

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
AHMEDABAD
REGIONAL BENCH, COURT NO. 2**

SERVICE TAX APPEAL NO. 12036 OF 2016-DB

(Arising out of OIA-CCESA-VAD-APP-II-VK-270-2016-17 dated 26/09/2016 passed by Commissioner of Central Excise and Service Tax-SURAT-II (Appeal))

Gokulanand Texturisers Pvt Ltd

Survey No. 82/2, Block No. 54, Sachin-palsana Road,
Village- Vanz,
Surat, Gujarat

Appellant

Vs.

C.C.E. & S.T.-Surat-ii

New C.Ex Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat-395001

Respondent

WITH

i. SERVICE TAX No. 12092 of 2016

(M/s. Gokulanand Petrofibres)

ii. SERVICE TAX No. 12124 of 2016

Commissioner Of Central Excise And Service Tax-Surat-ii)

iii. SERVICE TAX No. 12125 of 2016

Commissioner Of Central Excise And Service Tax-Surat-ii)

Appearance:

Present for the Appellant :Shri Amal Dave, Advocate

Present for the Respondent: Shri Rajesh Nathan, Assistant Commissioner (AR)

CORAM:

HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)

HON'BLE MR. RAJU, MEMBER (TECHNICAL)

Final Order No.10857-10860/2024

DATE OF HEARING: **13.12.2023**

DATE OF DECISION: **09.04.2024**

RAJU

Appeals have been filed by M/s. Gokulanand Texturisers Private Limited against order of Commissioner (Appeal). Two appeals have been filed by revenue as well against the order of Commissioner (Appeal).

2. M/s. Gokulanand Texturisers Private Limited (GTPL) registered under Service Tax. GTPL had shown transportation charges income in their balance sheet. GTPL had cleared portion of their sale by charging freight per kg in their invoices. In these cases GTPL was arranging transportation of the goods sold by them by hiring individual truck owners or other such logistic provider. No consignment note was issued nor any lorry receipt was issued. It was learnt by revenue that the freight charges collected by GTPL were in excess of the amount paid to transporters/ logistic suppliers who were actually transporting the goods to buyers premises. A demand of Service Tax was raised against the GTPL on the ground that the service of delivery provided by them to some customers amounted to provision of business support service. The Said demands were dropped by the original Adjudicating Authority on the ground that service provided by the GTPL did not constitute business support service. The Additional Commissioner has also observed in the said order. Aggrieved by the said order revenue filed an appeal before Commissioner (Appeal) who partly allowed revenue's appeal. In the said order of Commissioner (Appeal), which is impugned order before us, the demand raised on the amount charged towards transportation was not confirmed and the Order-In-Original was upheld to that extent. The order of commissioner appeal however confirmed the demand under the head of business support service on the difference between the amount charged by them from their customers and the amount paid to different transporters /logistics service providers. Aggrieved by this order both revenue as well as GTPL are in appeal before us.

3. Learned Counsel for the GTPL pointed out that the issue is squarely covered by the decision in the case of Pushpak Steel Industries PVT Limited 2019(20) GSTL 88. He further argued that second notice was issued invoking extended period of limitation was raised against the GTPL. It was argued that there was no reason for invoking extended period of limitation, on the second notice when already one notice on the identical ground had been issued to the GTPL.

4. Learned AR relies on the grounds of appeal Reliance has been placed on decision of Tribunal in the case of Canara Motors 2011 (121) STR 407. It was argued that in the said case transportation and delivery of vehicle done from factory to sales office was held to be covered under the service of business support service as "Managing Distribution and Logistic". Revenue has in the grounds of appeals argued that the GTPL had arranged transportation of the sold excisable goods by engaging individual truck owners and managed transportation of said goods up to the buyers premises by managing distribution and logistic activities and they have neither issued any consignment note nor any lorry receipt.

5. It has been argued that the GTPL had taken profit of approximately 23% on the amount charged to buyers for the purpose of transportation. Revenue has also contested the view of Commissioner (Appeal) that the amount collected over and above the actual transport is recovery of additional consideration and therefore, includable in the value of excisable goods sold under Central Excise Valuation Rules, 2000. Revenue has relied on the decision of Tribunal in the case of Indian Sugar and General Engineering Corporation 2016 (333) ELT 109 wherein it has been held that excess freight collected is not includable excisable goods so long as it is shown separately in the purchase order. Revenue has argued that the said excess amount collected by GTPL is not includable in the value of excisable goods manufactured and sold.

6. We have considered the rival submissions. It is seen From the order in original that Additional Commissioner observed as follows :-

“20. In the present case I find that the transportation has been arranged by the assessee for their customers but actually the services provided are for the transportation and no loading/unloading of good or other logistics has been provided by the assessee. They only arrange for the transportation and reimburse the amount of transportation. The transportation is provided by the transporter and not by the assessee. The additional amount taken by them as raised in the invoices issued by them to their customers are on account of time, effort and manpower engaged for arranging such transportation. Thus there is no service element present and there is no service provided to buyer by the assessee. Mere reference or appointment of transport agencies for and on behalf of buyers would not result in provision of any service in the nature of business support service. The payments made to the transport agencies are also duly reimbursed by buyers and some amount is added thereon for engaging the transport agencies for and on behalf of buyers. Thus if any service involved in the said transaction is the transportation of goods and is provided by the transport agencies to buyers for the transport of goods for which the reimbursable freight is charged in invoices and in this regard as per Rule-2(d) (v) which is in reference to goods transport services, any persons who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road is person liable for paying service tax. Even if it is assumed that appointment of transport agency for and on behalf of buyers was in the nature of any service provided, then also, it must be noted that such service was integrally connected with the service of transport provided by the transport agencies to buyer. Therefore it can be concluded that if any services involved in the process is of the transport and comes under the GTA. The assessee has discharged service tax under GTA category on the actual freight paid to the transporters and submitted that excess amount charged over and above the actual freight on which service tax under GTA category is discharged. is not for providing

cry services but is in fact towards reimbursement of various expenses incurred on account of time, effort and manpower engaged for arranging such transportation. In view of the above it can be said that the services provided were not of the logistics in nature and cannot be classified under Business Support Services. I fully agree with the assessee's contention that they have not provided any logistics since there is no management of distribution regarding sale of goods rather it is only in relation to managing transport on the assessee's request for which even they are not issuing any lorry receipt or other documents. They are only managing the transporter and charging somewhat additional amount which they are showing in their balance sheet as profit. In this connection case of Bax Global India Ltd. reported in 2008 (9) STR 412 may be relied where following the principle laid down in the judgment of the Hon'ble Supreme Court in the case of Baroda Electric meters it was held that the demand of service tax is not sustainable on the profit made by the assessee for arranging various third party services for their clients. Now, since this is a freight income and the transportation is arranged by the assessee the service element if any present in the transaction is of the GTA, and by no means it can be Business support service. "

We find that identical issue has been decided in the case of Pushpak Steel Industries Pvt Ltd (Supra) wherein following has been observed :-

"6. It is an admitted fact on record that the appellant is a manufacturer of excisable goods and discharges appropriate Central Excise duty liability on the goods manufactured and cleared by it outside the factory premises. Perusal of the purchase orders placed by the buyers on the appellant transpires that they placed orders for supply of the goods manufactured by the appellant. There were no separate agreements between the buyers and appellant for providing any service, over and above supply of goods. In other words, there is no involvement of a service provider and a service receiver relationship in the sale transaction made

between the parties. Further, we also find that the invoices issued by the appellant reflected the assessable value of goods, statutory levies, and transportation cost etc. Since transportation cost, incurred was in context with delivery of goods at the buyers premises, it cannot be said that such facility extended by the appellant should be considered as a taxable service, leviable to Service Tax under the category of 'business support service'. Further, the appellant, in the present case, had not supported the business of the buyers in any manner and arrangement of transportation was just to facilitate delivery of the duty paid excisable goods at the buyer's premises. Thus, the activities undertaken by the appellant, in our considered view, do not confirm to the definition of taxable service, for the purpose of levy of Service Tax thereon."

We find that the facts are identical. Reliance has also been placed decision on the Tribunal in the case of Bax Global India limited V/s. CST, Bangalore 2008 (9) STR 412. In the said case following was observed :-

9. On a very careful consideration of the issue, we find that the appellants apart from the activity of the Customs House Agent undertake work as freight forwarders and other activities related to that. We have perused the details of the billing for their entire period under dispute. It is broadly categorized in the following way. The charges are relating to :-

(1) Air exports

(2) Air imports

(3) Ocean exports

(4) Ocean imports

(5) Customs clearance

(6) Logistic.

For example, in respect of Air exports, for the year 2000-2001 the Freight revenue is of the order of 8,8 crores. That means, this amount represents the freight collected by the appellants towards air freight for the customers and then paid to the airliners. This amount has also been sought to be taxed under the Customs House Agent activity. This shows the adjudicating authority has not applied his mind to the details of the various activities undertaken by the appellants and how they relate to the amount collected by them. In respect of air exports apart from freight, they collected various other charges ie. Cartage revenue, MSIL/JWG charges, due carrier, documentation etc. In all these cases the services are rendered by the third party and the appellants initially make payment for the activities on behalf of the client and later collect the amount from the clients. These are actually reimbursable expenses and they do not relate to any CHA activities. In these cases, on going through the statement, we find that in certain cases the appellants had incurred less cost and in certain cases, they had incurred more cost. In any case, the profit or loss incurred in respect of activities which are not related to CHA activities should not be the concern of the Department for the purpose of collecting service tax. The Apex Court's decision in Baroda Electric Meters Ltd. case (supra), even though it relates to the Central Excise, has definitely a bearing on this. If the appellant performs an activity which is not related to the customs house agent then service tax cannot be levied on that activity under the category of CHA services. Similarly, we have seen the break up of all other services. It was already pointed out by the appellants that in certain cases, the appellants directly render certain services which do not relate to CHA and they collect fees directly from the clients. These charges are 'charges collect fee', 'DO fee', 'Currency Adjustment Fee', 'Cartage revenue', etc. The appellants have clearly explained the nature of each of these charges. The Commissioner has not discussed the nature of each of the charges and given a finding whether it relates to CHA services. The definition of CHA as given in the Finance Act, 1994, Section 65(35) reads as follows-

(35) "Customs House Agent" means a person licensed, temporarily or otherwise, under the regulations made under sub-section (2) of Section 146 of the Customs Act, 1962 (52 of 1962);

(105)(h) to a client, by a custom house agent in relation to the entry or departure of conveyance or the import or export of goods:

Regulation 2(c) of the Customs House Agents Licensing Regulations, 2004 defines customs house agent as under:

**(c) "Customs House Agent" means a person licensed under these regulations to act as agent for the transaction any business relating to the entry or departure of conveyances or the import or export of goods at any Customs Station."*

When we carefully go through the definition of the customs house agent, we find that the activity of the CHA relates to the entry or departure of conveyances or import or export of goods at any Customs station. Therefore the activity of the CHA is limited to the Customs Station. It cannot extend beyond it. For example, in the present case, the appellants collect air freight for export from the clients, but before collection he pays from his pocket to the Airliner. Thus this activity relates to transportation from a port in India or from a place in India to any other place in a foreign country. These freight charges cannot be said to be related to the activity of the CHA. In any case, the air freight fee is for a passage beyond India. This service is also not rendered by the CHA. The freight charges collected is for the transportation of the goods and the transportation service is rendered actually by the Airliner and not the CHA. These points have not been properly gone through by the adjudicating authority. Similarly if we see the breakup of other services, they do not relate to CHA activity at all. Further we find that storage and handling charges came into the service tax net only with effect from 16-8-2002. In these circumstances, we are of the opinion that there is no merit in the impugned order. Moreover as contended by the learned Advocate, the major amount portion of the Billing represents freight charges and the Commissioner (Appeals) had already

decided the issue in favour of the appellants. The order of the Commissioner (Appeals) has not been challenged by the Revenue. In such circumstances, we agree with the learned Advocate for the appellants that the Revenue cannot agitate over the issue which has become final. The demand is also time-barred. In view of the above observation, we are of the view that the impugned order is not sustainable. Summing up, we find that the appellants had already discharged the duty liability in respect of the Customs House Agent activities undertaken by him. As regards all the other activities, we find that they do not relate to customs house agent activities. Even if any profit has been made in respect of those activities, they cannot be subjected to service tax in view of the Apex Court decision in the Baroda Electricity Meters Ltd. case (supra). In fine the demand is not sustainable. There is no justification for imposition of any penalty. We set aside the impugned order and allow the appeal with consequential relief.”

From the above discussion and from the observation made in the para 20 of the Order-In-Original. It is notice that no specific case of the service being provided under the head of business support service has been made out. As observed in Order In Original there is no contract for provision of the business support service between GTPL and their buyers. Even the notice does not show that GTPL were engaged in other than simply organizing transportation of goods.

Relying on the decision of Tribunal in the case of Pushpak Steel Industry Private Limited (Supra). We do not find any merit in the appeal filed by revenue. We also note that in the case of Canara Motors (supra) relied by the revenue the service provided was far more elaborate than mere transportation. The facts in the said case were totally different.

7. The appeals of GTPL is allowed. The appeal of revenue is dismissed.

(Pronounced in the open court on 09.04.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Arpita