CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH, COURT NO. 3

SERVICE TAX APPEAL NO. 51700 of 2022

[Arising out of Order-in-Original No.24/COMMR./DDN/2022 dated 31.03.2022 passed by the Commissioner, CGST & Service Tax Commissionerate, Dehradun]

M/s. Bharat Heavy Electricals Ltd., **....APPELLANT**
Ranipur, Haridwar,
Uttarakhand-249 403.

Versus

COMMISSIONER OF CGST, **.....RESPONDENT**
E-Block, Nehru Colony,
Haridwar Road,
Dehradun (Uttarakhand).

Appearance:
Present for the Appellant : Ms. Pankhuri Srivastava and Shri Alekshendra Sharma, Advocates for the appellant.
Present for the Respondent: Shri Shashank Yadav, Authorised Representative

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER NO.50617/2025

Date of Hearing : 01/04/2025
Date of Decision : 08/05/2025

BINU TAMTA:

1. Challenge in the present appeal is to the Order-in-Original No. 24/COMMR./DDN/2022 dated 31.03.2022 passed by the Commissioner, CGST, Dehradun confirming the demand of service tax along with interest and penalty under the provisions of the Finance Act, 1994.

2. The appellant is engaged in rendering various services and paying service tax under forward charge for various taxable services like Erection, Commissioning and Installation service, Maintenance & Repair services,

Works Contract services, Supply of Tangible Goods Service, Consulting Engineer Service, etc. and are also registered under RCM and paying service tax as service receiver under reverse charge for some services like Legal & Consultancy service, Manpower Recruitment/Supply Agency Services, Transport of Goods by Road/Goods Transport Agency Service, Works Contract Services. They are also availing CENVAT Credit facility as per the provisions of the CENVAT Credit Rules, 2004.

3. During the course of audit of other units of the appellant situated at Hyderabad and Bhopal, it was noticed that the said units had not paid duty on due service tax on the income received on account of facilitation of freight and insurance. Information was called for from the appellant regarding the payment for freight and insurance income. In response, the appellant informed that they have received amount of Rs.90,12,98,559/-, Rs.80,49,60,556/- and Rs.11,95,87,843/- during the period 2015-16, 2016-17 and 2017-18 (upto June, 2017) respectively and booked as freight and insurance income in the financial records and that no service tax is payable on the said amounts as they are not "Goods Transportation Agent" or "Insurance Service Provider" and the activity of transportation of goods and insurance is undertaken by them through their contractors/vendors and service tax has been discharged thereon. The appellant has also submitted Work Contract dated 27.12.2014 entered between the appellant and the Telengana State Power Generation Corporation Limited and also a sample copy of the invoice dated 07.03.2017. The Department was of the view that on the scope of work as mentioned in the contract, the appellant is required to perform the work of unloading at site and handling inter-site and intra-site transportation, erection, testing and commissioning, completion of trial

operation and handing over including insurance excluding Advance Loss of Profit (ALOP), excluding all kinds of transportation/duties on behalf of the clients for consideration. The services provided by them appears to be covered under the taxable service as per Section 65B(44) of the Act and leviable to service tax under Section 66B. Show cause notice dated 23.12.2020 was issued proposing demand of service tax amounting to Rs.26,93,70,551/- along with interest under Section 75 and penalty under Section 76 and 78 of the Act. On adjudication, the demand has been confirmed by the impugned order. Hence the present appeal before this Tribunal.

4. Heard both the sides and perused the records of the case.

5. The issue considered in the impugned order was whether the additional amounts received by the appellant towards transportation and consequent insurance booked by them under the head "Other Operational Income and Freight and Insurance Income" is in addition to the price of the goods and other Work Contract incidental to commissioning of the plant or not.

6. Both sides agree that the issue has been decided in the case of the appellant in respect of their Bhopal Unit by Final Order No.57972 of 2024 dated 27.11.2024, where the issue has been decided in favour of the appellant that no service tax is levialbe on the amount towards facilitation of freight and insurance. The relevant para of the order is set out below:-

> “7. However, with respect to the activity of transportation of goods by the appellant themselves, we observe that the appellant admittedly is not a Goods Transport Agency. We also observe that with effect from 1st July, 2012 the concept of nomenclature of services has been done away and every activity has been made taxable except those which are mentioned in section 66D of the Finance Act (Amendment Act of 2012). The period in question is post said amendment. Hence in light of the above facts section 66D is perused. We observe that sub-clause (p) of Section 66 D records the services by way of transportation of goods by road except the services of :
> (i) A Goods Transport Agency
> (ii) A Courier Agency.
>
> Since admittedly the appellant is neither the GTA, nor the Courier agency hence, the activity of transportation of goods by road by them is well covered under the aforesaid provision. The amount in question is an amount towards facilitation of freight and insurance by the appellants themselves. The said perusal of section 66 D (p) in itself is sufficient to hold that the service tax on the said amount has wrongly been demanded. The order to that extent is therefore liable to be set aside.”

7. The facts and the issue in the present case are identical and, therefore, following the aforesaid final order, the impugned order needs to be set aside and is hereby quashed. The appeal is, accordingly, allowed.

[order pronounced on 8th May, 2025.]

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Ckp.