

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA**

REGIONAL BENCH – COURT NO. 2

Service Tax Appeal No. 75725 of 2021

(Arising out of Order-in-Original No. 13/Pr. Commr./ST/GHY/2020-21 dated 22.02.2021 passed by the Commissioner of GST & Central Excise Commissionerate, Guwahati GST Bhawan, Kedar Road, Machkhowa Guwahati-781001)

M/s. North East Carriers Private Limited.

: Appellant

GGU Parking, Gopinath Bordoloi Road,
Chamata Pathar, Sonapur, Guwahati-782402 Assam.

VERSUS

The Commissioner of CGST & CX,

: Respondent

Guwahati Commissionerate, GST Bhawan,
Kedar Road, Machkhowa, Guwahati-781001.

APPEARANCE:

Shri S. P. Siddhanta, Consultant
for the Appellant

Shri S. Chitkara & A. Mukherjee, Authorized Representative
for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 76383/ 2026

DATE OF HEARING: 24.09.2026

DATE OF PRONOUNCEMENT: 08.10.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The instant Appeal has been filed by M/s. North East Carriers Private Limited. Sumitra Devi Compound, 1st Floor, Lokhra, Lokhra Charali, Garchuk, Guwahati, Assam, Pin. 781034 (herein after referred as 'the Appellant') against the Order-In-Original No. 13/Pr. Commr./ST/GHY/2020-21 dated 22.02.2021, passed by the Principal Commissioner of GST & Central Excise

Commissionerate, Guwahati GST Bhawan, Kedar Road, Machkhowa Guwahati-781001. Vide the impugned order, the Ld. Principal Commissioner has confirmed the demand of service tax including cesses amounting to Rs. 1,19,50,659/ for the period 2014-15. He has imposed penalty of Rs. 10,000/ under section 77 of the Finance Act and imposed a penalty of Rs. 1,19,50,659/ under section 78 of the said Act with option to pay reduced penalty.

2. The Appellant submits that they have rendered the service of transportation of goods to the following four companies, namely, M/s. Star Cement Ltd., M/s. Megha Technical and Engineers Private Ltd., M/s. Star Cement Meghalaya Ltd. and M/s. Meghalaya Power Ltd. for the year 2014-15. As per notification No. 30/2012-ST, dated 20.06.2012, in respect of transportation of goods by road, the service tax is payable by the receiver of the service, if they fall under any one of the categories mentioned therein. In the present case all the four companies received the transportation service fall within the ambit of the companies mentioned in the Notification 30.2012-ST dated 20.06.2012. Thus, the liability of payment of service tax in this case is the receiver of the service under RCM basis. The Appellant submitted sample copies of 'Consignment Note' and bills issued to the said four companies, wherein it was specifically mentioned that the service tax was to be paid by the above said four companies. The Appellant also submitted copies of declaration given by the said four companies, wherein they have agreed to pay service tax on the transportation service received by them on RCM basis. In this regard, the Appellant submitted the declaration issued by the said four companies indicating that

they have discharged their service tax on the transportation service received from the Appellant on RCM basis. Thus, the Appellant submits that demanding service tax from them again would amount to double taxation on the same amount.

2.1. The Appellant further submits that the show cause notice has been issued demanding service tax of Rs. 4,78,38,635/- based on the "Total amount /paid/credited under 194C, 194H, 194I, 194J, as per the ITR data received from Income Tax Department, without mentioning any particular service provided by the Appellant. On adjudication, the Ld. Pr. Commissioner has allowed the abatement and confirmed the service tax of Rs. 1,19,50,659/ on GTA service.

2.2. The Appellant submits that the impugned notice has been issued without any investigation carried out by the department to allege non-payment of service tax on the entire amount shown in ITR irrespective of the nature and character of services. The Appellant submits that service tax cannot be charged on the turn over shown in the ITR and for that they rely on the decision in the case of Synergy Audio Visual Workshop P. Ltd. vs. Commr. of S.T., Bangalore [2008(10) S.T.R. 578(Tri.-Bang.)] wherein it has been decided that amount shown in the Income Tax Return or Balance Sheet not liable to service tax. The same view has been expressed by the Hon'ble CESTAT, Principal Bench, New Delhi in the case of Deltax Enterprises v. Commissioner of C. Ex., Delhi-I reported in 2018 (10) G.S.T.L. 392 (Tri. - Del.), wherein it has been decided, inter alia, that demand based on income tax returns filed under Section 44AD of Income Tax Act, 1961 as income

shown was much higher than declared consideration for taxable service without specific allegation with reference to nature of service or service recipient is not maintainable.

2.3. The Appellant submits that the burden of proof of coverage under particular category of service lies with the department, which has not been discharged in the instant case and hence the impugned notice is not maintainable. In support of this view, the Appellant rely on the decision of the CESTAT, SZB, Bangalore in the case of S. N. Uppar & Co. v. Commissioner of Central Excise, Belgaun reported in 2008(11)S.T.R. 34(Tri.- Bang.)

2.4. The Appellant were registered under the said Act. The demand in the instant case has been raised on the basis of ITR and so there cannot be any allegation of suppression of any fact by them with intent to evade payment of service tax and hence the demand for the extended period is barred by limitation. In support of the same, the Appellant rely on the decision in the case of Kirloskar Oil Engines Ltd. v. CCE, Nashik reported in 2004(178)E.L.T, 998(Tri.- Mum.). They also rely on the decision of the Hon'ble CESTAT, Principal Bench, New Delhi in the case of Jaipur Jewellery Show v. Commissioner of C. Ex. & S.T., Jaipur-I reported in 2017(49)S.T.R. 313.

2.5. The Appellant also contested the demand on the ground that pre-show cause notice consultation as mandated by Board vide instruction issued from F No. 1080/09/ DLA/MISC/15, dated 21st December, 2015 has not been conducted in this case. Since the impugned notice has been issued without pre consultancy, the Appellant submitted that the

impugned order is liable to be set aside on this ground also. In support of this view, the Appellant relied on the decision of the Hon'ble High Court of Delhi in the case of Amadeus India Pvt. Ltd. v. Pr. Commr. of C. Ex., S.T. & Central Tax reported in 2019(25) G.S.T.L. 486.

2.6. In view of the above submissions, the Appellant prayed for setting aside the demand and allowing their appeal.

3. The Ld. A.R. reiterated the findings in the impugned order.

4. Heard both sides and perused the appeal documents.

5. We find that the show cause notice has been issued to the Appellant demanding service tax of Rs. 4,78,38,635/- based on the ITR data received from Income Tax Department. On adjudication, the Ld. Pr. Commissioner has allowed the abatement and confirmed the demand of service tax of Rs. 1,19,50,659/ on GTA service.

5.1. From the records submitted before us, we find that the Appellant have rendered the service of transportation of goods to the following four companies, namely, M/s. Star Cement Ltd., M/s. Megha Technical and Engineers Private Ltd., M/s. Star Cement Meghalaya Ltd. and M/s. Meghalaya Power Ltd. for the year 2014-15. As per notification No. 30/2012-ST, dated 20.06.2012, in respect of transportation of goods by road, the liability to pay service tax is on the person who pays the freight and if the receiver of the service fall within the ambit of any one of the categories mentioned therein. For ready reference, the categories for which the receiver who pays the freight and liable to pay

service tax as per the said Notification is furnished below:

- (a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);
- (b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;
- (c) any co-operative society established by or under any law;
- (d) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;
- (e) any body corporate established, by or under any law; or
- (f) any partnership firm whether registered or not under any law including association of persons.

5.2. In the present case, we find that all the four companies which received the transportation service from the Appellant fall within the ambit of the companies mentioned in the Notification 30.2012-ST dated 20.06.2012. It is also on record that the freight has been paid by M/s. Star Cement Ltd., M/s. Megha Technical and Engineers Private Ltd., M/s. Star Cement Meghalaya Ltd. and M/s. Meghalaya Power Ltd. Thus, we observe that the receiver companies being the body corporate, they are liable to pay service tax in respect of the transportation of goods by road service received by them.. From the declarations given by the said four companies. From the sample copies of 'Consignment Note' and bills

[illegible][illegible]

NORTH EAST CEMENTS PVT LTD
Saurashtra Cement Compound,
Lokesh Chahal, 84-22, Gueshah-751005 Assam
Reg. Office: 1st Floor Block A
Chowpatty Complex, A.T Road Tokabari
Guwahati-781001

To,
ANAND TECHNICAL & ENGINEERING LLP
101 & 102 Grounding,
East Jyoti-Nile
Bhupatya, JALPAIGURI
Service Tax No: AAAC0841001001

Bill No: **NECP/VA/141873** Date: **21-03-2018**

Sl. No.	Item	Loading Station	Delivery Station	Stock No	Truck No	Contents	Delivery Date	Qty	Charged MT (MT)	Rate per MT	Freight Amt
1	CEMENT	CHOWPATY	CHOWPATY	141873	141873	CEMENT	21-03-2018	100	100.00	144.00	14.40
2	CEMENT	CHOWPATY	CHOWPATY	141873	141873	CEMENT	21-03-2018	100	100.00	144.00	14.40
Charged										288.00	
Freight											14.40
Grand Total (MT)											302.40

Amount Payable: **Rs. 302.40**

For, North East Cements Pvt Ltd
Authorized Signatory

NORTH EAST CEMENTS PVT LTD
Saurashtra Cement Compound,
Lokesh Chahal, 84-22, Gueshah-751005 Assam
Reg. Office: 1st Floor Block A
Chowpatty Complex, A.T Road Tokabari
Guwahati-751005

To,
ANAND TECHNICAL & ENGINEERING LLP
101 & 102 Grounding,
East Jyoti-Nile
Bhupatya, JALPAIGURI
Service Tax No: AAAC0841001001

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Charged										288.00	
Freight											14.40
Grand Total (MT)											302.40

Amount Payable: **Rs. 302.40**

For, North East Cements Pvt Ltd
Authorized Signatory

5.3. A perusal of the bills clearly reveals that the Appellant has categorically indicated that the receivers are liable to pay service tax on the transportation service received by them on RCM basis. We have also perused the copies of declaration given by the said four companies, wherein they have agreed to pay service tax on the transportation service received by them on RCM basis. In this regard, the Appellant submitted the declaration issued by the said four companies indicating that they have discharged service tax on the transportation service received from the Appellant. A sample copy of the Declaration given by all the four companies are extracted below:

MEGHALAYA POWER LIMITED

CIN : U40106ML2002PLC006921

Regd. Office & Works : Lumahong, P.O. Khalehvat, Dist. East Jaintia Hills, Meghalaya-793 210
Ph: 03655-276215/16/18, Fax : 03655-276217, e-mail : lumahong@starcement.co.in

GHY/ACCTS/079/19-20

Nov. 26, 2019

TO WHOM IT MAY CONCERN

It is to confirm that Service Tax liabilities on all transportation bills raised on us by M/S North East Carrier Pvt Ltd, Gopinath Bardoli Road Vill:Chanta Pathar Dist:Kamrup(Metro) PIN-782402 Assam, (PAN no. AACN2143F) for the period from 01/04/2014 to 31/03/2015 has already been paid by us under "Reverse Charge Mechanism" as per Service Tax Act.

Our Service Tax No. AAECM8414FST001

Our TAN No. SHLM01330A

Thanking you,

MEGHALAYA POWER LIMITED
Meghalaya Power Limited



Authorized Signatory

Authorised Signatory

Megha Technical & Engineers (Pvt.) Limited

Major Garden, 2nd Floor, Opp. Rajiv Bhawan, G.S. Road, Guwahati-781005.
Ph: 0361-2462215/ 19/ 2513, Fax: 0361-2462217, e-mail: emt@emtd.com

GHY/ACCTS/078/19-20

Nov. 26, 2019

TO WHOM IT MAY CONCERN

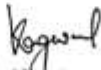
It is to confirm that Service Tax liabilities on all transportation bills raised on us by **M/S North East Carrier Pvt Ltd**, Gopinath Bardoli Road Vill:Chamta Pathar Dist:Kamrup(Metro) PIN-782402 Assam, (PAN no. AADCN2143F) for the period from 01/04/2014 to 31/03/2015 has already been paid by us under "Reverse Charge Mechanism" as per Service Tax Act.

Our Service Tax No. AADCM5410CST001

Our TAN No. SHLM01035G

Thanking you,

MEGHA TECHNICAL & ENGINEERS PVT. LTD.


Authorised Signatory

STAR CEMENT MEGHALAYA LIMITED

Regd. Office & Works : Lumshnong, P.O. Khalehriat, Distt. - East Jaintia Hills, Meghalaya
Ph: 03655-278215/16/18, Fax : 03655-278217, e-mail : lumshnong@cmcl.co.in

GHY/ACCTS/077/19-20

Nov. 26, 2019

TO WHOM IT MAY CONCERN

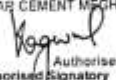
It is to confirm that Service Tax liabilities on all transportation bills raised on us by M/S North East Carrier Pvt Ltd, Gopinath Bardoli Road Vill:Chamta Pathar Dist:Kamrup(Metro) PIN-782402 Assam, (PAN no. AADCN2143F) for the period from 01/04/2014 to 31/03/2015 has already been paid by us under "Reverse Charge Mechanism" as per Service Tax Act.

Our Service Tax No. AAECM7979BST001

Our TAN No. SHLM01225A

Thanking you,

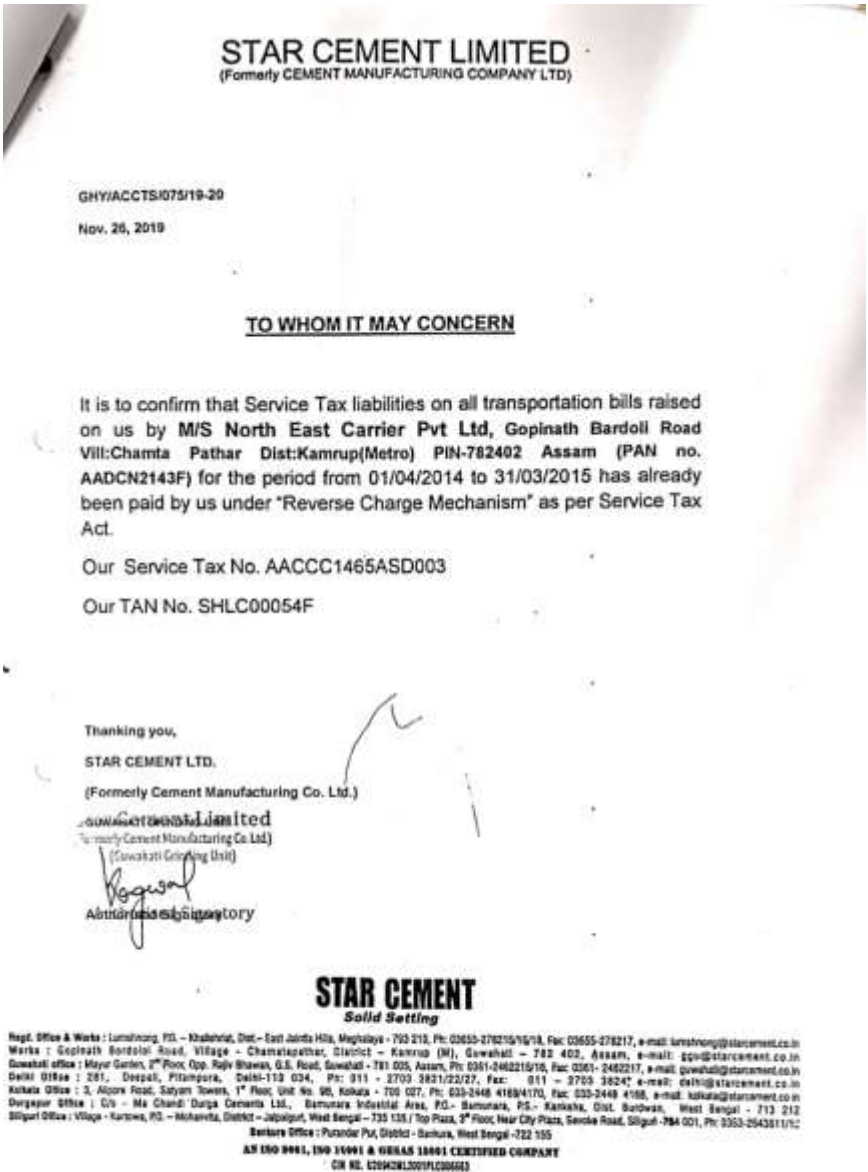
STAR CEMENT MEGHALAYA LTD.
STAR CEMENT MEGHALAYA LTD.


Authorised Signatory
Authorised Signatory



Corporate Office : Sanyam Towers, 3 Alipore Road, 1st Floor, Unit No. 9B, Kolkata-700027
Ph: 91 33 24494168/4170/4693, Fax: 033 24484168, e-mail: kolkata@cmcl.co.in
CIN NO. U63206ML2005PLC008911

(4)



5.4. Thus, we find that as per notification No. 30/2012-ST, dated 20.06.2012, in respect of transportation of goods by road rendered by the Appellant, the liability to pay service tax is on the receiver of the service, who paid the freight. As the receivers of the service in this case, paid the freight and falls within the ambit of one of the categories mentioned in the notification No. 30/2012-ST, dated 20.06.2012, we hold that receivers are liable to pay

service tax on RCM basis. Thus, we hold that demanding service tax from them again would amount to double taxation on the same amount. Accordingly, we set aside the demand of service tax confirmed in the impugned along with interest.

5.5. The Appellant has also contested the demand on the ground of limitation. It is the submission of the Appellant that service tax has been demanded in this case on the basis of the data received from Income Tax Department, without mentioning any particular service provided by the Appellant. On adjudication, the Ld. Pr. Commissioner has allowed the abatement and confirmed the service tax of Rs. 1,19,50,659/ on GTA service. In this regard, we find merit in the submission of the Appellant. We find that the impugned notice has been issued without any investigation carried out by the department at the end of the Appellant. The Notice alleged non-payment of service tax on the entire amount shown in ITR irrespective of the nature and character of services. We observe that service tax cannot be charged on the turn over shown in the ITR without verifying whether the Appellant has rendered any taxable service or not. In support of this view, we rely on the decision in the case of *Synergy Audio Visual Workshop P. Ltd. vs. Commr. of S.T., Bangalore [2008(10) S.T.R. 578(Tri.-Bang.)]* wherein it has been decided that amount shown in the Income Tax Return or Balance Sheet not liable to service tax, without conducting further verification on the nature of taxable service rendered. The same view has also been expressed by the CESTAT, Principal Bench, New Delhi in the case of *Deltax Enterprises v. Commissioner of C. Ex., Delhi-I reported in 2018 (10) G.S.T.L. 392 (Tri. - Del.)*,

wherein it has been decided, inter alia, that demand of service tax based on the income tax returns filed under Section 44AD of Income Tax Act, 1961, is not sustainable, as the income shown was much higher than declared consideration for taxable service. There must be specific allegation with reference to nature of service rendered.

5.6. We find that the Appellant were registered under the Finance Act, 1994. The demand in the instant case has been raised on the basis of ITR received from Income Tax department and so there cannot be any allegation of suppression of any fact by them with intent to evade payment of service tax. Accordingly, we hold that the demand of service tax confirmed by invoking the extended period of limitation is not sustainable. In support of this view, we rely on the decision in the case of Kirloskar Oil Engines Ltd. v. CCE, Nashik reported in 2004(178)E.L.T, 998(Tri.- Mum.). We also rely on the decision of the CESTAT, Principal Bench, New Delhi in the case of Jaipur Jewellery Show v. Commissioner of C. Ex. & S.T., Jaipur-I reported in 2017(49)S.T.R. 313. Thus, we hold that the demand of service tax confirmed by invoking the extended period of limitation is not sustainable.

5.7. The Appellant also contested the demand on the ground that pre-show cause notice consultation as mandated by Board vide instruction issued from F No. 1080/09/ DLA/MISC/15, dated 21st December, 2015 has not been conducted in this case. We find that. Board has made pre-show cause notice consultation mandatory by the Principal Commissioner/ Commissioner, prior to issue of show cause notice in respect of the cases involving demands of duty above Rs. 50 lakhs (except for

preventive/offence related SCNs). We find that the instruction issued from F No. 1080/09/DLA/MISC/15, dated 21st December, 2015 for conducting consultation by the adjudicating authority with the assessee prior to issue of the Notice is mandatory and the case of the Appellant does not fall within the ambit of the exclusion provided in the Instructions. We observe that this is an important step towards trade facilitation and promoting voluntary compliance and to reduce the necessity of issuing show cause notice. Since the impugned notice has been issued without pre consultancy, we observe that the impugned order is liable to be set aside on this ground also. In support of this view, we rely on the decision of the Hon'ble High Court of Delhi in the case of *Amadeus India Pvt. Ltd. v. Pr. Commr. of C. Ex., S.T. & Central Tax reported in 2019(25) G.S.T.L. 486*.

5.8. As the demand of service tax is not sustained and no suppression of fact established in this case, we hold that no penalty imposable on the Appellant. Thus, we set aside the penalty imposed under section 78 of the Finance Act, 1994. However, we uphold the penalty of Rs. 10,000/imposed under section 77 of the Finance Act.

6. In view of the above findings, we pass the following order:

(i) We hold that the demand of service tax confirmed under the category of GTA service from the Appellant along with interest is not sustainable and hence we set aside the same.

(ii) We hold that no penalty imposable on the Appellant under section 78 of the Finance Act, 1994 and hence the same are set aside.

(iii) We uphold the penalty of Rs.10,000/- imposed on the Appellant under section 77 of the Finance Act, 1994, for violation of provisions under section 70 of the said Act.

(iv) The appeal filed by the Appellant is disposed of on the above terms.

(Order Pronounced in Open court on 08.10.2026)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP