

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.77325 of 2018

(Arising out of Order-in-Appeal No.59/ST/RKL-GST/2018 dated 22.03.2018 passed by Commissioner of CGST & Central Excise, Rourkela)

M/s Mata Dadhimati Transport

(Station Road, Barbil, Dist.-Keonjhar, Pin-758035, Odisha)

Appellant

VERSUS

Commissioner of CGST & Central Excise, Rourkela

(KK-42, Civil Township, Rourkela, Odisha-769004)

Respondent

APPEARANCE :

Ms.Ritika Kurmy, Advocate for the Appellant

Mr.S.K.Jha, Authorized Representative for the Respondent

CORAM:

HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)

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

FINAL ORDER NO.75044/2026

DATE OF HEARING : 09 JANUARY 2026

DATE OF DECISION : 09 JANUARY 2026

Per Ashok Jindal :

The appellant is in appeal against the impugned order wherein the demand of service tax has been confirmed along with an equivalent amount of penalty imposed on the appellant under Section 78 of the Finance Act, 1994.

2. The brief facts of the case are that the appellant is engaged in "local transportation (shifting) of Iron Ore Fines" from the stock yard of their client to the Railway Siding at a distance of 6 K.Mand also engaged in the "loading" of Iron Ore Fines into Railway Wagon for their clients. The appellant is also engaged with "wagon loading" activities, for which, they have paid the service tax under the category of "Cargo Handling Services".

2.1 The appellant is registered under the Finance Act, 1994 for rendering "Cargo Handling Services" defined U/s 65(23) read with Section 65 (105)(zr) and Section 66 of the Act.

2.2 The appellant was awarded Work Order dated 01-04-2009 by M/s Annapurna Enterprises against separate rate for;

(i) Local transportation of Iron ore;

(ii) Loading of wagon;

2.3 The appellant was awarded another Work Order dated 01-04-2008 by M/s Thriveni Earthmovers (P) Ltd., against separate rate for;

(i) Local transportation of Iron ore;

(ii) Loading of wagon;

2.4 The appellant states that the activities of Wagon Loading and Transportation are separate and distinct hence separate rate/contract are issued by the client and the Appellant has raised separate Bills/charged separately in the bills for said two activities.

2.5 On the "wagon loading" they have paid service tax under the category of "Cargo Handling Services" and there is no dispute on this point.

2.6 The appellant has not collected and paid service tax on the "local transportation" activities under the *bonafide* belief that the said activity is most appropriately classifiable under the category of "Goods Transport Agency Service" and in terms of Rule 2(1)(d)(v) of the Service Tax Rules, 1994 the liability to pay service tax is on the service recipient and not on the appellant.

2.7 The appellant states that their books of accounts have been audited under EA 2000 for the year 2008-09 to 2011-12 and in the said

audit, it was purportedly noticed that on income received for local transportation (shifting charges) from M/s Thriveni Earthmovers (P) Ltd., and M/s Annapurna Enterprises amounting to Rs.16,58,920/-, no Service Tax is paid.

2.8 The show-cause notice dated 14.10.2014 was issued to the appellant demanding service tax along with penalty.

2.9 The matter was adjudicated. The demand was confirmed.

2.10 The appellant challenged the order of the adjudicating authority before the Id.Commissioner (Appeals), who upheld the adjudication order and confirmed the demand.

2.11 Being aggrieved with the said order, the appellant is before us.

3. The Id.Counsel appearing on behalf of the appellant submits that the local transportation (shifting) (upto distance of 6KM) are taxable under the category of Goods Transport Agency services defined U/s 65(105)(zzp) and the liability to pay service tax in such case lies on the service receivers and not on the service provider i.e. the appellant. She further submits that the contract in the instant case is divisible. There are separate rates for "transportation" and "loading" on loading activities and accordingly the invoices are raised. Further, she submits that the appellant has already paid tax on loading activities which is not subject matter of dispute in the instant case. She submits that the activity of local transportation/shifting is more appropriately taxable under the category of "Goods Transport Agency Services" defined U/s 65(50b) read with Section 65(105)(zzp) of the Act. In support of her contention, she relies on the following decisions :

- (i) M/s S.K. Mineral Handling Pvt. Ltd. Vs. CCE & ST Order dated 17-09-2021 (Service Tax Appeal No.279 of 2012);

- (ii)** M/s S. Kumar Handling Agency Vs. CCE Order dated 29-12-2021 (Service Tax Appeal No.90 of 2009);
- (iii)** Maa Kalika Transport Pvt. Ltd. Vs. CCE & CX reported in 2023 (79) GSTL 263 (Tri-Kolkata);
- (iv)** Jai Jawan Carrier Pvt. Ltd. Vs. CST reported in 2015 (37) S.T.R. 509 (Tri-Del) ;
- (v)** Jain Carrying Corporation Vs. CCE reported in 2014-12-TMI-506-CESTAT New Delhi (Para 9) which is affirmed by Hon'ble Supreme Court in 2015 (39) S.T.R. J370 (S.C.).

4. The Id.A.R. for the Revenue, has justified the impugned order.
5. Heard both the parties and considered the submissions.
6. We find that the issue is no more res-integra in view of the decision of this Tribunal in the case of M/s S.K.Mineral Handling Private Limited Vs. CGST & Central Excise, Bhubaneswar II vide Final Order No.75791-75792/2021 dated 17th September, 2021, wherein this Tribunal has observed as under :

"13. We find that the issue is no more res integra in view of the Tribunal's decision in the Appellant's own case reported as S.K.Mineral Handling Pvt.Ltd. Vs. CCE, C & ST, BBSR-II [2019-TIOL-3514- CESTAT-KOL], wherein it was held as under:-

"2. The facts of the case in brief are that during the period under dispute i.e. January, 2005 to December, 2005 the appellant executed composite activity of local transportation of Iron Ore from mines dump yard to the Rail Track Heads/Railway Siding upto lead of ½ km in Automated Tipping Trucks (goods carriage), with incidental loading into such tipping trucks and automated unloading at the Railway Track Head/Railway Siding.

3. The automated tipping trucks are fitted with Hydraulic Jack facility for automatic unloading without any human intervention. The appellant prepares bills for "local transportation" on their client. Department has confirmed Service Tax demand of Rs.

18,50,827/- on such activities. It appears from Page 16 & Page 17 of the show cause notice dated 1-2-2007 that the said transportation for short distance is treated by the department as "Shifting" for short distances which the appellant has claimed to be transportation but as per the show causing authority, it cannot be transportation activity but Cargo Handling activity. As per Para 8 of the show cause notice the rate is composite and no charges for loading, unloading is collected separately by the appellant. On perusal of the quantification of demand placed at Annexure-1 of the show cause notice (Page 309) it appears that there are separate contract for local transportation and wagon loading activities and the two contracts are distinct and separate and in the instant case service tax is already paid by the appellant on the wagon loading activities but no service tax is paid on the transportation/shifting activities on which service tax is now demanded.

4. The Learned Advocate for the appellant Shri Kartik Kurmy took us through the bills raised by the appellant for wagon loading and Local Transportation/Shifting to demonstrate that the wagon loading contracts and local transportation contract are separate. The appellant has already discharged service tax on wagon loading activities. In the show cause notice service tax is demanded only on the local transportation/shifting work (with incidental loading of tippers and automated unloading at Railway Track Head). The Learned Advocate further submits that the Learned Commissioner (Appeals) in the impugned Order under Para 33 following the Board Circular No. B11/1/2002-TRU, dated 1-8-2002 (Para 4) has sought to tax the entire consideration under the category of "Cargo Handling Services" on the ground that for loading of tippers, transportation and unloading of tippers at the Railway Track Head/Railway Siding, there is no separate rates provided, therefore, as per the said circular the entire consideration shall be taxable under the category of Cargo Handling Services. The Learned Advocate submits that they are transporter and not Cargo Handling Agents and to attract the levy

unless the twin test of handling of "cargo" by a "Cargo Handling Agent" are not satisfied, no tax can be demanded by implication and without clear authority of law. In the instant case it is nobody's case that the appellant is a Cargo Handling Agent. The Learned Counsel further relied upon the decisions of this Tribunal in the case of Shri Raj Coal Carriers P. Ltd. v. CCE vide Order dated 24-4-2019 bearing No. FO/75464/2019 in Appeal No. ST/158/2009, M/s. Lakhanpur Coal Carriers v. CCE vide Order dated 24-4-2019 bearing No. FO/75466/2019 in Appeal No. ST/159/2009 and Khanduja Coal Transport Company v. CGST reported in 2019-TIOL-1018-CESTAT-DEL to contend that transportation for short distance cannot be taxed under the category of Cargo Handling Services but as transport services. The Learned Advocate further relied upon judgment of the Hon'ble Supreme Court in the case of CCE v. Singh Transporters reported in 2017-TIOL-249- SC-ST to contend that transportation for short distance is taxable as transportation service. The Learned Counsel also contended that the demand is barred by normal period of limitation.

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7. We find from Page 16, 17 & 18 of the show cause notice that service tax is demanded only on the local transportation/shifting charges collected by the appellant which is inclusive of loading of tipper, transportation upto Railway Track Head and automated unloading of tipper at the Railway Track Head. A perusal of the show cause notice shows that the demand in the instant case is on the "Work of Shifting of Iron Ore Lumps and Fines from Dump Yard to Railway Siding" which involved loading at Dump Yard, transportation and unloading at Railway Siding. The appellant has already paid service tax on wagon loading activities which is clear from the quantification made in the show cause notice.

8. We find that the contract is essentially for the transportation of goods which incidentally involving loading of tipper/unloading of tipper at Railway Track head/Railway Siding which cannot be

taxed under the category of Cargo Handling Service simply because rates for loading of tipper at Dump Yard and unloading of tipper at Railway Siding is not provided separately. The Learned Commissioner (Appeals) has erred in placing reliance on Circular No. B11/1/2002-TRU, dated 1-8-2002 which does not apply to the facts of the instant case. Further, it is nobody's case that the appellant is a Cargo Handling Agent to attract the levy under the category of Cargo Handling Services."

14. We find that separate rates in the work orders clearly indicates two separate contracts in one instrument. The learned Commissioner has erred in clubbing a divisible contract. The Tribunal in the case of Jai Jawan Coal Carriers Pvt.Ltd. Vs. CST reported in 2015 (37) S.T.R. 509 (Tri.-Del.), held thus :-

"6. The appellant had entered into agreements with their various clients - Bharat Cooking Coal Ltd., Orissa Coal Mining Corporation Ltd. etc. in terms of which the appellant were to provide tipper trucks, load the coal/mineral ores at the coal/mineral heaps into the tipper trucks, transport the same to the railway siding located within the mines and unload the coals/mineral ore into the wagons for its transportation. On going through the sample work orders placed on record, we find that the work orders mention separate rates for transportation, tipper loading and wagon loading and according to the appellant, the invoices had been issued on this basis only. Since, the work orders prescribe separate rates for tipper loading that is loading of the coal/mineral ore into the tipper trucks, its transportation up to the railway siding and unloading of the coal/mineral ore into the railway wagons, the appellant's contracts with their clients has to be treated as separate contracts for transportation, loading and unloading of coal/mineral ores, though under one instrument. The coal/mineral ore loaded by the appellant at the coal/mineral ore heaps and thereafter unloaded into the wagons was meant for transportation to its destinations by railways and, therefore, the same would have to be treated as 'cargo' and its loading into the tipper trucks and thereafter unloading into the railway wagons

would have to be treated as cargo handling service. Hon'ble Orissa High Court in para 22 of its judgment in the case of Coal Carriers v. CCE & CUS & ST, Bhubaneswar (supra) has observed that pre-transportation activities like packing/loading and post transportation activities like un-loading, un-packing are covered by cargo handling service and that cargo handling service is an adjunct service to the actual transportation of the goods. Since, in this case in the appellant's contracts with their clients, the activity of the loading of the coal/mineral ore into the tipper trucks and its subsequent unloading into the railway wagons for its transportation is clearly identified and separate rates are prescribed for the same, we hold that the service tax would be chargeable on the amount charged by the appellant for these services under Section 65(105)(zr) read with Section 65(23) of the Finance Act, 1994. However, service tax would not be chargeable on the amount charged for transportation, as even if this transportation within the mines is treated as GTA service provided by the appellant agency, the liability to pay service tax in respect of this activity would be of the service recipient."

15. We also find that the decision of the Tribunal in the case of Jain Carrying Corporation Vs. CCE reported in 2014-12-TMI-506-CESTAT New Delhi, against which the Civil Appeal filed by the Department is dismissed by the Hon'ble Supreme Court reported in 2015 (39) S.T.R. J370 (S.C.), Para 9 of the said decision reads as follows:-

"9. We do not find any favour with the reasons given by the adjudicating authority, which stands reiterated by the Id.DR, which is to the effect that all the three services have to be taken collectively for treating the same as 'cargo handling services', which were introduced w.e.f. 16.08.2002 and the appellant are liable to pay service tax on the full consolidated compensation received by them for the said three different services, even though in respect of the services (a) and service (b), the appellant started paying service tax from the date of introduction of the different services. The contract may be a composite

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contract but the services stand clearly mentioned separately with separate rates for the same as indicated against each and every service. As already observed, the first two services fall under different categories which were introduced subsequently and for which the appellant had started paying service tax from those date, we find no reasons to hold that the said two services are part & parcel of the 'cargo handling services', which according to the Revenue falls under clause (c)"

16. In the above background of the case, it is observed that the demands of Service Tax on transportation charges is not sustainable. Further, the demand in the first case i.e. in Service Tax Appeal No.344 of 2010 is entirely barred by normal period of limitation and in the second case i.e. Service Tax Appeal No.279 of 2012 is partly barred by normal period of limitation of one year.

In view of the above discussions, we set aside the impugned orders and allow the Appeals with consequential relief to the Appellants."

7. In view of the above decision of this Tribunal in the case of M/s S.K.Mineral Handling Private Limited (supra), the appellant is not liable to pay service tax under "Cargo Handling Services". Therefore, the demand of service tax confirmed against the appellant is dropped.
8. In view of the above, the appeal filed by the appellant is allowed with consequential relief, if any.

(Operative part of the order was pronounced in the open court)

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)