

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE  
TRIBUNAL, BANGALORE**

REGIONAL BENCH - COURT NO. 1

**Service Tax Appeal No. 3308 of 2012**

[Arising out of Order-in-Appeal No.536/2012 dated 11.10.2012 passed  
by the Commissioner of Central Excise (Appeals), Mangalore]

**M/s. Threyambaka Enterprises,**  
Kittur Chennamma Circle,  
Dandeli-581 325.

Appellant(s)

*VERSUS*

**Commissioner of Central  
Excise, Customs and Service  
Tax,**  
7<sup>th</sup> Floor, Trade Centre,  
Bunts Hostel Road,  
Dakshina Kannada-575 003.

Respondent(s)

WITH

**1. SERVICE TAX APPEAL NO.3309 of 2012**

(M/s. Threyambaka Enterprises Vs. Comm. Of Central Excise,  
Customs and Service Tax, Dakshina Kannada)  
[Arising out of Order-in-Appeal No.536/2012 dated 11.10.2012  
passed by the Commissioner of Central Excise (Appeals),  
Mangalore]

**2. SERVICE TAX APPEAL NO.3310 of 2012**

(M/s. Threyambaka Enterprises Vs. Comm. Of Central Excise,  
Customs and Service Tax, Dakshina Kannada)  
[Arising out of Order-in-Appeal No.536/2012 dated 11.10.2012  
passed by the Commissioner of Central Excise (Appeals),  
Mangalore]

**3. SERVICE TAX APPEAL NO.20213 of 2014**

(M/s. Threyambaka Enterprises Vs. Comm. Of Central Excise,  
Customs and Service Tax, Mysore)  
[Arising out of Order-in-Appeal No.MLR-EXCUS-000-DIVV-APP-  
HAB-060-13-14 dated 20.11.2013 passed by the Commissioner of  
Central Excise (Appeals), Mysore]

**4. SERVICE TAX APPEAL NO.20694 of 2017**

(M/s. Threyambaka Enterprises Vs. Comm. of Central Excise,  
Customs and Service Tax, Mysore)  
[Arising out of Order-in-Appeal No.MLR-EXCUS-000-APP-101-16-  
17 dated 27.02.2017 passed by the Commissioner of Central  
Excise (Appeals), Mysore]

**APPEARANCE:**

Ms. Rukmani Menon with Mr. Nagaraja, Advocates for the Appellant

Mr. M. Sreekanth, Asst. Comm. (AR) for the Respondent

**CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)  
HON'BLE MRS. R. BHAGYA DEVI, MEMBER  
(TECHNICAL)**

**FINAL ORDER No. 20399 to 20403 / 2026**

DATE OF HEARING: 07.10.2025

DATE OF DECISION: 24.03.2026

**PER: D.M. MISRA**

These appeals are filed against respective Orders-in-Appeal passed by the Commissioner of Central Excise (Appeals), Mangalore, since involved common issues, are taken up together for hearing and disposal.

2. Briefly stated the facts of the case are that the appellant, a proprietorship concern, engaged in providing services of removal of fly ash from the factory of M/s. West Coast Paper Mills Ltd., Dandeli and dumping of the same outside the factory. Alleging that the appellant had provided services under the taxable category of 'Cargo Handling Services' as defined under Section 65(23) of Finance Act, 1994, show-cause notices were issued from time to time during the period from 01.02.2007 to 31.12.2012 for recovery of total service tax demand of Rs.82,36,739/- with interest and penalty. On adjudication, the demands were confirmed with interest and penalty. Aggrieved by the said orders, they filed appeals before the learned Commissioner(Appeals) who in turn rejected their appeals. Hence, the present appeals.

3.1. At the outset, the learned advocate for the appellant has submitted that the appellant had provided mainly the services of transporting of fly ash, Metso sludge and lime sludge, causticizer sludge from the factory premises of M/s. West Coast Paper Mills Ltd. to dumping pits / deserted mines. These transportation of waste material was carried out by the appellant through tippers and trucks owned by them. For the purpose of transporting the material, it was necessary to load fly ash and sludge by using tippers and unloading the same at pits and deserted mines. This

removal of fly ash and sludge was mainly in order to comply with the environmental laws. Referring to the contracts entered with M/s. West Coast Paper Mills Ltd., she has submitted that it contemplates removal, loading, unloading, handling of fly ash etc. without involving any manual labour, thereafter transporting it to the pits and deserted mines situated not very far from the factory and dumping the same. She has further submitted that the waste material under consideration are not marketable commodity and not capable of being bought and sold in the market. Even though the contract contemplates loading of fly ash into the tippers and dumping it in the pits and deserted mines, the loading and unloading activities is directly done from the boilers to the tippers and no manual labour is involved. The main emphasis is disposal of waste material and transportation of the same from the factory premises to the dumping yard. No activity of packing or unpacking is involved; hence the allegation of the Department that they rendered 'Cargo Handling Service' is unsustainable.

3.2. Further, referring to the Universal Dictionary definition of 'cargo', she has submitted that fly ash and sludge which are not meant to be carried by a ship or aeroplanes or any other vehicles for commercial transportation (being in the nature of goods being bought and sold) but transported only for the purpose of dumping in the pits and deserted mines; hence, cannot be called as 'cargo' at all; therefore transportation of these waste material also cannot be considered as 'Cargo Handling Service'. In support, they referred to the following judgments:-

- i. Bharat Haribhau [2008(12) STR 645 (Commr. Appl.)]
- ii. Karnataka State Warehousing Corporation Vs. CST, Bangalore [2010(19) STR 32 (Tri. Bang.)]
- iii. Tripathi Transport Co. Vs. CCE, Bhopal [2017(5)GSTL 384 (Tri. Del.)]
- iv. CCE, Raipur Vs. Drolia Electrosteels (P) Ltd. [2016(43) STR 261 (Tri. Del.)]
- v. CST, Ranchi Vs. HEC Ltd. [2018(9) GSTL 403 (Tri. Kolkata)]

3.3. Further, she has submitted that in appeal No. ST/20694/2017, the services referred under the said contract falls under the category of 'GTA Service' as there is no mention of loading, unloading etc. in the contracts / work orders; hence, demand on 'Cargo Handling Service' cannot be sustained. Further, she has submitted that no fact was suppressed or misstated in the returns filed by them with the Department from time to time; therefore, invocation of extended period of limitation is unsustainable.

4. Learned AR for the Revenue has reiterated the findings of the learned Commissioner(Appeals).

5. Heard both sides and perused the records.

6. The short issue involved in the present appeals for consideration is whether the removal of fly ash by tippers / trucks/ dumpers from the boiler head to dumping yard is taxable under the category of 'Cargo Handling Service'. The definition of 'Car Handling Service' under Section 65(23) of the Finance Act, 1994 reads as follows:-

Section 65(23) "cargo handling service" means loading, unloading, packing or unpacking of cargo and includes,—

(a) cargo handling services provided for freight in special containers or for non-containerised freight, services provided by a container freight terminal or any other freight terminal, for all modes of transport, and cargo handling service incidental to freight; and

(b) service of packing together with transportation of cargo or goods, with or without one or more of other services like loading, unloading, unpacking, but does not include, handling of export cargo or passenger baggage or mere transportation of goods;

7. A plain reading of the said definition reveals that loading, unloading, packing or unpacking of cargo and cargo handling services for all modes of transport and cargo handling services incidental to freight would fall under the scope of the said taxable service. In the present case, undisputedly the appellant engaged in the removal of fly ash from the boiler which emerges during the course of manufacture of paper. The contract dated 03.03.2007 entered with M/s. West Coast Paper Mills Ltd. for removal of such fly ash, even if mention 'removal, loading, unloading, handling, dumping and transportation of fly ash / economizer ash from FBC boilers', however, it is the claim of the appellant that there is no labour force employed in the process of loading, unloading, dumping etc. The tippers / trucks used to be kept below the boilers which collect the fly ash directly from the boilers and later transported and dumped outside the factory premises. It is their contention that this service is generally an activity of transportation rather than cargo handling service.

8. We find merit in the contention of the learned advocate for the appellant that the principal and only activity of the appellant is to remove the fly ash from the boiler bins so that the manufacturing process continues uninterrupted, as mentioned in the contract. The waste product viz. fly ash and / economizer ash generated during the course of manufacture of paper cannot be considered as 'cargo' within the scope of dictionary meaning of 'cargo' even if such definition is not provided under the Finance Act, 1994. We find that more or less in similar circumstances, this Tribunal in the case of Tripathi Transport Co. (supra) addressed the issue observing as:

**5.** The appellants are put to service tax liability only on the ground that the agreement mentions loading as one of the item of work under the scope of contract. Further, unloading charges @ Rs. 10 Per MT is separately mentioned. The transportation charges are mentioned as Rs. 450 Per MT. Admittedly the distance involved in movement of cargo is about 300 KM. In these factual

circumstances, we find that allegation and finding that the amount of Rs. 450 Per MT is attributable mainly to cargo handling and incidentally to the transportation is not factually sustainable. Further, the aspect that the loading of fly ash is done by mechanical process at the premises of the suppliers' plant (Hindalco) in which the appellants labour or instrument is not involved has not been considered or discussed by the lower authorities. This fact has been insisted upon by the appellant. Even considering the unloading charges separately mentioned as Rs. 10 Per MT, we find that the contract is overwhelmingly for the work of transporting the cargo of fly ash over a long distance of about 300 KM and unloading charges of about 2% of the transportation charges will not make the contract and the consideration, primarily meant for cargo handling services. There is no factual support for such inference.

9. In the present case also, the Revenue is of the opinion that since loading and unloading along with handling of fly ash is mentioned in the contract, the service charges paid for transportation of fly ash would be taxable under 'Cargo Handling Service'. Therefore, following the aforesaid precedent, the impugned order demanding service tax under the category of 'Cargo Handling Service' during the disputed period 01.02.2007 to 31.12.2012 cannot be sustained. In the result, the impugned orders are set aside and the appeals are allowed with consequential relief, if any, as per law.

(Order pronounced in Open Court on 24.03.2026)

**(D.M. MISRA)**  
**MEMBER (JUDICIAL)**

**(R. BHAGYA DEVI)**  
**MEMBER (TECHNICAL)**

Raja...