs and Service Tax-BHAVNAGAR)

SADULBHAI LALABHAI VAGH **.........Appellant**
Proprietor Somnath Suppliers Rampara-2 Rajula
Amreli, Amreli, Gujarat

VERSUS

C.C.E. & S.T.-BHAVNAGAR **.........Respondent**
Plot No.6776/B-1...Siddhi Sadan,
Narayan Upadhyay Marg,
Beside Gandhi Clinic,
Near Parimial Chowk,
Bhavnagar, Gujarat- 364001

WITH

- **Service Tax Appeal No. 10116 of 2023- DB (SURENDRA B KUMAVAT) (ST/S/10069/2023)**
- **Service Tax Appeal No. 10117 of 2023- DB (RAJENDRA B KUMAVAT) (ST/S/10070/2023)**
- **Service Tax Appeal No. 10118 of 2023- DB (SURESHBHAI JILUBHAI VALA) (ST/S/10071/2023)**
- **Service Tax Appeal No. 10119 of 2023- DB (HARESHBHAI KATHADBHAI RAM) (ST/S/10072/2023)**
- **Service Tax Appeal No. 10120 of 2023- DB (VIJENDRAKUMAR B KUMAVAT) (ST/S/10073/2023)**

APPEARANCE:
Shri P.D Rachchh, Advocate for the Appellant
Shri, R.K.Agarwal, Superintendent (AR), for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR

Final Order No. 11765-11770/2023

DATE OF HEARING: 24.04.2023
DATE OF DECISION: 23.08.2023

RAMESH NAIR

The brief facts of the case are that on the basis of 26AS details of Income Tax It was alleged by the department that the payment received as consideration of service for which TDS was deducted and reflected in 26AS,appellant have provided taxable service. Accordingly, the demand was confirmed and the same was upheld by the Commissioner (Appeals). The appellant's submission was that firstly, only on the basis of form 26AS, Service Tax demand cannot be confirmed. Alternatively, the appellant has taken a stand that the appellant's activity is classifiable under 'goods transport agency service' in such case the service recipient is liable to pay the Service Tax.

2. Shri P.D Rachchh, Learned Counsel, appearing on behalf of the appellant submits that the learned commissioner (Appeals) though upheld the demand but for recalculation remanded the matter to the Adjudicating Authority. Therefore, the present appeal was filed, challenging merit of the case that appellant is not liable to pay Service Tax.

2.1 First of all the demand on the basis of 26AS of Income Tax cannot be confirmed. Secondly, the service falls under 'goods transport agency service' in such case the Tax liabilities is on recipient of service. However, the Learned Commissioner (Appeals) has discarded this claim on the presumption that majority of their customers maybe proprietary firms that category is not covered under the notification and accordingly, denied the benefit of Notification No. 30/2012-ST dated 20.06.2012.

2.2 It is his submission that even by name majority of service recipient are either limited company or partnership firm, which are covered under Notification No. 30/2012-STwhereby, the appellant are exempted from Service Tax on GTA, as the Service Tax liability is on recipient of service.

3. Shri R.K Agarwal, Learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the record. We are of the view that this matter can be decided by remanding it to the Adjudicating Authority, only on the threshold point that if at all the service of the appellant is classifiable under 'goods transport agency service' whether the same is eligible for exemption Notification No. 30/2012-ST.The relevant portion of the notification is reproduced below:

"I. The taxable services,—

(A)(i) ……..;

(ii) provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,—

(a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);

(b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;

(c) any co-operative society established by or under any law;

(d) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;

(e) any body corporate established, by or under any law; or

(f) any partnership firm whether registered or not under any law including association of persons;

……."

"(II) *The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified in (I) shall be as specified in the following Table, namely :-*

TABLE

Sl. No.	***Description of a service***	***Percentage of service tax payable by the person providing***	***Percentage of service tax payable by the person receiving the***

		service	***service***
1.	*......*	*.....*	*.....*
2.	*in respect of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road*	*Nil*	*100%*

From the above notification, it can be seen that in case of service provided by a 'goods transport agency service' in respect of transport goods by road, 100 % Service Tax liability is on a person receiving the service subject to condition that the said service recipient falls under the category of clause A(ii)(a)to(f) of para 1of the Notification.

4.1 We find that on the claim of the appellant that in case of GTA the service recipient is liable to pay the Service Tax in terms of the above Notification, the Learned Commissioner (Appeals) has given the following findings:

> *"Further on verification of Form 26AS, ledgers and profit & loss accounts, it transpires that the services were provided by the Appellant to their various customers such as Vimal Micron Ltd., Pranav Logistic, Shivam Logistics, Global Logistics, Face impex Pvt. Ltd., Hasti Petro Chemical, Granoland Tiles LLP, New Arjun Transport, Amco Food ind., Jagsun Carriers Pvt. Ltd., Yadav Transport, Sunflex Recycling Pvt. Ltd. etc. There is a possibility that some or majority of these customers may be proprietary firms, a category not covered under the Notification. However, to claim exertion from payment of service tax, the Appellant has to fulfil the conditions ar raentioned in the Notification. Here, the condition is that the goods transport agency should provide the services to category of persons mentioned at (a) to (f) of the Notification No. 30/2012- Tax dated 20.06.2012. It is a settled law that conditions of an exemption Notification are to be satisfied strictly and the burden of proof is on the claimant. Therefore, I am of considered view that in absence of any documentary evidences, the benefit of exemption cannot be extended to the Appellant on the basis of presumption. Thus, I hold that the Appellant is liable to pay service tax."*

From the above finding, it can be seen that, despite there are numbers of limited and private limited companies as service recipients, the Learned Commissioner (Appeals) has assumed that the majority these customers maybe proprietor and accordingly exemption was denied.

4.2 We are completely in disagreement with this cryptic finding given by the learned commissioner (Appeals).Firstly, by name itself it appears that most of the service recipients are limited and private limited companies and also the partnership firm. At least in that cases the Service Tax could not have been demanded from the appellant. Moreover, in respect of others merely by name it cannot be ascertained whether the service recipient are covered under clause A(ii)(a)to(f) of notification. It was incumbent on the Learned Commissioner (Appeals) to verify the actual status of the service recipients from the records. In this position, we are of the view that the whole matter needs to be reconsidered by the Adjudicating authority.

5. Accordingly, we set aside the demand as well as the impugned order and remand the matter to the Adjudicating Authority to reconsider the entire case on all the issues. The impugned order is set aside and appeals are allowed by way of remand to the Adjudicating Authority. Since the appeals itself have been disposed of, the stay applications become infructuous and are disposed of accordingly.

(Pronounced in the open court on 23.08.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

Raksha