CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 20085 of 2017

(Arising out of Order-in-Appeal No. BEL-EXCUS-000-APP-032-16-17 dated 24.10.2016 passed by the Commissioner of Central Excise (Appeals), Mysore.)

M/s. Doddanavar Brothers,
Mine Owners & Exporters,
Doddanavar Corporate House, No. 738/1,
Near 3rd Railway Gate, Khanapur Road,
Belgaum – 590 008.

Appellant(s)

VERSUS

Commissioner of Central Excise and Service Tax,
No. 71, Club Road,
Belgaum – 590 001.

Respondent(s)

APPEARANCE:

Mr. Pradyumna G.H., Advocate for the Appellant

Mr. Maneesh Akhoury, Asst. Commissioner (AR) for the Respondent

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

Final Order No. 20398 /2026

DATE OF HEARING: 14.10.2025
DATE OF DECISION: 24.03.2026

PER : DR. D.M. MISRA

This is an appeal filed against Order-in-Appeal No.BEL-EXCUS-000-APP-032-16-17 dated 24.10.2016 passed by the Commissioner of Central Excise (Appeals), Mysore.

2. Briefly stated the facts of the case are that the appellant are mine owners and are registered under the category of

Transportation of Goods by Road or Goods Transport Agency(GTA) w.e.f. 28.12.2006. On audit of their records during 2009, it was noticed that the appellant has not included an amount of Rs.1,88,28,661/- being the transport charges incurred for export of their finished goods during the period 2007-08 and failed to discharge service tax under the category of GTA service. Consequently, a show-cause notice was issued to the appellant on 22.04.2013 demanding service tax of Rs.5,81,806/- on the said taxable value of Rs.1,88,28,661/- for the period 2007-2008 along with interest and penalty. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, they filed appeal before the learned Commissioner(Appeals), who in turn rejected their appeal. Hence, the present appeal.

3. At the outset, the learned advocate for the appellant has submitted that the appellant are owners of mines and are engaged in export of Iron ore fines. During the relevant period, they have exported Iron ore fines. It is their contention that the value of Rs.1,88,28,661/- has not been considered while discharging service tax on GTA service for the simple reason that they have not engaged the service of any GTA nor any consignment note has been issued, thereby attracting service tax on the value of the said transportation cost incurred for export of Iron ore fines and reflected in their balance sheet. In support, they have referred to the judgment of this Tribunal in the case of Lakshminarayana Mining Company Vs. CCT, Bengaluru South GST [2019(27) GSTL 745 (Tri. Bang.)]. It is his contention that they have simply engaged the services of lorries for transportation of Iron ore from their mines to the port of export; hence, in view of the principle laid down by the said judgment, the service tax demand on the value of transportation cost incurred during the said period 2007-08 i.e.

Rs.1,88,28,661/- cannot be sustained. Further, even though they have incurred the value of transport cost during the period 2007-08 and the audit was conducted in 2009 and the show-cause notice was being issued in April 2013, in absence of any suppression of fact or misdeclaration, the demand is barred by limitation.

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 appeal is whether the appellant are required to pay service tax on reverse charge mechanism basis as per Rule 2(1)(d)(iv) of Service Tax Rules, 1994 on the cost of transportation incurred for transport of Iron ore fines from their mines to the port of export during the period 2007-08.

7. On going through the show-cause notice and the impugned order, we find that the authorities below have observed that even though the appellant is entitled to the benefit of Notification No.41/2007-ST dated 06.10.2007, on the value of freight incurred for transportation of goods from the mines to port of export; however, the said exemption is extended by way of refund subject to initial payment of service tax and thereafter establishing the fact of export of the goods and incurring of freight charges on which service tax was paid. In the present case, the appellant had failed to discharge service tax first on the value of freight charges i.e. Rs.1,88,28,661/-; therefore, the refund is not admissible and they are required to pay service tax on the said value. On the other hand, the appellant has claimed that there is no evidence to show that they had employed the services of GTA, who issued a consignment note thereby service

tax on such freight charges is attracted and to be paid by the appellant. Further, it is their claim that the fact of incurring GTA services for export of their goods duly reflected in their balance sheet and subjected to audit wayback in 2009; therefore, demanding service tax in 2013 in absence of any suppression of facts or misdeclaration is hit by limitation.

8. The crux of the argument advanced on behalf of the appellant is that they have not employed any GTA and the Iron ore fines have been transported from the mines to the port of export by employing individual trucks; therefore, service tax is not attracted in such cases. In support, they have referred to the judgment of this Tribunal in the case of Lakshminarayana Mining Company (supra), which was earlier remanded by the Hon'ble Supreme Court to Hon'ble Karnataka High Court, which in turn considered by this Tribunal. This Tribunal observed as under:-

> **5.** The core issue, as concurred with by both sides, is the taxability of the consideration paid by the appellant for utilization of lorries for transportation of 'iron ore' from their mines to the port of export at New Mangalore. It is the claim of the Learned Counsel for the appellant that the trucks are hired by themselves and the 'iron ore' for export are loaded on to them for carrying to the port of export. He contends that there is no agency function involved as the goods are loaded on vehicles hired by them and, hence, there is no third party involved. He further contends, after taking us through the narrative of the history of taxation of 'goods transport' under Finance Act, 1994, that it was not the intent of the Government to tax 'goods transport operators' but that the tax leviability was to devolve on agencies that perform the function of acceptance of cargo for transport under consignment notes.
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> **6.** Learned Authorised Representative drew our attention to the findings in the impugned order pertaining to certain invoices which clearly indicated the levy of Service Tax which was

thereafter deducted from the total payment made by the appellant to the goods transport entities. He also points out that the 'trip sheets' maintained by the lorries also contain a common goods consignment note number. According to him, these were sufficient to establish the taxability of the consideration thereon under Section 65(105)(zzp) of Finance Act, 1994.

7. Having heard the rival submissions, we take note that this issue has come up before the Tribunal time and again. In a catena of decisions such as *Commissioner of Central Excise, Guntur* v. *Kanaka Durga Agro Oil Products Pvt. Ltd.* [2009 (15) S.T.R. 399 (Tri. - Bang.)] followed in *Shreenath Mhaskoba Sakhar Karkhana Ltd.* v. *Commissioner of Central Excise, Pune-III* [2017 (3) G.S.T.L. 169 (Tri. - Mumbai)] and in *Commissioner of Central Excise and Service Tax, Aurangabad* v. *Jaikumar Fulchand Ajmera* [2017 (48) S.T.R. 52 (Tri. - Mumbai)] the issue stands settled with detailed orders. In *re Jaikumar Fulchand Ajmerai,* it was held that -

"4. Our decision in *Re : Kanaka Durga Oil Products Ltd.* has excluded the individual truck owner from the purview of the tax in Section 65(105)(zzp) of Finance Act, 1994. We have perused the definition of "goods transport agency" in Section 65(50b) of Finance Act, 1994 and find that an essential characteristic of provider of the service is the issuance of a consignment note. Revenue has resorted to a circular logic by claiming that Rule 4B of Service Tax Rules, 2004 requires the goods transport agency to issue a consignment note. This, according to us, is a specious line of reasoning as the provider of "goods transport agency" service being determined by issuance of consignment note under the statute, it is not within the ambit of a subordinate legislation to create the class of taxable persons by imposing a condition that would, perforce, bring such persons within the tax net. The intent and purpose of Rule 4B has been misinterpreted by the reviewing authority.

5. The goods transported by the District Supply Officer are for a public service which involves a distribution chain. The distributors are mere designated outlets for the public distribution system and, till the transfer of title of the goods to the intended beneficiaries of the system, the goods are in the possession of the District Supply

> Officer; consequently, during the transportation stage, the respondent does not acquire any lien on the goods which is implicit in the issue of a consignment note. Therefore, no stretch of imagination can document issued by District Supply Officer conveying the goods transported be construed as a consignment note to render the respondent to be a 'goods transport agency.' The demand of tax therefore, fails."
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> **8.** The service that is taxable is -
> 'in relation to transport of goods by road and not transportation of goods by road. It is submitted that it is only such of those services which are in relation to transport of goods by road which are taxable and not the actual transport of goods by roads itself.'
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> and in Section 65(50b) of Finance Act, 1994 goods transport agency envisages rendering of service by a person in relation to transport of goods by road and issue of a consignment note by whatever name called.
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> **9.** From the above, it is clear that the tax liability will arise only upon the goods transport agency i.e., one who undertakes responsibility, in full legal sense, for the cargo despatched by it and an individual truck operator who does not accept such responsibility, is merely performing the activity of transport of goods which is not the subject of the tax. It is, of course, necessary to point out, from the history of the tax on this service, that the blanket intent to tax the operators led to widespread agitation and, conscious of the problems of implementation, the Central Government, upon reintroduction of the levy, restricted it to agencies.

9. Besides, we find that the demand raised on the basis of the balance sheet figures audited by the Department in 2009 and the show-cause notice was issued in 2013; therefore, the demand is also barred by limitation.

10. In the result, following the precedent laid down by this Tribunal in the case of Lakshminarayana Mining Company (supra) and also since the demand is barred by limitation, the

impugned order cannot be sustained and accordingly, set aside. The appeal is 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)

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