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

REGIONAL BENCH – COURT NO. 2

[THROUGH VIRTUAL MODE OF HEARING]

Service Tax Appeal No. 76113 of 2024

(Arising out of Order-in-Original No. 24/CCE/S.TAX/RKL/2024-25 dated 03.07.2024 passed by the Commissioner of G.S.T. & C.X. Commissionerate, Rourkela, KK-42, Civil Township, Rourkela – 769 004)

M/s. Manish Kumar Singh **: Appellant**
Near Old Petrol Pump, Belpahar,
Jharsuguda, PIN – 768 218 (Odisha)

VERSUS

Commissioner of C.G.S.T. and Central Excise **: Respondent**
Rourkela Commissionerate,
KK-42, Civil Township,
Rourkela, PIN – 769 004 (Odisha)

APPEARANCE:

Smt. Kshitij Singh, Advocate,
Along with Shri Ajay Kumar Singh, Advocate,
For the Appellant

Shri Biren Sanfui, Authorized Representative,
For the Respondent

CORAM:

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

FINAL ORDER NO. 76593 / 2026

DATE OF HEARING: 05.11.2026

DATE OF DECISION: 13.11.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been preferred by M/s. Manish Kumar Singh, Belpahar, Jharsuguda, Odisha (hereinafter referred to as the "appellant"), assailing the Order-in-Original No. 24/CCE/S.TAX/RKL/2024-25 dated 03.07.2024 passed by the Ld. Commissioner of GST & Central Excise Commissionerate, Rourkela whereby the ld. adjudicating authority has confirmed a demand of Service Tax amounting to

Rs.2,73,51,065/- (inclusive of cesses) for the Financial Year 2016-17 under Section 73(2) of the Finance Act, 1994, along with interest under Section 75, and imposed penalties under Section 77(1)(c)(ii), 77(2) and 78 of the Act.

2. Briefly stated, the facts of the case are that the appellant is engaged in the business of transportation of goods viz. coal and iron, on behalf of various clients across different parts of India, for which freight considerations are received in cash as well as through banking channels.

3. The inception of departmental scrutiny against the appellant arose purely out of third-party data/information shared by the Central Bureau of Direct Taxes (CBDT) vis-à-vis the Income Tax Return (ITR) filed by the Appellant for the Financial Year 2016-17. On the basis of this income-tax dataset, the Revenue entertained a suspicion that the appellant had rendered taxable services during the relevant period without obtaining Service Tax registration, without filing ST-3 returns under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994, and without discharging the applicable Service Tax liability attracted thereon under Section 66B of the Act.

4. Upon verifying the sales and gross receipts figures reflected in the appellant's ITR for the Financial Year 2016-17, the Revenue noticed that the appellant had disclosed an amount of Rs. 18,23,40,433/- under the head of "Sales/Gross Receipts from Services" whereas the Total amount paid/credited under Sections 194C, 194H, 194I, and 194J of the Income Tax Act, 1961 was Rs.5,18,74,009/-. After comparing this gross figure against the total credits recorded

under, the Revenue adopted the highest aggregate figure, namely the gross turnover of Rs. 18,23,40,433/- and considered the entire gross receipt as taxable consideration received for providing taxable services.

5. During the preliminary inquiry, a letter dated 21.05.2020 was issued to the appellant by the Superintendent, GST & Central Excise, Belpahar Range, calling upon the appellant to furnish copies of various documents pertaining to the relevant period such as copies of Balance Sheet, Profit & Loss Account, Copy of Form 26AS/TDS Certificate, etc.

5.1. In response to the above query, the appellant duly replied vide letter dated 02.07.2020, expressly clarifying the fundamental nature of its business i.e., lifting and transportation of coal and iron across different parts of India, and duly enclosed documents such as ITR Acknowledgement and audited Balance Sheet for the Financial Year 2016-17.

5.2. It is the appellant's case that, however, owing to severe operational disruptions during the pandemic period, the complete, vehicle-wise, party-wise, and banking records could not be presented in a fully collated and reconciled format at that initial juncture.

6. The Department considered the non-furnishing of the documents in their entirety as called to be deliberate non-cooperation and as evidence of mala fide intent to evade tax. It was accordingly alleged that the appellant had consciously suppressed material facts by failing to obtain Registration and file the ST-3 Returns. The Revenue thus proceeded on the entire gross turnover of Rs. 18,23,40,433/- shown in the Income Tax Returns towards sale of services, and

applied the tax rate @ 15.00%, to arrive at the Service Tax liability of Rs. 2,73,51,065/- (inclusive of cesses) which was allegedly payable by the assessee for the consideration received for rendering taxable services during the Financial Year 2016-17.

7. Subsequently, a Show Cause Notice dated 30.06.2021 was issued to the appellant, invoking the extended period of limitation under the proviso to Section 73(1) of the Finance Act, 1994, proposing to demand the Service Tax of Rs. 2,73,51,065/- (inclusive of cesses), along with interest thereon. The said Notice also proposed imposition of penalties under Sections 77(1)(a), 77(1)(c), 77(2), and an equivalent penalty under Section 78 ibid.

8. During the adjudication proceedings, the appellant appeared for personal hearing on 20.06.2024 and reiterated that its activities were exclusively in the nature of goods transportation by providing trucks. Thereafter, the ld. adjudicating authority, vide the impugned Order-in-Original dated 03.07.2024, confirm the entire demand of Rs.2,73,51,065/-, as proposed, besides ordering imposition of penalties of Rs.2,98,000 under Section 77(1)(c)(ii) of the Act, Rs.10,000/- under Section 77(2) of the Act and Rs.2,73,51,065/- under Section 78(1) of the Act.

8.1. Aggrieved by the confirmation of the aforesaid demand, interest, and penalties, the appellant has preferred the present appeal before this Tribunal.

9. The matter was taken up for hearing through virtual mode, wherein the Ld. Counsel appearing on behalf of the appellant submitted that the appellant is a truck owner and operator engaged strictly in the transportation of goods by road and has never functioned as a 'Goods Transport Agency' (GTA) within the meaning of the Finance Act, 1994. It was specifically contended that the appellant never issued any document constituting a 'consignment note' within the statutory meaning of the Act, and consequently, the activity undertaken by the appellant falls outside the ambit of taxable GTA services.

9.1. It was further submitted on behalf of the appellant that the impugned demand proceeds mechanically and principally upon the aggregate figure of Rs. 18,23,40,433/- appearing in the Income Tax Returns and CBDT data, which has been treated in its entirety as the taxable value of services without undertaking any transaction-wise determination of the precise legal character of the underlying receipts. The Ld. Counsel pointed out that the primary fact of the appellant being engaged in the transportation of goods was already placed on record before the Department during the course of the inquiry and adjudication proceedings, and the appellant is now placing comprehensive documentary evidence on record before this Tribunal in substantiation of the said stand.

9.2. In support of their contentions, the appellant has submitted a compilation of underlying business records pertaining to Financial Year 2016-17, comprising: (i) copy of the audited account statement (Annexure A-1, Pages 8–27); (ii) copy of the

statement of services for the relevant period (Annexure A-2, Pages 28–133); (iii) copy of the list of trucks/vehicles with registration numbers owned or operated by the appellant during the relevant period (Annexure A-3, Pages 134–139); (iv) copies of the Work Orders (Annexure A-4, Pages 140–144); (v) copies of sample Transport Challans (Annexure A-5, Pages 145–149); (vi) copy of the party-wise ledger and account statements (Annexure A-6, Pages 150–164); and (vii) copies of the bank account statements for the relevant period (Annexure A-7, Pages 165–193). Explaining the production of these records at the appellate stage, it was further submitted that the impugned transactions pertain to Financial Year 2016-17, which were contemporaneously maintained during the course of the appellant's transportation operations and retained with the appellant's accountant and record keeper; that therefore the complete vehicle-wise, party-wise, and banking material was not available in a collated and reconciled form capable of being effectively produced and explained before the ld. adjudicating authority during the adjudication proceedings. It was asserted that the documents now produced are genuine contemporaneous records relating to the very transactions forming the subject matter of the impugned demand and are wholly consistent with the appellant's stand that their receipts arose purely from transportation activities without the issuance of any consignment note. The appellant has also emphasized that the said documents bear directly upon matters lying at the very foundation of the appeal, namely, the actual nature of the activity undertaken by the appellant and provide the correlation between the aggregate

Income Tax/CBDT figure and the underlying transactions.

9.3. Reliance in this regard was placed by the appellant on the decision of this Bench in *M/s. Tabassum Enterprises v. Commissioner of CGST & Central Excise, Kolkata South [Final Order No. 77452/2025 dated 19.09.2025],* wherein this Tribunal, while dealing with a Service Tax demand founded upon Income Tax/CBDT data, emphasized the necessity of establishing the actual character of the receipts and the rendition of a taxable service rather than proceeding mechanically upon Income Tax figures.

9.4. In view of the foregoing submissions and the documentary evidence brought on record, the Ld. Counsel for the appellant have argued that the demand of Service Tax, along with interest and penalties, is unsustainable in law and deserves to be set aside. Accordingly, it is prayed that the impugned Order-in-Original dated 03.07.2024 be set aside and the appeal be allowed with consequential relief.

10. On the other hand, the Ld. Authorized Representative of the Revenue reiterated the findings in the impugned order.

11. Heard both sides and perused the documentary evidence presented before us.

12. We have perused the appeal records along with the additional documents brought on record. At the outset, we observe that the appellant had filed a Miscellaneous Application seeking leave to adduce additional documentary evidence under Rule 23(1) of the Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982, namely, (i) copy of

the audited account statement; (ii) copy of the statement of services for the relevant period; (iii) copy of the list of trucks/vehicles with registration numbers owned or operated by the appellant during the relevant period; (iv) copies of the Work Orders; (v) copies of sample Transport Challan; (vi) copy of the party-wise ledger and account statements; and (vii) copies of the bank account statements for the relevant period. Rule 23(1) of the CESTAT (Procedure) Rules, 1982 expressly empowers this Tribunal to permit additional evidence where it considers such documents necessary to enable it to pass an effective order or for any other sufficient cause. Thus, the said application has already been allowed and these additional documents have been taken on record for deciding the present issue, since these records directly bear upon the factual matrix concerning the actual nature of the activities undertaken by the appellant, the true legal character of the receipts, and whether the foundational statutory prerequisites for taxing the underlying transactions under the Finance Act, 1994 stand satisfied. Therefore, taking these documents into consideration is essential for this Tribunal to arrive at a just, lawful, and effective determination of the dispute.

13. Turning to the merits of the dispute, upon a meticulous perusal of the statutory provisions, the underlying operational contracts, and the additional documentary evidence brought on record, we find sufficient force in the appellant’s submission that the activities rendered by it fall outside the ambit of a ‘Goods Transport Agency (GTA)’ as envisaged under the Finance Act, 1994.

13.1. Under Section 66D(p)(i)(A) of the Finance Act, 1994 (the Negative List), services by way of transportation of goods by road are expressly excluded from the levy of Service Tax, unless such services are provided by a 'Goods Transport Agency' or a courier agency. For an entity to qualify as a Goods Transport Agency under Section 65B(26) read with Rule 4B of the Service Tax Rules, 1994, the issuance of a statutory 'consignment note' is an indispensable legislative prerequisite. Where road transportation services are executed without the issuance of a consignment note, the transaction retains its character as simple goods transport by a truck owner/operator, which remains squarely exempt from Service Tax under the Negative List.

13.2. The Ld. Authorized Representative for the Revenue contended that the plea regarding non-issuance of consignment notes was not specifically raised before the lower authority and constitutes an afterthought. It is a settled position of law that pure legal questions touching upon the statutory exigibility of a transaction can be raised at any stage of proceedings. The factual premise that the appellant was exclusively engaged in the transportation of goods was already placed on record before the Department vide the appellant's reply dated 02.07.2020 as well as during the personal hearing on 20.06.2024. It cannot be construed that the ld. adjudicating authority was unaware of the statutory framework governing transportation services under Section 66D(p)(i)(A). However, the impugned order completely failed to examine or discuss whether the appellant had issued any consignment notes or not so as to bring its activities within the tax net.

13.4. The additional documentary evidence produced by the appellant substantially fortifies its stand. A cumulative reading of the Work Orders, transport documents, vehicle records, and bank statements demonstrates that the appellant operated merely as a truck owner/operator moving heavy bulk commodities (coal and iron) for various clients, accompanied strictly by internal transport challans and work orders, without ever issuing any document possessing the legal characteristics of a consignment note. For better appreciation of the facts, some of these documents are reproduced below.

- **Relevant portion of trucks/vehicles list:**

TRUCK OWNERSHIP / VEHICLE DETAILS STATEMENT 134

Name of Truck Owner: Manish Kumar Singh
Address: Near Old Petrol Pump, Belpahar Fatak, Dist. Jharsuguda, Odisha – 768217 **Financial Year:** 2016–17

SL. No.	Truck Registration No.	Make/Model	Date Of Purchase	Owner Name as Per RC	RC No.	Nature Of Use	Period Used in Transport Business
1.	OR15H6971	09/2004	01/11/2004	MANISH KUMAR SINGH	01193874	COAL	BASANT KUMAR GANAYAK
2.	OR23D5479	07/2010	02/09/2010	MANISH KUMAR SINGH	01328961	COAL	BASANT KUMAR GANAYAK
3.	OR23E7471	07/2011	01/10/2011	MANISH KUMAR SINGH	05828020	COAL	BASANT KUMAR GANAYAK
4.	OR23F4671	02/2012	26/06/2012	MANISH KUMAR SINGH	05763877	COAL	BASANT KUMAR GANAYAK
5.	OR15L7121	09/2007	08/11/2007	MANISH KUMAR SINGH	00170586	COAL	BASANT KUMAR GANAYAK
6.	OR17D6971	01/2005	27/08/2005	MANISH KUMAR SINGH	02758127	COAL	BASANT KUMAR GANAYAK
7.	OR15L7113	09/2007	08/11/2007	MANISH KUMAR SINGH	00170595	COAL	BASANT KUMAR GANAYAK
8.	OR23A2536	02/2006	24/03/2006	MANISH KUMAR SINGH	01282562	COAL	BASANT KUMAR GANAYAK
9.	OR15L7112	09/2007	07/11/2007	MANISH KUMAR SINGH	00170589	COAL	DIPAK KUMAR MISHRA
10.	OR23D5478	07/2010	02/09/2010	MANISH KUMAR SINGH	09004344	COAL	DIPAK KUMAR MISHRA
11.	OR23F4672	02/2012	26/06/2012	MANISH KUMAR SINGH	05763876	COAL	DIPAK KUMAR MISHRA
12.	OR23A8922	03/2007	20/04/2007	MANISH KUMAR SINGH	01676416	COAL	ARDHHARESWAR COAL CARRIER
13.	OR23A2533	3/2007	2/2006	MANISH KUMAR SINGH	01282557	COAL	ARDHHARESWAR COAL CARRIER
14.	OR23A2534	2/2006	24.3.2006	MANISH KUMAR SINGH	02884601	COAL	ARDHHARESWAR COAL CARRIER
15.	OR23A8923	3/2007	20.4.2007	MANISH KUMAR SINGH	01676418	COAL	ARDHHARESWAR COAL CARRIER

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Sl. No.	Truck Registration No.	Make/Model	Date Of Purchase	Owner Name as Per RC	RC No.	Nature Of Use	Period Used in Transport Business
83.	OD23D2583	3/2016	23.5.2016	MANISH KUMAR SINGH		coal	ARYAN CONTRACTION
84.	OD23D2557	3/2016	18.5.2016	MANISH KUMAR SINGH		coal	ARYAN CONTRACTION
85.	OD23D2556	3/2016	18.5.2016	MANISH KUMAR SINGH		coal	ARYAN CONTRACTION
86.	OD23D2555	3/2016	18.5.2016	MANISH KUMAR SINGH		coal	ARYAN CONTRACTION

I, Manish Kumar Singh, hereby declare that the above-mentioned goods carriage vehicles were owned by me during the relevant period and were used for transportation of goods by road. The vehicles were operated for transportation of coal/goods under work orders/transport arrangements.

I further state that I did not issue any consignment note/Goods Receipt (GR)/Lorry Receipt (LR) in respect of the transportation undertaken by me, unless specifically shown in the records. The amounts received by me represented transportation/carrying charges relating to the use/operation of my own goods carriage vehicles.

This declaration is made on the basis of my vehicle ownership and business records.

Place: _____
Date: _____

Signature: Manish Kumar Singh
Manish Kumar Singh
Truck Owner / Transport Contractor

Documents to attach

For each truck, preferably keep copies of:

13.4.1. From a perusal of the above, it is revealed that the appellant has specifically stated that it "did not issue any consignment note/Goods Receipt (GR)/Lorry Receipt (LR) in respect of the transportation undertaken".

- **Sample copy of Work Order:**

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p rl PRAGATI (INDIAN) ROAD LINES

Date: 10/04/2016

To

Manish Kumar Singh
Belpahar,
Jharsuguda, Odisha

Sub: Work Order for transportation of 2,00,000 MT of Coal from our Tamnar Area to Hindalco Industries Ltd., Hirakud, Dist. Sambalpur & Aditya Aluminium,Lapanga , Jharsuguda.

Dear Sir,

With reference to the discussions held with you regarding transportation of coal, we are pleased to issue this **Work Order** to you for transportation of **2,00,000 MT (Two Lakh Metric Tonnes) of Coal** from **Tamnar Area** to **Hindalco Industries Limited, Hirakud, Dist. Sambalpur, Odisha & Aditya Aluminium,Lapanga , Jharsuguda,** on the following terms and conditions:

1. Scope of Work

You shall be responsible for the **transportation of coal, as applicable under the agreed arrangement**, from **Tamnar Area** to **Hindalco Industries Limited, Hirakud, Dist. Sambalpur, Odisha & Aditya Aluminium,Lapanga , Jharsuguda,** as per the instructions and requirements of the principal/customer.

2. Quantity

The total tentative quantity under this Work Order shall be **2,00,000 MT (Two Lakh Metric Tonnes)**.

3. Transportation Rate

The agreed road freight shall be:

₹570/- (Rupees Five Hundred Seventy Only) & ₹ 620 /-(Rupees Six Hundred Twenty Only) per MT.

4. Shortage / Penalty

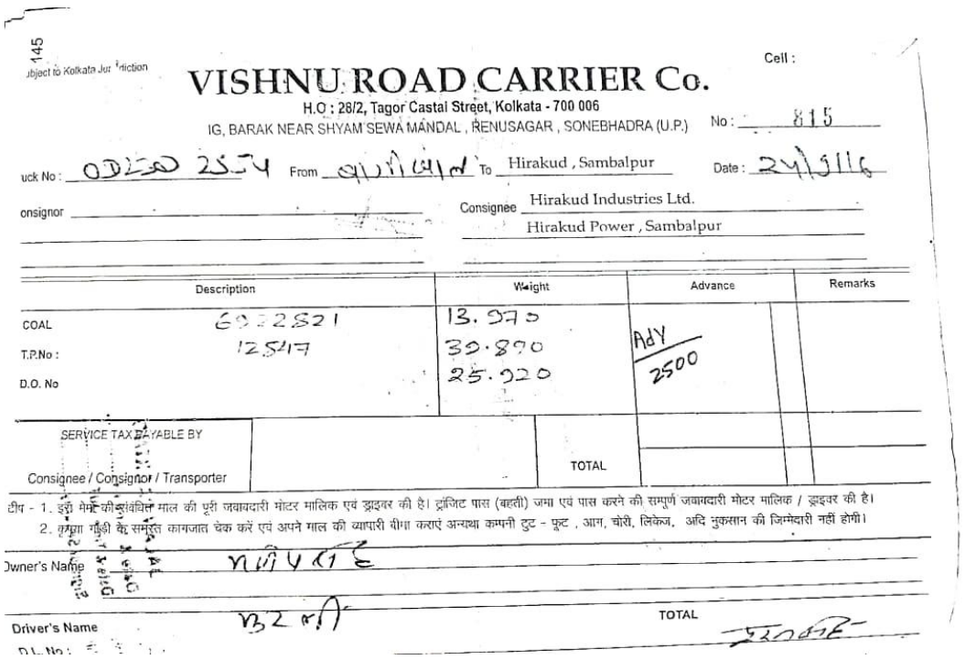
Any shortage beyond the permissible limit prescribed by the customer/principal shall be recoverable from the transporter as per the applicable rules and terms of the transportation arrangement.

Any penalty, deduction or recovery imposed by the customer/principal due to shortage, delay, non-compliance or any other attributable reason shall be to the account of the transporter, wherever applicable.

PRAGATI INDIAN ROAD LINES

13.4.2. A collective perusal of the Work Orders issued to the appellant, by various principals, including the sample Work Order dated 10.04.2016 issued by M/s. Pragati (Indian) Road Lines reproduced above, supports the appellant's stand that it operated strictly as a sub-contracted Goods Transport Operator (GTO) providing physical road haulage of coal, and other goods as the case may be, rather than as a Goods Transport Agency (GTA). Across all such Work Orders, the contractual terms exhibit identical essential characteristics: firstly, the agreements are executed with principal contractors who hold the primary contracts with end-customers, restricting the appellant's scope strictly to physical transportation as per the instructions and requirements of the principal/customer; secondly, the freight consideration is uniformly fixed on a per-metric-tonne basis, etc., confirming that the contracts are simpliciter for the transportation of goods by road and negating any allegation of taxable hiring of vehicles or supply of tangible goods; and thirdly, the standard shortage and penalty recovery clauses are merely commercial risk-allocation stipulations between a principal contractor and a sub-contractor, which do not meet the requirement contemplated under Rule 4B of the Service Tax Rules, 1994. Consequently, in the complete absence of clause for issuance of any Consignment Note by the appellant, which is the foundational statutory requirement under Section 65B(26) of the Finance Act, 1994, all road transportation services rendered by the appellant under such Work Orders squarely fall within the Negative List under Section 66D(p)(i) of the Act.

- **Sample copy of Transport Challan:**



VISHNU ROAD CARRIER Co.

H.O : 28/2, Tagor Castal Street, Kolkata - 700 006

IG, BARAK NEAR SHYAM SEWA MANDAL , RENUSAGAR , SONEBHADRA (U.P.)

Cell :

No : 815

Truck No : OD25D 2554 From Talcher To Hirakud , Sambalpur Date : 24/9/16

Consignor

Consignee Hirakud Industries Ltd.
Hirakud Power , Sambalpur

Description	Weight	Advance	Remarks
COAL 602821	13.970	ADV 2500	
T.P.No : 12547	30.890		
D.O. No	25.920		
SERVICE TAX PAYABLE BY Consignee / Consignor / Transporter		TOTAL	

टीप - 1. इसी मेमो की संबंधित माल की पूरी जवाबदारी मोटर मालिक एवं ड्राइवर की है। ट्रांजिट पास (बहती) जमा एवं पास करने की सम्पूर्ण जवाबदारी मोटर मालिक / ड्राइवर की है।
2. कृपया गाड़ी के समस्त कागजात चेक करें एवं अपने माल की व्यापारी बीमा कराएं अन्यथा कम्पनी लुट - फूट , आग, चोरी, लिकेज, अदि नुकसान की जिम्मेदारी नहीं होगी।

Owner's Name MANISH

Driver's Name BIRA

TOTAL 25000

13.4.3. A collective examination of the Transport Challans / Loading Slips on record demonstrates a uniform operational practice wherein all transit documentation was generated and issued exclusively by the principal transport companies, and never by the appellant, Shri Manish Kumar Singh. Across all such documents, the printed letterheads belong to the respective hiring agencies, while the appellant's name is merely recorded at the bottom under the column "Owner's Name" alongside the vehicle registration number and trip advance details, conclusively establishing that the appellant functioned solely as a hired truck owner. Furthermore, these challans uniformly omit mandatory statutory particulars prescribed under the Explanation to Rule 4B of the Service Tax Rules, 1994, such as Consignor details, the statutory Service Tax liability declaration, etc., while their printed terms expressly fasten all transit risk and responsibility upon the truck owner/drivers. Consequently, these documents are merely internal

trip-tracking and advance-disbursement slips issued by the principal transporters and cannot, by any stretch of legal fiction, be construed as 'Consignment Notes' issued by the appellant under Section 65B(26) of the Finance Act, 1994.

- **Sample portion/extract of party-wise Ledger Account summary:**

Orissa Transport Co.
Gandhi Chowk,Brajrajnagar
Jharsuguda
ST NO ACBPG5922EST001

Manish Kumar Singh
Ledger Account

1-Apr-2016 to 6-Mar-2017

Page 1

Date	Particulars	Vch Type	Vch No /Excise Inv No	Debit	Credit
27-8-2016	By Freight Expenses	Journal			2,90,338.00
29-8-2016	To Cash	Payment	3993	2,90,338.00	
9-9-2016	By Freight Expenses	Journal			1,28,758.00
10-9-2016	To Cash	Payment	4315	1,26,106.00	
	To Cash	Payment	4316	1,27,841.00	
	To Cash	Payment	4317	1,28,758.00	
	By Freight Expenses	Journal			1,27,841.00
	By Freight Expenses	Journal			1,26,106.00
12-9-2016	To Cash	Payment	4400	1,13,899.00	
	By Freight Expenses	Journal			1,13,899.00
21-9-2016	By Freight Expenses	Journal			1,08,408.00
	By Freight Expenses	Journal			1,27,932.00
	By Freight Expenses	Journal			1,27,555.00
	By Freight Expenses	Journal			1,29,036.00
1-10-2016	By Freight Expenses	Journal			6,447.00
5-10-2016	To Cash	Payment	4680	1,30,413.00	
	To Cash	Payment	4681	1,27,555.00	
	To Cash	Payment	4682	1,08,408.00	
	To Cash	Payment	4683	6,447.00	
7-10-2016	To Cash	Payment	4719	1,27,932.00	
15-10-2016	To Cash	Payment	5104	4,00,000.00	
20-10-2016	By Freight Expenses	Journal			1,30,542.00
	By Freight Expenses	Journal			1,30,694.00
	By Freight Expenses	Journal			1,29,473.00
	By Freight Expenses	Journal			1,30,539.00
	By Freight Expenses	Journal			1,28,165.00
26-10-2016	By Cash	Receipt	232		4,00,000.00
	To Cash	Payment	5259	1,30,542.00	
	To Cash	Payment	5260	1,30,539.00	
	To Cash	Payment	5261	1,29,473.00	
	To Cash	Payment	5262	1,28,165.00	
	To Cash	Payment	5263	1,30,694.00	
5-11-2016	By Freight Expenses	Journal			1,29,391.00
10-11-2016	To Cash	Payment	5664	1,30,584.00	
	To Cash	Payment	5665	1,30,621.00	
	To Cash	Payment	5666	1,29,391.00	
	To Cash	Payment	5667	1,31,942.00	
	To Cash	Payment	5668	98,362.00	
12-11-2016	To Cash	Payment	5801	15,00,000.00	
1-12-2016	By Freight Expenses	Journal			1,31,942.00
	By Freight Expenses	Journal			1,30,584.00
	By Freight Expenses	Journal			1,30,621.00
	By Freight Expenses	Journal			98,362.00
	By Freight Expenses	Journal			1,24,866.00
	By Freight Expenses	Journal			1,30,753.00
	Carried Over			44,58,010.00	32,12,252.00

continued ...

13.4.4. A comprehensive review of the third-party Ledger Accounts provides corroboration of the appellant's status as an unorganized Goods Transport Operator (GTO) rather than a Goods Transport Agency (GTA). Across all such ledgers maintained by Service Tax-registered principal transporters, the appellant's earnings are in majority credited through Journal vouchers strictly under the general accounting head "By Freight Expenses", with the corresponding invoice/voucher reference columns left completely blank. These further buttress the contentions of the appellant that they fell outside the purview of 'Goods Transport Agent' issuing consignment notes.

13.4.4. The aforesaid documents clearly confirm that the appellant acted solely as a truck owner/operator providing transportation on a freight basis. In the absence of consignment notes, the appellant cannot be artificially categorized as a Goods Transport Agency. The Ld. Authorized Representative has failed to adduce any evidence to dislodge these factual records or to prove the issuance of consignment notes.

13.5. This principle is well-settled across a consistent line of Tribunal decisions. In particular, this Bench in the case of *M/s. Tabassum Enterprises v. Commissioner of CGST & Central Excise, Kolkata South [Final Order No. 77452 of 2025 dated 19.09.2025 in Service Tax Appeal No. 75037 of 2025 – CESTAT, Kolkata],* while dealing with an identical issue, has held as under: -

> *"6. Regarding the merits of the case, I find that the appellant were rendering the service of arranging transportation of goods. They did not issue any consignment note. I observe that the service of transportation of goods by road is liable to service*

tax under the category of GTA service, only when the service provider issues 'consignment notes'. As the appellant have not issued any 'consignment note, I hold that' the service rendered by them were clearly excluded, as the said services were covered in the 'Negative List' Entry under Section 66D(P)(i)(A) of Finance Act, 1994. I find that this view is supported by the judgment of Hon'ble Apex court in the case of CCE, Ahmedabad-II v Chartered Logistics Ltd. [(2024) 16 Centac 474 (SC)]. For ready reference, the relevant portion of the said decision, is reproduced below:

Tribunal was justified in holding that transportation of goods by road by assessee would not be taxable as GTA service when consignment note was not issued by assessee and said services were clearly excluded from taxable services being covered in 'Negative List' Entry under Section 66D(P) (i) (A) of Finance Act, 1994.

6.1. Thus, by relying on the ratio of the decision cited supra, I hold that the demand confirmed in the impugned order is not sustainable.

6.2. In this regard, I observe that the Ld. A.R contended that the appellant has not raised the issue of not issuing 'Consignment Notes' earlier. Thus, raising this ground at this stage is only an after thought. I observe that the legal issues can be raised at any stage. In respect of 'GTA' service, the issue of 'Consignment Notes' is a primary requirement. It is on record that the appellant has not issued 'Consignment Notes'. Thus, to establish their case, the appellant can raise this point in support of their claim. As there is no evidence contrary to the claim made by the appellant, I hold that the objection of the Revenue on this ground is not sustainable."

13.6. Without prejudice to the primary submission that the appellant is not a GTA in the absence of issuance of any Consignment Note, even assuming arguendo that the impugned services were to be treated as GTA services, the Service Tax liability in respect of freight paid by specified recipient entities, such as bodies corporate, partnership firms (including LLPs), factories, societies, co-operative societies, and registered excisable dealers, rested entirely on such

recipients under the Reverse Charge Mechanism (RCM) in terms of Rule 2(1)(d)(i)(B) of the Service Tax Rules, 1994 read with Notification No. 30/2012-ST dated 20.06.2012. As is evident from the CBDT / Form 26AS data and party-wise ledgers on record, several payers who deducted tax at source under Section 194C of the Income Tax Act, 1961 fall within these specified categories, and the adjudicating authority ought to have examined this recipient-wise statutory exclusion before confirming the demand against the appellant.

13.7. We also find that the ld. adjudicating authority erred in confirming the demand on the sole premise that the appellant failed to substantiate claims of abatement or exemption during the initial inquiry. It is a fundamental principle of tax jurisprudence that the initial burden lies squarely on the Revenue to establish that a transaction is exigible to tax in the first instance before demanding proof of exemptions. The Department could not have assumed taxability merely because the Appellant faced constraints in collating four-year-old vehicle-wise and trip-wise records during the peak COVID-19 pandemic period (May–July 2020).

14. In view of the above findings, since the transportation services rendered by the appellant without issuing consignment notes are exempt under Section 66D(p)(i)(A), the demand of Service Tax for the transportation services rendered by the assessee cannot be sustained in law.

Demand Raised on ITR / CBDT Data without any independent investigation

15. We further find that the entire demand in the present case suffers from a foundational defect, inasmuch as it has been raised mechanically by adopting the gross turnover figure reflected in the appellant's Income Tax Return (ITR) / CBDT data, without any independent investigation or transaction-wise determination of the taxable services actually rendered.

15.1. Under Section 66B of the Finance Act, 1994, Service Tax is leviable only on the provision of a specific "service" (as defined under Section 65B(44) of the Act) that is neither covered under the Negative List (Section 66D) nor exempted vide any notification issued under Section 93. The burden of proof rests squarely on the Revenue to identify the specific service, establish its exigibility, and determine the exact taxable consideration. The Department cannot simply pick up the gross receipts shown in the ITR (Rs. 18,23,40,433/-) or Form 26AS, apply the flat rate of 15.00%, and treat the entire turnover as taxable service income by default, ignoring the statutory exemptions and operational realities of the trade. It is a settled proposition of law, affirmed in a catena of judicial pronouncements, that Service Tax cannot be demanded mechanically by merely borrowing gross receipts from Income Tax records without establishing that such receipts constitute consideration for a specific taxable service under the Act. In the case of *M/s. Rishu Enterprise v. Commissioner of C.G.S.T. & C.Ex., Dibrugarh [Service Tax Appeal No.75509 of 2022 – CESTAT, Kolkata]*, this Tribunal has observed, under similar facts and circumstances, as under: -

> *"8. In view of the judicial pronouncement of this Tribunal, we hold that merely on the basis of Form 26-AS issued by the Income Tax Department, the demand of Service Tax is not sustainable against the appellant.*
>
> *…..*
>
> *11. In view of this, we hold that the impugned demand is not sustainable against the appellant on the basis of the details provided by the Income Tax Department in Form 26AS and the extended period of limitation is not invokable."*

15.2. Further, the same issue has also been dealt with by this Tribunal in the case of *M/s. Quest Engineers & Consultant Pvt. Ltd. v. Commissioner of C.G.S.T. & C.Ex., Allahabad [2022 (58) G.S.T.L. 345 (Tri-All)].* The relevant observation of the Tribunal in the aforesaid case is reproduced below: -

> *"12. …*
>
> *....We further find that Form No. 26AS is not a statutory document for determining taxable turnover under the Service the Tax provisions. We find that Form No. 26AS is maintained on cash/ receipt basis by the Income Tax Department for the purpose of tax deducted at source, etc. being the relevant data for Income Tax. Whereas under the Service Tax provisions, the service tax is chargeable on mercantile basis (accrual basis) on the service provided whether the value of such service is received or not. Thus, we find that the whole basis of show cause notice is incorrect and/or misconceived."*

15.3. In fact, we observe that the above issue also formed the subject matter in the case of *Tabassum Enterprises (supra),* wherein, the Bench noted that the demand of Service Tax solely relying on data received from CBDT, without adducing corroborative evidence in support, cannot be sustained.

15.4. The ratio of the aforesaid decision applies with full force to the facts of the present case. In the absence of any independent evidence brought on record by the Revenue to establish the rendition of any taxable service beyond simple road transportation, which is excluded under the Negative List, the confirmation of Service Tax demand purely on the strength of ITR/CBDT data cannot be sustained in the eyes of law.

16. We now turn to the issue concerning the invocation of the extended period of limitation under the proviso to Section 73(1) of the Finance Act, 1994. The Show Cause Notice in the present case was issued on 30.06.2021 for the Financial Year 2016-17, alleging wilful and deliberate suppression of facts with intent to evade payment of Service Tax, alongside non-registration and non-filing of statutory ST-3 returns. Under Section 73(1) read with Section 73(6)(i)(b) of the Finance Act, 1994, where no return is filed, the "relevant date" for computing the period of limitation is the last date on which the ST-3 return was required to be filed. Considering the same, we find that the entire demand of Rs. 2,73,51,065/- raised in the Show Cause Notice dated 30.06.2021 survives solely on the invocation of the extended period under the proviso to Section 73(1). Moreover, since the normal period of limitation had already lapsed in 2019, well prior to the onset of the pandemic, the general extension of limitation ordered by the Hon’ble Supreme Court during the COVID-19 period has no application whatsoever to revive a time-barred demand.

16.1. In this regard, we take note of the fact that the entire foundation of the Revenue's demand rests on

the gross receipts of Rs. 18,23,40,433/- disclosed by the appellant in its own Income Tax Return (ITR) for FY 2016-17, as reflected in the CBDT data/Form 26AS. We find that during the course of the inquiry, the appellant had also submitted its audited Balance Sheet for FY 2016-17. It is a well-settled principle of tax jurisprudence that where financial receipts are transparently declared in audited books of account and disclosed in statutory returns filed with the Income Tax Department, an allegation of "suppression of facts" with intent to evade tax cannot be sustained.

16.2. It has also been held in various decisions that invocation of the extended period is unjustified when the demand itself is based on records of the assessee such as ITR/CBDT data and no meaningful investigation has been conducted for such demands. In this context, the Tribunal in *Mohammed Fajlur Haque v. Commissioner of C.G.S.T. and C.Ex., Malda [Final Order No. 75412 of 2026 dated 19.03.2026 in Service Tax Appeal No. 76356 of 2024 – CESTAT, Kolkata]* has held that: -

> *"10. Further, I also find force in the contentions raised by the appellant that the demand confirmed in the impugned order is not sustainable on the ground of limitation. The demand in the present case has been raised for the period 2014-15 whereas the Show Cause Notice came to be issued on 17.10.2019, by invoking the extended period of limitation. Admittedly, the demand has been raised on the basis of the data received from the Income Tax Authorities / Form 26AS, without conducting any independent enquiry so as to ascertain the nature of service being rendered by the appellant. It has been held in a catena of decisions that the data available in Income Tax Returns / Form 26AS loses its evidentiary value in the absence of any corroborative independent evidence. In this case, I do not find that any evidence has been brought on*

> *record by the Revenue to show that the appellant has indulged in any activity amounting to suppression or wilful mis-statement with the intent to evade Service Tax. Therefore, the allegation of suppression of facts and wilful mis-statement of facts for invocation of the extended period of limitation only on assumptions and presumptions cannot be sustained. Accordingly, in view of the facts and evidence available on record, I am of the view that the demand confirmed vide the impugned order, by invoking the extended period of limitation, is liable to be set aside. Thus, the impugned demand stands set aside on account of being barred by limitation also."*

16.3. To invoke the extended period under the proviso to Section 73(1), the law mandates that the Revenue must prove a deliberate, positive act of fraud, collusion, wilful misstatement, or active suppression of facts accompanied by a specific mens rea to evade payment of tax. Mere omission to obtain Service Tax registration or file ST-3 returns, especially when driven by a bona fide understanding of non-taxability, does not automatically equate to suppression of facts. When the Department initiated inquiry vide letter dated 21.05.2020, the appellant promptly submitted a detailed reply on 02.07.2020, explicitly disclosing the exact nature of its business viz. lifting and transportation of coal and iron and placing its ITR Acknowledgement and audited Balance Sheet before the investigating officer. Furthermore, the case on merits as canvassed by the appellant shows that it merely operated under the bona fide understanding that no Service Tax liability was payable at its end, which negates any deliberate intent or mens rea to evade government revenue.

16.4. In the impugned order, the ld. adjudicating authority has in particular and in addition to other

circumstances, inferred mens rea primarily because the appellant could not provide the necessary documents called for and present 4-year-old vehicle-wise and party-wise records during the departmental inquiry conducted between May and July 2020, which was during the COVID-19 pandemic period. An inability to produce records during an investigation period, when several logistical constraints existed, in our view, cannot retrospectively establish a fraudulent intent to evade tax during Financial Year 2016-17.

17. Therefore, we hold that the essential statutory ingredients for invoking the extended period of limitation under the proviso to Section 73(1) are completely absent in this case. The entire demand is unsustainable on the ground of limitation as well.

18. With respect to the penalties imposed under Section 78, we observe that the imposition of an equivalent penalty under Section 78 requires the existence of the very same statutory ingredients, namely fraud, collusion, wilful misstatement, or suppression of facts with intent to evade tax. In view of the above finding that the appellant acted under a bona fide statutory belief grounded in Section 66D(p)(i)(A) and Notification No. 30/2012-ST, and that no mens rea or deliberate suppression can be attributed to the appellant, the penalty under Section 78 is set aside, being unwarranted in this case.

18.1. As regards the penalty imposed under Section 77(1)(c)(ii) of the Finance Act, 1994 for failure to produce all documents called for by the Central Excise Officer, we are of the view that the same merits to be set aside, since the appellant had duly responded to the departmental communications by furnishing its ITR Acknowledgement and audited Balance Sheet. An

inability to immediately produce granular, trip-wise historical records during the COVID-19 inquiry period cannot be construed as a wilful or contumacious default. Accordingly, the same is set aside.

18.2. We however do not interfere with the general procedural penalty imposed under Section 77(2) of the Act, which is accordingly upheld.

19. In the result, we pass the following order: -

(i) The demand of Service Tax amounting to Rs.2,73,51,065/- (inclusive of cesses) confirmed against the Appellant for the Financial Year 2016-17 is hereby set aside.

(ii) The demand of interest under Section 75 of the Finance Act, 1994 is consequently set aside.

(iii) The penalties imposed under Section 77(1)(c)(ii) and Section 78 of the Finance Act, 1994 are set aside.

(iv) The penalty imposed under Section and Section 77(2) of Act is upheld.

19.1. The impugned order stands modified to the extent indicated above.

20. The appeal is disposed of accordingly, with consequential relief, if any, as per law.

(Order pronounced in the open court on **13.11.2026**)

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd