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

REGIONAL BENCH- COURT NO. 01

Service Tax Appeal No. 10823 of 2015

(Arising out of OIA-AHM-SVTAX-000-APP-206-14-15 dated 25/02/2015 passed by the Commissioner (Appeals-II), Central Excise, Ahmedabad)

CENTRAL WAREHOUSING CORPORATION **.....Appellant**
Regional Office Gujarat, Opp Unnati Vidhyalaya
Mahalaxmi Char Rasta, Paldi, Ahmedabad,
Gujarat-380007

VERSUS

CGST & Central Excise– AHMEDABAD South **.....Respondent**
7th Floor, Central GST Bhavan, Nr. Polytechnic,
Ambawadi, Ahmedabad-380015

WITH

Service Tax Appeal No. 11435 of 2015

(Arising out of OIA-AHM-SVTAX-000-APP-020 to 021-15-16 dated 20/05/2015 passed by Commissioner (Appeals-II), Central Excise, Ahmedabad)

CENTRAL WAREHOUSING CORPORATION **.....Appellant**
Regional Office Gujarat, Opp Unnati Vidhyalaya
Mahalaxmi Char Rasta, Paldi, Ahmedabad,
Gujarat-380007

VERSUS

CGST & Central Excise– AHMEDABAD South **.....Respondent**
7th Floor, Central GST Bhavan, Nr. Polytechnic,
Ambawadi, Ahmedabad-380015

APPEARANCE:
Shri. Rahul Patel, Chartered Accountant for the Appellant
Shri. M P Solanki, Assistant Commissioner (AR) for the Respondent

CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)
HON'BLE MR. SATENDRA VIKRAM SINGH,MEMBER (TECHNICAL)

Final Order No. 10376-10377/2026

DATE OF HEARING:28.01.2026
DATE OF DECISION:29.06.2026

SATENDRA VIKRAM SINGH

M/s. Central Warehousing Corporation (CWC), Ahmedabad who are appellant in both the appeals, were issued two show cause notices i.e one dated 04.03.2010 demanding Service Tax of Rs. 47,71,487/- and the other dated 26.08.2011 for demanding service tax of Rs. 347001/- under Section 73(1) along with interest under Section 75 & penalty under Section 76,77,78 of the Finance Act, 1994.

1.1 The facts of the case are that during audit conducted of the records of M/s Durga Crane Company and M/s. Kandla Cargo Handlers, Kandla by the departmental officers, it revealed that the above two parties were providing services to the appellant under Handling and Transportation (H & T) contract but while issuing invoices, they were splitting charges in two parts i.e. one for Cargo Handling Services on which they were paying service tax and the other for GTA Service. Instead of paying service tax on GA service, they had put a remark in their invoices that *the service recipient would be paying service tax on reverse charge basis, (RCM basis) i.e.* appellant in these cases.

1.2 On the basis of records of above two parties for the period from 11.02.2005 to March 2009, it revealed that they have provided Goods Transport Agency Service valued at Rs. 4,19,78,297/- (abated value) on which service tax of Rs. 47,71,487/- was liable to be paid by the appellant on reverse charge basis. Further, another show cause notice dated 26.08.2011 was issued to them for demanding service tax of Rs. 347001/-. for the period from 01.04.2009 to 31.03.2010.

1.3 The show cause notice dated 04.03.2010 was adjudicated by the Additional Commissioner vide order dated 17.08.2012 wherein, he

confirmed service tax demand of Rs. 47,71,487/- against the appellant along with interest applicable as per Section 75 of the Finance Act, 1994. He imposed a penalty of Rs.1,000/- on them under Section 77 and an equal penalty of Rs. 47,71,487/- under Section 78 of the Finance Act, 1994. Second show cause notice was decided vide order dated 15.03.2012 wherein demanding was confirmed along with penalty under Section 77 and equal penalty under Section 78 of the Finance Act, 1994. Aggrieved with these orders, appellant filed two appeals before the Commissioner (Appeals) mainly, contending that the service providers have artificially vivisected their invoice(s) in two parts which was not permissible as contract was for provision of H & T services which fall under Cargo Handing Service. Appellant submitted that they are classifying these services (which are their output services) under Cargo Handling Service and are paying full-service tax. They are therefore, not liable to pay any service tax on as services were to be classified under Cargo Handing Service. Another ground taken was wrong invocation of extended period. Learned Commissioner (Appeals) after considering their arguments, rejected the appeals filed by M/s CWC and upheld the orders of the lower authority. He also observed the penalty imposed on the appellant under Section 76 of the Finance Act, 1994 has been upheld by Commissioner (Appeals) in another order. The second appeal filed by the appellant was also rejected by the appellate authority vide order dated 25.05.2015. Hence, the present appeals before the Tribunal.

1.4 In their appeal, M/s CWC have taken the following grounds:

a. The appellate authority erred in interpreting Rule 2(1)(d) of the Service Tax Rules, 1994 read with Section 68 (2) of the Finance Act, 1994 and the definition of GTA service as per Section 65(50b) of the Finance Act, 1994.

b. They are neither the consigner nor consignee in this case and are acting as an agent of the client who ultimately consumes the service provided by above-mentioned two parties. Further, no consignment note was issued in this case which is must for a service to fall under GTA service.

c. Revenue has not adduced any evidence to show that Kandla Cargo Handlers was a goods Transport Agnecy (GTA) as defined under Section 65(50b) of the Finance Act, 1994. They are paying service Tax to the Government above said services under cargo handing service on full value without availing any abatement and thus, there is no short payment of service tax.

d. Had they paid service tax on GTA service on Reverse Charge Basis, they would have been entitled to Cenvat Credit on the said service tax amount. The situation is therefore, revenue neutral which fact has completely been ignored by the Learned Commissioner (Appeals). If same criterion is adopted for classification of a part of their output service under GTA services then, they have already paid excess service tax to the Government as against present service tax liability confirmed on them.

e. Their H&T contractors have wrongly bifurcated service in two parts one for cargo handling service and other for GTA services, to lower their tax liability by shifting to the appellant.

The appellant prayed for setting aside the impugned order and allowing their appeals.

3. Learned Advocate argued that issuance of consignment note is must for classification of a service under Goods Transport Agency category. Appellant entered into a composite Cargo Handling Service Contract with their clients for which, they had engaged above two parties as

contractors. The service provided by above two contractors is therefore, liable to be classified as Cargo Handling Services which they wrongly bifurcated into two parts to shift the tax liability on the appellant on RCM basis. This incorrect classification was never accepted by the appellant as they continued to classify their output services which were identical in nature and character to those rendered by their contractors, under Cargo Handling Service and discharged the service tax on the full value at the full rate. Learned Advocate further pleads that the appellant is a Public Sector undertaking and therefore, no motive can be attached with them for evading service tax payment.

3.1 Tax has to be collected strictly as per the provisions of the Finance Act, 1994 and any disagreement between two parties does not constitute basis to levy tax. Being a combined contract for Cargo Handling Service, they have correctly discharged service tax liability on their output services. They pray that the service tax liability wrongly fastened on the appellant on GTA service under Reverse Charge Mechanism need to be set aside.

3.2 Learned Advocate further pleads that under Rule 4B of the Service Tax Rules, 1994, "Consignment note" should contain particulars such as vehicle registration number, date of transportation, origin and destination of goods etc. The invoices raised by their contractors were consolidated periodic invoices issued after completion of transportation and lacked all mandatory attributes of a consignment note. These invoices therefore, cannot be treated as consignment note and hence, wrong classification of service by their contractors under the category of GTA service, cannot bring any liability of service tax on them. He further pleads that as per opportunity provided by the Tribunal, they inspected the department's file which also did not contain any consignment note. Thus, their contention

that no consignment note was ever issued in these cases is further fortified. Arguing on invocation of extended period, learned advocate mentions that there is no charge of suppression or willful mis-statement of facts or intent to evade payment of service tax and therefore, extended period is not applicable.

3.3 Learned Advocate mentioned that in an identical matter, CESTAT Delhi vide Order reported at 2019 (5) TMI 258 (Tir-Delhi) in their own case has decided that *"revenue cannot split Cargo Handling Service into Transport Services and other services by vivisecting the contract entered into by the appellant with H & T contractor M/s Durgesh Shukla, for charging service tax under GTA service on RCM basis. CBEC itself vide their circular dated 08.01.2002 has clarified that storage, warehousing keeper is required to pay tax under the category of Cargo Handling Service only. Thus, it cannot be held that providing the Cargo handling Service, in which the transportation of goods is also an ancillary activities, can be vivisected into transportation service and other service, such as loading and unloading of the goods, in this case".* He pleads that the said decision is squarely applicable in the facts of the present case and therefore, service tax demands confirmed on them be set aside by allowing their appeals**.** He also relied on the following decisions:

- Aims Industries Ltd Vs. C.C.E & S.T-Vadidara-i (2024 (1) TMI 721-(Tri-Ahmd.)
- Bhoramdeo Sahakari Shakhar utpadan Karkhana Vs. C.C.E Raipur [2019 (10) TMI 1416-(Tri- Delhi]
- Ultra Tech Cement Ltd. Vs. C.C.E, Kolhapur [2017 (11) TMI 297- (Tri-Mumbai]
- Choice Laboratories Ltd. Vs. Union Of India [2013 (1) TMI 894 (Gujarat)
- M/S Bharat Oman Refineries Ltd. Vs. CCE & ST, Bhopal [2017 (4) TMI 1129-(Tri-Delhi]
- K-AIR SPECIALITY GASES PVT. LTD. Vs. C.C.E, Pune [2017 (5) TMI 822 – (Tri- Mumbai]

4. Countering the arguments, learned AR reiterated the finding of the lower authorities. He mentions that H & T contractors themselves have mentioned in their invoices that *"service tax on transportation service shall be paid by the service recipient under Reverse Charge Mechanism",* which shows that no service tax has been paid on transportation charges by their H & T contractors. The department has therefore, correctly confirmed demand of service tax on them along with interest and penalty. On invocation of extended period, he argues that the issue was detected while auditing records of H&T contractors which would otherwise have remained unnoticed by the department. GTA services so received by the appellant were not reflected in their ST-3 returns. Unless any service provider shows taxable value of service on which he is liable to pay service tax under RCM basis, there is no other mechanism with the department to discover that. He submits that as per the provisions of the Finance Act, 1994 and the rules made there under, it was the responsibility of the appellant to have correctly reflected taxable value in their ST-3 returns including the amount on which they were liable to pay service tax on RCM. He relies on the decision of CESTAT Mumbai in the case of Commissioner of Central Excise, Nasik Vs. V H Patel & Company reported at 2017 (6)TMI 327, decision in the case of L & T Ltd Vs. CCE Raipur reported at 2017 (3) TMI 940, decision of CESTAT Bangalore in the case of Bhagyalaxmi Electroplast P Ltd reported at 2015 (39) STR 622 and decision of Hon'ble Allahabad High Court in the case of CCE Lucknow Vs. Kisan Sahakari Chini Mills Ltd reported at 2019 (29) GSTL 292 (All.) to supplement his arguments.

5. We have heard both sides. The short issue to be decided in this case is whether or not M/s CWC are liable to pay service tax on receipt of goods transport agency service from their H&T contractors?

5.1 We find that the appellant has entered into a contract with Shri. Durga Crane Company and M/s. Kandla Cargo Handlers service for handling and transportation of containerized cargo and other incidental services etc. Clause XXI of the Tender document specifies services to be rendered by the contractor which are categorized into Import operations, export operations, Factory stuffing and de-stuffing, Local transport, General operations and Incidental operations.

(A) Under Import operation, activities to be done in brief are:-

a) The contractors shall provide suitable type of road vehicles in good working condition for transportation of containers.

b) It shall take over loaded containers placed on such road vehicles after due inspection of locks/seals and the condition of the containers and on completion of all other formalities including preparation of equipment interchanged report. The transportation shall be done within the prescribed time limits.

c) The contractors shall make available the required number of vehicles and shall arrange taking over all containers from the port. The contractor shall provide transport facilities to the Customs officials, where it becomes necessary to move the container under the Customs escort at no extra remuneration.

d) On reaching the container depot, contractor shall hand over container to the ICD authorities duly satisfying the condition of seals/locks of the container. The contractor shall arrange immediate de-stuffing of the container after grounding.

e) Loaded/empty container, as the case may be, shall have to be stacked in the container yard of the ICD up to three high.

f) The contractor shall provide labour and appropriate equipment, low mast forklifts, hand pallet trucks, hydraulic/hand trolleys, wheel

barrows, slings, plates etc for bringing the package from storage point or from any location in the open yard to the designated point for customs examination.

(B) Similar services are prescribed for Export Operations where contractor shall arrange to receive export cargo at the ICD Complex in break bulk condition, being brought by the parties in trucks/vehicles and unload the same by appropriate handling equipment means and stack in the export unit. Contractors shall provide labour and appropriate equipments, required vehicles at ICD and transport the loaded containers after completing all formalities. Transportation of loaded/empty containers from ICD to designated factory, for de-stuffing/stuffing and return back to the factory shall be the responsibility of the contractor.

(C) For incidental operations, contractor shall be required to perform all or any of the following duties at no extra payment.

(a) Handling of cargo in the manner required by Corporation/Customs authorities, whenever joint check/Survey is warranted due to defective seal etc.

(b) Weighment of all out-ward/in-ward container/cargo

(c) Sealing and riveting of container(s)

(d) Inventorisation (both in the sheds/open yard)

(e) Housekeeping of containers and cargo to give the campus a neat look at any given point of time.

(f) Proper cleaning of the ICD Complex premises to be ensured after destuffing/stuffing or shifting or delivery or any other operation performed in the premises.

(g) Proper cleaning of Interior of the container before stuffing/after destuffing.

(h) Stacking of chocking/packing material viz. pallets etc in the designated area in ICD Complex.

5.2 From above, it is clear that the services rendered by H&T contractors included not only transportation of empty/loaded containers from port to ICD to factory and vice-versa but also handling of cargo

within the ICD area as well as provision of causal labor of smooth handling operations. Cumulatively, services performed by H&T contractors seem to be covered under Cargo Handling Services against which contractors have issued monthly invoice showing consideration amount in two parts i.e. one pertaining to cargo handling and the remaining towards transportation charges. They paid service tax on cargo handling portion only and shifted the service tax liability on GTA operation on the service recipient, on RCM basis.

5.3 We find that the facts in the present case are squarely covered by the decision of CESTAT Delhi in appellant's own case, decided Vide Final Order No. 50600 of 2019 dated 02.04.2019. Wherein, it was held that revenue cannot split Cargo Handling Services into transport services and other services while vivisecting the contract entered by the appellant with H & T contractor. It cannot be held that providing Cargo Handling in which transportation of the goods is also ancillary activity, can be vivisecting in transportation services and other services such as loading and unloading of the goods. The relevant paras of the said decision are reproduced below:-

> *"7. We have heard parties and considered the submissions on record.*
>
> *8. The issue involved in the present controversy is regarding charging of service tax on the transportation activities which is being conducted by the appellant through their H&T Contractor. The contract is a consolidated one for host of the activities namely:*
>
> *(a) Handling of goods at rail head (loading/unloading, stacking at the platform etc.*
>
> *(b) Transportation of goods from rail head to the warehouses.*
>
> *(c) Handling of goods at warehouse (unloading, stacking them inside the godown in the manner as prescribed).*
>
> *(d) Other services such as physical verification, weighment rebagging, supply of casual labour etc.*
>
> *We find that this issue stands settled in favour of the appellant vide order of Hon'ble Tribunal in the case of* ***Karnataka State Warehousing Corporation,*** *wherein para 9, it is held as under:*

> ***9.*** *As regards the question of arranging loading and unloading of fertilizer by H&T contractors at the assessee's premises, the appellant had not taken any ground challenging the same. In the written submissions furnished, it is argued that the impugned activity is more appropriately classifiable as "Business Auxiliary Service" instead of "Clearing and Forwarding Service". We are not able to appreciate this ground. The appellants arranged loading and unloading of consignments of fertilizers. The taxable entry is as follows :*
>
> > *"Cargo handling means - loading, unloading, packing or unpacking of cargo and includes cargo handling services provided for freight in special containers or for non-containerized 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, but does not include handling of export cargo or passenger baggage or mere transportation of goods."*
>
> *KSWC charges its clients for the above service which is admittedly with a margin of 15% compared to the amount paid to H&T contractors. In view of the language of the entry 'Cargo Handling Services' we hold that the appellants are also engaged in provision of 'Cargo Handling Services'.*
>
> *9. In view of above, we are of the view that the Revenue cannot split the cargo handling services into transport services and other services while vivisecting the contract entered by the appellant with H&T contractor M/s Durgesh Shukla, for charging service tax under GST category on the RCM basis. We also find that in this case the CBEC itself vide their Circular dated 8.1.2002 has clarified that for storage, warehousing keeper is required to pay tax under the category of cargo handling services only. We also find that in this case H&T contractor has not issued any consignment note to the appellant and, therefore, would not be covered as Goods Transport Service (GTA) which has been held in the various decisions of Hon'ble Tribunal in the cases mentioned at para-4.1 above. Accordingly, it cannot be held that providing the cargo handling service in which the transportation of goods is also an ancillary activity, can be vivisected into transportation service and other services, such as loading and unloading of the goods, in this case agricultural produce. We also find that the Commissioner in his order No. 21-25/Commr/ST/BPL-I/2013 dated 28.6.2013 has rightly held that the benefit of exemption Notification No. 10/2002-ST dated 1 August, 2002 is available to the notice. The notification exempts the taxable service provided by "any person by a cargo handling agency in relation to, agricultural produce or goods intended to be stored in a cold storage, from the whole of the service tax leviable thereon under Section 66 of the said Act." This order has attained finality and accordingly, the benefit of this notification is available for the activities carried out by the appellant during the concerned period. Therefore, no service tax is leviable on the appellant. The order under challenge is thus not sustainable.*
>
> *10. In view of above, we set aside the impugned order and allow the appeal with consequential benefits."*

5.4 The appellant has relied on several decisions of the tribunal as mentioned in para 3.3 above. We find that in the case of AIMS Industries

Ltd. Vs C.C.E & S.T, Vadodara-I, Bhoramdeo Sahakari Shakhar Utpadan Karkhana Vs. C.C.E & S.T, Raipur and Ultra Tech Cement Ltd Vs. C.C.E, Kolhapur, it has been held that service tax under GTA service is not leviable if consignment note or lorry receipt is not issued and transportation is not provided by the goods transport agency. The decisions relied by the revenue in the case of V H Patel & Company and in Larson and Turbo Ltd case are not applicable as in both the cases consignment note was issued.

5.5 As per the provisions of Section 65 (50b) of the Finance Act, 1994, "Goods Transport Agency" means *any person who provides service in relation to transport of goods by road and issue*s *consignment note*, *by whatsoever name called"*. It is on record that in this case no consignment note(s) have been issued by the contractors and only a consolidated invoice has been issued on monthly basis indicating therein the amount to be received against two different services. This fact is also established from the Inspection Memo dated 17.06.2025, jointly signed by the Representative of the appellant and concerned officials of the commissionerate who were custodian of the file. Joint scrutiny/inspection of revenue's file was ordered by this Tribunal on 06.03.2025. Therefore, when H&T contractors of the appellant have not issued any consignment note, service cannot be classified under GTA service. The agreement entered into between the appellant and their contractors also reveals that service agreed upon between them was Cargo Handling Service. The services so provided by H&T contractors were ultimately consumed by the clients of the appellant to whom invoices have been issued treating output service as Cargo Handling services. This is also clear from the certificate dated 23.04.2014 issued by M/s Kadamber and Associates , Chartered Accountant who have certified that-

1. We have verified the transactions of invoices raised by the Cargo Handlers in relation to which the demand of service tax has been raised under Goods Transport agency Services, on test check basis..

2. We have verified the sales invoices raised by the Central Warehousing Corporation to its customers/clients, on test check basis.

3. It has been found that M/s Central Warehousing Corporation has included whole of the amount of transportation charges as contained in the invoices raised by the Cargo Handlers to M/s Central Warehousing Corporation, into the value of taxable services contained in their respective sales invoices under Cargo Handling Services and offered full amount of Service Tax thereon.

5.6 Therefore, considering all the facts and relevant case laws, we are of the view that H&T contractors of the appellant have unnecessarily vivisected consideration amount in two part, namely GTA service and cargo handling service. Accordingly, we hold that the appellant is not liable to pay service tax on GTA service under RCM basis. Consequently, service tax demands confirmed by the lower authority vide impugned order dated 25.02.2015 and 20.05.2015 against the appellant do not survive.

7. Both the Appeals are allowed.

(Pronounced in the open Court on 29.06.2026)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Prachi