CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL HYDERABAD

Division Bench – Court No. – I

Service Tax Appeal No. 27580 of 2013
(Arising out of Order-in-Appeal No.18/2013 (T) ST dt.15.05.2013 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Guntur)

M/s UltraTech Cement Ltd
Bhogasamudram Village, Tadipatri Mandal,
Anatapur, Andhra Pradesh – 515 721
......Appellant

VERSUS

Commissioner of Central Tax
Tirupati - GST
9/86-A, West Church Compound,
Amaravati Nagar, Tirpuati, AP – 517 502
……Respondent

WITH

Service Tax Appeal No. 30830 of 2016
(Arising out of Order-in-Appeal No.TTD-EXCUS-000-APP-003-16-17 dt.27.04.2016 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Guntur)

M/s UltraTech Cement Ltd
Bhogasamudram Village, Tadipatri Mandal,
Anatapur, Andhra Pradesh – 515 721
......Appellant

VERSUS

Commissioner of Central Tax
Tirupati - GST
9/86-A, West Church Compound,
Amaravati Nagar, Tirpuati, AP – 517 502
……Respondent

WITH

Service Tax Appeal No. 30312 of 2018
(Arising out of Order-in-Appeal No.TTD-EXCUS-000-APP-081-17-18 dt.26.12.2017 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Guntur)

M/s UltraTech Cement Ltd
Bhogasamudram Village, Tadipatri Mandal,
Anatapur, Andhra Pradesh – 515 721
......Appellant

VERSUS

Commissioner of Central Tax
Tirupati - GST
9/86-A, West Church Compound,
Amaravati Nagar, Tirpuati, AP – 517 502
……Respondent

WITH

Service Tax Appeal No. 30313 of 2018

(Arising out of Order-in-Appeal No.TTD-EXCUS-000-APP-082-17-18 dt.26.12.2017 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Guntur)

M/s UltraTech Cement Ltd
Bhogasamudram Village, Tadipatri Mandal,
Anatapur, Andhra Pradesh – 515 721

......Appellant

VERSUS

Commissioner of Central Tax
Tirupati - GST
9/86-A, West Church Compound,
Amaravati Nagar, Tirpuati, AP – 517 502

……Respondent

WITH

Service Tax Appeal No. 30314 of 2018

(Arising out of Order-in-Appeal No.TTD-EXCUS-000-APP-083-17-18 dt.26.12.2017 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Guntur)

M/s UltraTech Cement Ltd
Bhogasamudram Village, Tadipatri Mandal,
Anatapur, Andhra Pradesh – 515 721

......Appellant

VERSUS

Commissioner of Central Tax
Tirupati - GST
9/86-A, West Church Compound,
Amaravati Nagar, Tirpuati, AP – 517 502

……Respondent

AND

Service Tax Appeal No. 30108 of 2020

(Arising out of Order-in-Appeal No.TTD-EXCUS-000-APP-029-19-20 dt.18.09.2019 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Guntur)

M/s UltraTech Cement Ltd
Bhogasamudram Village, Tadipatri Mandal,
Anatapur, Andhra Pradesh – 515 721

......Appellant

VERSUS

Commissioner of Central Tax
Tirupati - GST
9/86-A, West Church Compound,
Amaravati Nagar, Tirpuati, AP – 517 502

……Respondent

Appearance

Shri Ch. Sumanth, Advocate for the Appellant.
Shri B. Sangameshwar Rao, AR for the Respondent.

Coram: HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30415-30420/2026

Date of Hearing: 06.07.2026
Date of Decision: 28.07.2026

[Order per: ANGAD PRASAD]

The present six appeals arising out of Orders-in-Appeal, whereby, the Commissioner (Appeals) upheld the Orders-in-Original confirming the demand of service tax together with interest and penalties under section 76, 77 & 78 of the Finance Act, 1994, against M/s Ultratech Cement Ltd (hereinafter referred to as the appellant) on the allegation that the appellant had supplied its privately owned railway wagons to the Indian Railways under the Liberalized Wagon Investment Scheme (LWIS) and received consideration in the form of freight concession. According to the department, such activity amounts to taxable service under the category of 'Supply of Tangible Goods for use service'.

2. The facts, in brief, are that the appellant is engaged in the manufacture of cement and clinker. To ensure uninterrupted transportation of its finished products, it procured BCCW railway wagons under the LWIS introduced by the Ministry of Railways. Under the said scheme, private investors procure wagons at their own cost for movement of their own goods and, in return, are granted freight concession for specified period. The ownership of the wagons remains with the investor and the wagons are utilized only against indents placed by such investor.

3. The department entertained the view that by permitting the Railways to attach these wagons to railway engines for transportation, the appellant had supplied tangible goods for use to the Railways and that the freight concession received represented consideration for such taxable service. On this basis, the impugned demands have been confirmed.

4. Learned Counsel has submitted that the very foundation of demand is legally not sustainable. It has been argued that the appellant has never undertaken any contractual obligation to provide any service to the

Railways. On the contrary, the Railways continue to provide transportation service to the appellant, for which freight charges are paid by the appellant, though at concessional rates under the policy. It has been submitted that the concession is merely an incentive granted under the policy framed to encourage private investment in railway infrastructure and cannot be regarded as consideration for any independent service.

5. He has further submitted that the essential ingredients of a taxable service are completely absent. There is neither any service provider-service recipient relationship nor any identifiable service rendered by the appellant to the Railways. The appellant merely invested in wagons for their own business requirement. Such investment cannot be artificially converted into a taxable service.

6. Learned Counsel has also submitted that the freight concession is nothing but a reduction in freight payable by the appellant and cannot be equated with consideration under section 67 of the Finance Act, 1994. Reliance has been placed upon several judicial pronouncements as under:

a) All India Federation of Tax Practitioners Vs UOI [2007 (7) STR 625 (SC)]
b) Man Trucks India Pvt Ltd Vs CCCE & ST, Indore [2020 (4) TMI 76 – CESTAT New Delhi]
c) Bharti Airtel Ltd Vs CCGST, Gurugram [2025 (1) TMI 1322 – CESTAT Chandigarh] affirmed by Hon’ble Supreme Court.
d) CCGST & CE, Mumbai East Vs Edelweiss Financial Services Ltd [2022 (2) TMI 1359 – CESTAT Mumbai] affirmed by Hon’ble Supreme Court
e) Vinay Kumar Vs CST, Delhi-I [2020 (43) GSTL 384 (Tri-Del)]
f) Ultra Tech Cement Ltd Vs CGST & CE, Trichy [2025 (11) TMI 1276 – CESTAT Chennai]
g) CCE, Chandigarh Vs Nahar Industrial Enterprises Ltd [2010 (19) STR 166 (P&H)]

7. Learned AR has reiterated the findings recorded in the impugned orders. He has contested that ownership and maintenance of the wagons remains with the appellant while the Railways use such wagons for transportation. Therefore, according to Revenue, the appellant has supplied

tangible goods for use and has received freight concession as consideration. It has been further argued that extended period has rightly been invoked as the appellant had failed to discharge the service tax liability.

8. We have heard both parties and perused the records with their submissions.

9. The principle issue requiring determination is whether the appellant can be said to have rendered any taxable service to the Railways merely because it invested in railway wagons under LWIS and received freight concession.

10. Service Tax under the Finance Act, 1994, is attracted only where one person performs an identifiable activity for another person for consideration. Thus, existence of a service provider, a service recipient, a taxable activity and consideration flowing for such activity are indispensably pre-requisites.

11. On examination of the agreement entered into between the appellant and the Railways, we find that the appellant procured wagons entirely at its own cost only for facilitating transportation of its own goods. The Railways neither hired these wagons for independent commercial exploitation nor acquired any unrestricted right to use them. The wagons remained dedicated to the appellant's traffic and could not be deployed by the Railways for third-party transportation except in accordance with the terms of the scheme.

12. We further find that the Railways merely attached the appellant's wagons to their locomotives and transported the appellant's goods on payment of freight. Therefore, the actual transportation service admittedly flowed from the Railways to the appellant. The appellant remained the recipient of transportation service and not the provider of any service.

13. The freight concession granted under the scheme is only an incentive intended to encourage private investment in wagon capacity. Such concession merely reduces the freight otherwise payable by the appellant. A reduction in price or grant of rebate under policy cannot automatically assume the character of consideration for a taxable service unless there

exists an independent service transaction supported by reciprocal obligations.

14. We are unable to agree with the department's attempt to split one composite commercial element into two independent transactions viz., transportation service by the Railways and supply of wagons by the appellant. The agreement, when read as a whole, discloses only one commercial objective viz., transportation of the appellant's own goods through wagons procured under a policy incentive scheme.

15. The Hon'ble Supreme Court in the case of All India Federation of Tax Practitioners Vs UOI (supra), has held that service tax is a value added tax on services and necessarily presupposes rendition of service. Similarly, in the case of Man Trucks India Pvt Ltd Vs CCCE & ST, Indore (supra), the Tribunal held that mere price adjustment cannot be treated as consideration for a taxable service. The relevant paras are cited below for ease of reference.

> *"12.The impugned order of the Principal Commissioner has made reference to sub-clause (vi), which is regarding provision of service on behalf of the client. The Principal Commissioner has in the impugned order stated that for the period of 1 April 2009 to 30 June 2012, it was clear from the clauses of the Agreement that the Appellant had shifted its responsibility of providing after sale service to MAN Germany, for which it reduced the sale price by 500 Euros. Thus, it was this amount that was paid to MAN Germany for carrying out after sale service on behalf of the Appellant and this would be BAS liable for payment of service tax.*
>
> *13.This finding of the Principal Commissioner is not in conformity with the terms of the Agreement. The role of the Appellant assigned under the Agreement was limited to sale of trucks including spare parts. Article 9.2 clearly provides that the Appellant shall not be responsible for rendering any after sale services and that MAN Germany shall arrange for such services as may be required by its marketing organizations or its designated buyers. Article 9.5 basically provides that as MAN Germany has to provide warranty and after sale service, the Appellant shall allow a discount of Euros 500 on the product sold by the Appellant to MAN Germany. This does not in any manner mean that MAN Germany was rendering after sale service on behalf of the Appellant. In fact, the agreement is to the contrary. It provides that the Appellant shall not be responsible for rendering any after sale service. In such a situation, it cannot be said, under any circumstances, that MAN Germany was providing after sale service on behalf of the Appellant. After sale service was agreed to be provided by MAN Germany on its own account. The discount that is being offered by the Appellant to MAN Germany is merely an adjustment in the price of goods sold and is not towards provision of any service to be undertaken by MAN Germany on behalf of the Appellant. The service provided by MAN Germany would, therefore, not classify as BAS."*

16. The same principle has subsequently been reiterated in the case of Bharti Airtel Ltd Vs CCGST, Gurugram (supra) and in the case of CCGST & CE, Mumbai East Vs Edelweiss Financial Services Ltd (supra), wherein it has been categorically held that in the absence of consideration flowing for a service, no service tax liability can arise. The relevant para in the case of Bharti Airtel Ltd Vs CCGST, Gurugram (supra) is cited below.

"32. In view of the above discussion, we find the following:

(i) Service tax cannot be levied when there is no consideration received. Free allowance given to the employees by the appellant is in the nature of discount/ concession and as the same has not accrued to the service provider-appellant, the same cannot form part of the consideration for the purpose of levy of service tax.
(ii) Under the facts and circumstances of the case, Department has not made out any strong argument in favour of best judgment method.
(iii) Computation of service tax cannot be on the basis of assumptions and presumptions.
(iv) The Show Cause Notice is vague and does not specify the service which is rendered by the appellant; moreover, the benefit of discounts/ free allowance is accruing to the employees rather than the appellant who is the service provider. Consideration flowing towards the service recipient cannot be included for the purpose of taxing the service provided by the appellant.
(v) In view of (i), (ii), (iii)& (iv) above, the impugned Show Cause Notice and the impugned order cannot be sustained."

16. We also find considerable force in the appellant's reliance on the case of Vinay Kumar Vs CST, Delhi-I (supra), wherein the Tribunal emphasized that unless consideration flows for an identifiable service, no taxable service can be inferred merely because the parties derive commercial benefit from an arrangement.

17. Equally relevant in the decision of Hon'ble Punjab & Haryana High Court in the case of CCE, Chandigarh Vs Nahar Industrial Enterprises Ltd (supra), wherein it has been held that a person cannot provide service to himself. The appellant's investment in wagons is essentially measure for improving its own logistics. Such self-use or self-facilitation cannot be treated as provision of service to another.

18. The department has proceeded to assume that because the Railways physically operate the wagons, the appellant must necessarily be supplying tangible goods for use. This reasoning overlooks the true legal relationship between the parties. Operation control exercised by the Railways while

transporting the appellant's goods does not convert the transportation contract into a contract of hiring of wagons.

19. We further find that the freight concession granted under LWIS is inseparably linked with the capital investment in railway infrastructure and assured freight movement. It is not linked with any activity allegedly performed by the appellant for the Railways. Consequently, such concession cannot constitute assessable value under section 67 of the Finance Act, 1994.

20. Once we hold that no taxable service has been rendered by the appellant, the very basis of levy disappears. Consequently, the question of valuation, invocation of extended period, interest and imposition of penalties does not survive.

21. In view of the foregoing discussion, we hold that the appellant has not rendered any taxable service to the Indian Railways under LWIS. The freight concession granted under the scheme is merely a policy incentive linked to capital investment and cannot be regarded as consideration for 'supply of tangible goods for use service'. Accordingly, the impugned orders confirming the demand of service tax, interest and penalties are not sustainable in law.

22. Therefore, the impugned orders are set aside. All the appeals filed by the appellant are allowed with consequential relief, if any, in accordance with law.

(Pronounced in the Open Court on 28.07.2026)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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