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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI

PRINCIPAL BENCH - COURT NO. 3

Service Tax Appeal No. 50616 of 2018

[Arising out of Order-in-original No. 05/GST-West/KAM/2017-18 dated
30.11.2017 passed by the Commissioner, Central Tax, Delhi West]

M/s R. V. Infrastructural Pvt. Ltd.,

Appellant

411, GD ITL Northex Tower
A-9, Netaji Subhash Place, Pitghampura New
Delhi-110034.

VERSUS

Commissioner of Central Tax

Respondent

Delhi Commissionerate
Bhikaji Cama Place, R. K. Puram
New Delhi-110066.

APPEARANCE:

Shri Atul Gupta and Shri Anmol Gupta, Chartered Accountant for the appellant

Shri S. K. Meena, Authorised Representative for the respondent

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

HON'BLE Mr. P. V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51608/2023

DATE OF HEARING: 01.09.2023

DATE OF DECISION: 07.12.2023

BINU TAMTA:

The Order-in-original No. 05/GST-West/KAM/2017-18 dated 30.11.2017 passed by the Commissioner confirming the demand of service tax and also the penalty as proposed in the show cause notice is under challenge in this appeal.

2. The appellant has been issued demand-cum-show cause notice dated 23.10.2012, inter-alia stating that, audit of M/s Larsen & Toubro Limited, ECC Division, 211, 1st Floor, Okhla Estate Phase-III, New Delhi was conducted by the office of Director General of Audit (Central Revenue) New Delhi from 8th May, 2009 to 12th May 2009 for the period 2007-08 to 2008-09. During the audit, it was noticed that M/s R. V. Infrastructural Pvt. Ltd., 33-A, IIInd Floor, Kamla Nagar, New Delhi (hereinafter referred to as the „Service Provider/ Party/ Assessee“ working as sub-contractor has provided taxable services in respect of construction activities undertaken on behalf of M/s Larsen & Toubro Limited which may be classified as “Commercial or Industrial Construction” Services as per Section 65(105)(zzq) defined as per Section 65(25b) and “Works Contract Services” as per Section 65(105)(zzzza) of the Finance Act, 1994 (hereinafter referred to as the Act) ibid depending upon subcontract awarded by M/s Larsen & Toubro Limited and are getting amount in lieu of providing the taxable services but not paying service tax on the amount received from M/s Larsen & Toubro Limited.

2.1 Whereas, based on the LAR, vide Office letter of even No. 9352 dated 08.07.2011 and 13476 dated 25.11.2011 (RUD-I & II) the assessee was requested to furnish the details of gross amount received and service tax paid for the period 2007-08 to 2010-12. The assessee replied vide their letter dated 04.09.2012 which was incomplete and therefore the reply of the assessee was found inadmissible. Under the circumstances, the Department was left with no alternative but to issue a demand cum show cause notice on the basis of facts and records available.

2.2 Whereas as per audit report taxable service provided by the assessee during the period 2007-08 amounted to Rs.1,45,32,599/=. On this amount the assessee was liable to pay service tax amounting to Rs. 17,43,912/-, Education Cess amounting to Rs. 33,878/- and Secondary Education Cess amounting to Rs. 17,436/- (collectively amounting to Rs. 17,96,229/-).

3. The appellant was accordingly called upon to show cause as to why:-

(i) Assessment in terms of Section 72(a) should not be resorted to as the assessee has failed to furnish the return under Section 70 of the Finance Act, 1994 as amended.

(ii) Service Tax amounting to Rs. 1,98,91,415/- should not be demanded and recovered from them under Section (1) of Section 73 of Finance Act, 1994.

(iii) Education Cess amounting to Rs. 3,97,830/- should not be demanded and recovered from them under sub-section (1) of Section 73 of the said Act read with Section 91 of the Finance Act, 1994.

(iv) Secondary and High Education Cess amounting to Rs. 1,98,915/- should not be demanded and recovered from them under Section 136 read with Section 140 of the Finance Act, 2007.

(v) Interest under the provision of Section 75 of the said Act should not be demanded and recovered from them.

(vi) Penalty under Section 76 of the Finance Act, 1994 should not be imposed upon them for failure to pay the service tax in accordance with the provision of Section 68 read with Rule 6 of Service Tax Rules, 1994.

(vii) Penalty under Section 77(1) (a) of the Finance Act, 1994 should not be imposed upon them for contravention of Section 69 of the said Act by way of not getting registered under service tax on time as prescribed under the said Act.

(viii) Penalty under Section 77(2) of the Finance Act, 1994 should not be imposed upon them for contravention of Section 70 of the said Act by way of not filing the periodical ST-3 return in proper manner for the relevant period.

(ix) Penalty under Section 78 of the Finance Act, 1994 should not be imposed upon them for deliberately suppressing of the facts with the intention to evade payment of service tax.

4. As per the charges in the show cause notice, the services rendered by the appellant to M/s L&T Limited was proposed to be classifiable as „Commercial or Industrial Construction Services“ as per Section 65 (105)(zzq) and „Works Contract Services“ as per Section 65(105)(zzzza) of the Finance Act, however they have not paid service tax on the amount received from M/s L&T Limited. According to the

appellant he is engaged in providing machineries i.e. Transit Mixer on hire to M/s L&T Limited, sold Ready Mix Concrete (RMC) and also provided transportation of concrete direct to M/s L&T Limited to Delhi Airport Project Site in their own vehicles on which they were not liable to pay service tax under the Act.

5. The case of the Revenue is further that the appellant had failed to provide any information to make the assessment and therefore the show cause notice for the period following the one for which the show cause notice was envisaged was to be issued on identical irregularity for the period 2008-09 to 2011-12 on the basis of best judgement assessment under Section 72 (b) assuming 50% increase in value of the services provided as compared to the previous year.

6. The show cause notice dated 23.10.2012 was adjudicated by the Commissioner of CGST, Delhi (West). Learned Commissioner analysed the clauses of the agreement between the appellant and M/s L&T Limited and on that basis concluded that the final effective control and right of possession of the transit mixer remained with the appellant and hence they were liable for service tax under the category of "Supply of Tangible Goods Service", relying on the decision of this Tribunal in the case of Greatship (India) Ltd., vs. Commissioner of Service Tax, Mumbai-I-2015 (37) STR 533 (Tri. Bom.) which considered all the earlier case law on the subject. On the sale of RMC, learned Commissioner distinguished the decision of this Tribunal as upheld by the Supreme Court relied upon by the appellant in the case of GMK Concrete Mixing Pvt. Ltd., vs. Commissioner of Service Tax, Delhi -2012 (25) STR 357 (Tri. Del.) and observed that the appellant has not submitted sufficient documents for sale of RMC and hence they were liable to pay service tax on this activity. Similarly, on the transportation charges, learned Commissioner observed that the appellant has not submitted the requisite documentary evidence to establish that they have rendered any transportation services to their client and therefore liable to service tax. Taking note of the fact that the appellant failed to submit the substantial documents before the Department, so as to enable the demand under proper head, the same is sustainable and recoverable under Section 73, invoking the extended period of five years. Consequently, the appellant was held liable to pay service tax amounting to Rs. 2,04,88,240/- alongwith interest under Section 75 of the Finance Act read with Rule 14 of the Cenvat Credit Rules and penalty under Section 77(1)(a) and 77(2) and also penalty of equal amount under Section 78 of the Act. Being aggrieved, the appellant has filed the present appeal before this Tribunal.

7. The preliminary objection taken by the appellant is that the show cause notice is vague and the impugned order is beyond the scope of the show cause notice and hence the proceedings needs to be dropped. He has referred to series of decisions on this ground. He has also challenged that the invocation of Section 72(a) of the Act is not tenable. On merits, learned Counsel for the appellant submitted that hiring of Transit Mixer is covered under “right to use” and not under the service of “Supply of Tangible Goods” and sale of RMC is not liable to service tax as it is a simple sale of transaction and there is no element of service in it and therefore they have been paying VAT thereon. On the issue of service tax on transportation of concrete, it is submitted that in case of Goods Transport Agency service (GTA), the service tax is levied on reverse charge mechanism in terms of Rule 2(1)(d)(b) of Service Tax Rules, 1994 on the service recipient or the person who has paid the freight. In support of his submission, he also contended that payment of service tax and VAT are mutually exclusive and referred to certain case laws. According to him, since he is already paying VAT on the hiring of Transit Mixer and on the sale of RMC, the demand of service tax is not sustainable. Learned Counsel also challenged the invocation of extended period of limitation, pleading that they were under the bonafide belief that the activities undertaken by them were not liable to service tax as they were paying VAT thereon and accordingly the penalty needs to be dropped.

8. On the other hand, learned Authorised Representative for the Revenue reiterated the findings of the Commissioner in the impugned order. Learned AR submitted that the appellant is working under self-assessment system and therefore they were duty bound to correctly assess the service tax liability and filed the return accordingly but they never disclose the correct facts to the Department which were honoured only at the time of audit and even thereafter though opportunity was granted but the appellant had not submitted the requisite reply alongwith necessary documents. Consequently, the Department had no option but to invoke the provisions under Section 72 for making the assessment. Learned AR submitted that since there are several activities which are composite in nature and involves both transfer of the material as well as the service activities and therefore VAT as well as the service tax liability arises, however it cannot be said that if anybody has paid VAT he would not be liable to pay the service tax and therefore prays that the appeal is to be dismissed.

9. Having heard both the sides and on perusal of the records of the case, and also the judgements cited by the parties, we are of the view that firstly, we need to consider whether the show cause notice issued to the appellant is sustainable.

10. On perusing the show cause notice, we find that the contents thereof are vague and there is no clarity on the actual activity carried out by the appellant. The show cause notice is completely silent on the nature of respective activities so as to fall under any specific „service“ as defined under the Finance Act. The authorities while issuing the show cause notice merely proceeded on the footing that the appellant has not submitted the relevant figures and therefore the department is left with no option but to issue the show cause notice on the basis of available facts and record with them. This Tribunal has time and again observed that the officers have ample powers under the statute to make effective enquiry and investigation. In **Shubham Electricals vs. Commissioner of C. EX. and ST, Rohtak, 2015 (40) STR, 1034**, the Tribunal quashed the show cause notice for the simple reason that relevant facts have not been stated while issuing the show cause notice, the relevant para reads as:

“13. We have noticed earlier that the show cause notice itself adverts to the fact that the appellant had provided copies of 20 work orders executed in relation to CWG Projects, particulars of which are set out in a tabular form in para 5 of the show cause notice. From the description of the works in this table, officers could have classified the several works into the appropriate taxable service which may appropriately govern rendition of these services. In any event officers are not handicapped and the Act provides ample powers including of search under Section 82 of the Act to obtain information necessary to pass a proper, disciplined and legally sustainable adjudication order. The disinclination to employ the ample investigatorial powers conferred by the Act is illustrative of gross Departmental failure and cannot afford justification for passing an incoherent and vague adjudication order. The failure to gather relevant facts for issuing a proper show cause notice cannot provide justification for a vague and incoherent show cause notice which has resulted in a serious transgression of the due process of law.”

11. Similar are the observations by the Ahmedabad Bench of the Tribunal in **Indo Nippon Chemicals Co. Ltd., vs. Commissioner of C. EX. Vadodara, 2009 (16) STR 639**, observing that law gives sufficient powers to officers to conduct enquiries and investigations to bring out the truth, and without making any efforts, on the basis of non-production of documents, on the basis of assumptions and presumptions, a case cannot be made out against the appellant which is the case here.

12. From the records, we find that in response to the query made by the department vide their letter dated 8.7.2011, the appellant duly submitted its

response and on second question the contents of the letter dated 4.09.2011 are quoted:

“2) Total amount received (year wise) by you from M/s Larsen & Toubro Limited (ECC Division) and other clients for the period from 2007-08 to 2010-11 and year wise Service tax paid by you.

Reply: Total amount received by the notice from M/s Larsen & Toubro Limited for period from 2007-08 to 2010-11 is as per details below.

Financial year	Amount received from L&T (Rs.)	Remarks
2008-2009	21,12,590*	Supply of tangible goods for use on which VAT/Sales Tax has been paid. Effective Control and Possession was transferred to the client.
2008-2009	2,25,46,336	This was received for transportation of RMC within Airport site of L&T.
2009-2010	12,03,744*	Supply of tangible goods for use on which VAT/Sales Tax has been paid. Effective Control and Possession was transferred to the client.
2010-2011	2,31,755*	Supply of tangible goods for use on which VAT/Sales Tax has been paid. Effective Control and Possession was transferred to the client.

*Amounts are inclusive of VAT/Sales-Tax.”

Subsequently, along with letter dated 15.10.2012, the appellant submitted Form ST-2 dated 15.7.2010, whereby they were registered under the taxable services, i.e., “supply of tangible goods for use service” and also placed on record the turnover details of L&T during the period 2007-08 to 2011-12 separately for each of the activities. Therefore, when the show cause notice was issued by the department on 23.10.2012, the department was aware of the nature of the services which the appellant was rendering to M/s L & T. However, the department while issuing the show cause notice did not even made any efforts to make out a case of applicability of services of “supply of tangible goods “ as inserted by Notification No. 18 of 2008 dated 10.5.2008 and clarified at its inception by the Circular dated 29.2.2008. The definition of “Supply of tangible goods for use service” has been defined in section 65 (105)(zzzzj) and the twin conditions for its applicability have been considered by the Bombay High Court in **Indian National Ship Owners Association 2009 (14) STR 289** and affirmed by the Supreme Court in 2011 (21) STR 3. The department

completely ignored the provisions of law as well as the interpretation placed thereon by the judicial decisions resulting in absolutely vague show cause notice.

13. We are accordingly of the view, that the department cannot take shelter on account of failure of the appellant to produce and supply the documents, and it was incumbent upon them to have ascertained the actual nature of the services for the purpose of levying the service tax under the respective clause. The contents of the show cause notice as referred above, only stated that the appellant working as sub-contractor provided taxable services in respect of construction activities, undertaken on behalf of M/s L&T Limited which may be classified as “Commercial or Industrial Construction Services” as per section 65 (105) (zzq) as defined in section 65(25b) and “Works Contract Service” as per section 65 (105) (zzzza) of the Finance Act. We have no hesitation in holding tht the show cause notice needs to be quashed being vague.

14. The other aspect is that the impugned order is not sustainable on account of the fallacy in the approach of the Commissioner in going beyond the scope of the show cause notice. As stated by us above there is not even a whisper in the show cause notice about the provisions of section 65(105)(zzzzj) defining “Supply of Tangible Goods for use Service” and its applicability to the services rendered by the appellant yet the Commissioner in the impugned order has levied service tax holding that services provided by the appellant falls in the category of “Supply of Tangible Goods for use Service”. Repeatedly the Apex Court as well as this Tribunal has reiterated the principle that confirmation of service tax being beyond the allegations raised in the show cause notice, is not sustainable and on this legal infirmity, the proceedings will fail. Reliance has been placed by the learned Counsel for the appellant on **Futura Interiors vs. Commissioner of GST & C Ex, Chennai 2019 (24) GSTL 261, JSEL Securities Ltd vs. Commissioner of C. Ex & S, Jaipur-I 2017 (4) GSTL 8** and the Hyderabad Bench of the Tribunal in **Inox Leisure Ltd vs. commissioner of Service Tax, Hyderabad -2022 (61) GSTL 326**, observed as :

“21. The impugned order has confirmed the demand on the basis that the appellant provided „infrastructure support services” to the appellant. However, the show cause notice alleged that the appellant was provided “operational and administrative assistance” with supplier. The Commissioner could not have gone beyond the scope of the show cause notice to confirm the demand. This apart, in view of the decision of the Supreme Court in Faqir Chand Gulati and the decision of the Tribunal in Mormugao Port Trust, no service tax can be levied on the appellant under BSS.”

The above decision has been affirmed by the Apex Court observing that the view taken by Tribunal is absolutely correct view, reported in **2022 (61) GSTL 342**.

15. On merits, the first activity pertains to supply of Transit Mixers on hire by the appellant to M/s L&T. We agree with the submissions of the learned counsel for the appellant that the services rendered by them cannot be classified under the activity of Construction just because the main Contractor M/s L&T was engaged in providing the construction services. Reliance placed by the appellant on the Circular No. 147/16/2011 dated 21.10.2011 is rightly applicable, as it clarified that just because the main contractor is providing the WCS service in respect of projects involving construction of roads, airports, railways, transport, terminals, bridges, tunnels, dams, etc., it would not automatically lead to the classification of services being provided by the sub-contractor to the Contractor as WCS.

16. This issue of classifying the supply of “Transit Mixer” on hire is squarely covered by the decision of High Court of Andhra Pradesh in G.S. Lamba & Sons vs. State of Andhra Pradesh, 2015 (324) ELT 316 (AP), where the learned Division Bench in view of the principle to construe the document as a whole, considered the various clauses of the agreement in that case and concluded that supply of transit mixers was transfer of the right to use transit mixers. Para 45 of the judgment is quoted below:

“45. Reading the recitals and various clauses, indeed there is a transfer of the right to use Transit Mixers. All the tests as indicated hereinabove exist in the contract between the petitioners and Grasim. The vehicles are maintained by the petitioners. They appoint the drivers and fix their roster. The licences, permits and insurances are taken in their names by the petitioners, which they themselves renew. The Transit Mixers go to Grasim’s batching plants in Miyapur and Nacharam, where they are loaded with RMC and then proceed to the construction sites of customers. The product carried is manufactured by Grasim, which is delivered to the customers and the customers pay the cost of the RMC to Grasim and the petitioners nowhere figure in the process of putting the property in Transit Mixers to economic use. The entire use in the property in goods is to be exclusively utilized to a period of 42 months by Grasim. The existence of goods is identified and the Transit Mixers operate and are used for the business of Grasim. Therefore, conclusively it leads to the only conclusion that the petitioners had transferred the right to use goods to Grasim. For these reasons, we are not able to countenance any of the submissions made by the petitioners’ counsel.”

17. The Principal Bench of this Tribunal in **Express Engineers & Spairs Pvt. Ltd. vs. Commissioner of CGST, Ghaziabad, 2022 (64) GSTL 112**, referring to the decision of the Apex Court in **Bharat Sanchar Nigam Ltd vs. Union of India 2006 (2) STR 161**, that the term “transfer of right to use goods” has neither been defined in the Constitution nor in any of the State VAT Acts or Central Sales Tax Act provided five attributes for a transaction to constitute a transfer of right to use goods and quoted para 91 of the Apex Court decision as under :

“91. To constitute a transaction for the transfer of the right to use the goods, the transaction must have the following attributes:

- (a) There must be goods available for delivery;
- (b) There must be consensus ad idem as to the identity of the goods;
- (c) The transferee should have a legal right to use the goods- consequently all legal consequences of such use including any permission or licenses required therefore should be available to the transferee;
- (d) For the period during which the transferee has such legal right, it has to be the exclusion of the transferor this is the necessary concomitant of the plain language of the statute –viz, a „transfer of the right to use“ and not merely a license to use the goods;
- (e) Having transferred the right to use the goods during the period for which it is to be transferred, the owner cannot again transfer the same rights to others.”

(Emphasis supplied)

17.1. Also distinguishing the decision of the Andhra Pradesh, High Court in *Rashtriya Ispat Nigam Ltd.*, 1989 (12) TMI 325 and affirmed by the Supreme Court, 2013 (31) STR 513, the Tribunal took note of the fact that if under the terms of the contract, under which there was a transfer of the right to use, that it was held that since the effective control of the machinery, even while the machinery was in the use of the contractor, was that of the company that had given the machinery on hire, sales tax could not have been charged from the appellant under the provisions of the State Sales Tax Act. Further, taking note of the circular dated 29.2.2008 and also the earlier circular dated 23.8.2007, the Tribunal held that the supply of diesel generator sets to the customers would not amount to supply of tangible goods use service.

18. In view of the decisions discussed above, we need to examine the facts of the present case particularly the terms of the contract so as to determine whether the appellant had rendered any service to M/s. L&T by giving transit mixers on hire or has transferred the “right to use goods”. The learned Commissioner in the impugned order, on perusal of the agreement observed as:

- “(a) It was mentioned at S. No. 4 of Agreement that, the operating crew would be provided by noticee for this transit mixer.
- (b) It was further mentioned at S.No. 8 of Agreement that the responsibility of repair and maintenance of transit mixer would be of noticee at their own cost and no charges would be paid for breakdown period.

- (c) It was mentioned at S. No. 10 of Agreement that log book for the equipment indicating details of working hours, breakdown hours, overtime, fuel/lubricants drawn etc. was to be maintained and to be signed jointly by the representative of noticee.
- (d) It was mentioned at S. No. 16 of Agreement that safety and security of the operator and machine shall be the responsibility of noticee and not of L&T.”

18.1 That similar clauses have been considered in the decisions referred above by us, but they have not been held to be of such nature so as to classify the same as services for levy of service tax under the Finance Act. In *Express Engineers & Spares*, (supra) the Tribunal specifically held that merely because the appellant was responsible for the maintenance and repair of the diesel generator sets does not mean that he has retained effective control and it will not change the nature of the transaction. Similarly, it was also held that maybe the appellant is providing operators to the customer, but these operators were working entirely under the direction and control of the customers and the appellant had no control over them and therefore providing of operators who are actually under the direction or control of the customers would not mean that the transaction was not that of sale.

18.2 In addition to the clauses referred by the Commissioner, we would like to take note of other terms and conditions in the agreement which is evident of the fact that the appellant did not have any direct or indirect control on the transit mixers once they are provided on hire to M/s L & T. Clause (4) of the agreement specifies that the transit mixers are provided throughout the duration of the contract on payment of fixed charges per month up to 260 hours in a month and thereafter at the rate of 70% of the normal hire charges per hour at actual for exclusive use by L&T. Further, the usage of machinery depended on the client, as in case of „nil“ use also, the client was supposed to pay the fixed rental. The transit mixer provided to M/s L&T was exclusively for the use of L&T only in their business. The drivers responsible to operate these transit mixers were required to follow the instructions issued by L&T only and delivered RMC at the time and place as instructed by the officials of L& T. On going through the various clauses of the agreement, we find that the full control of the transit mixers, i.e., on the method, manner, and time of using them is absolutely vested in M/s L&T. The appellant had not rendered any service to L&T by providing the transit mixers on hire rather have transferred the right to use goods to L&T chargeable to VAT only.

19. Reliance placed by the revenue on the decision in **Greatship (India) Ltd.**, (Supra), is misplaced as after considering the terms and conditions of the contract there, it was held that appellant had possession and effective control over the drilling rigs, the crew so supplied were the employees of the appellant and not of ONGC and the consideration was paid on per-day basis.

20. The activity of supplying the RMC by the appellant on which he has paid VAT, considering it to be a sale transaction has been considered earlier by this Tribunal in the case of GMK Concrete Mixing Pvt. Ltd., vs. Commissioner Service Tax, Delhi, 2012 (25) STR 357, where the Principal Bench held that the appellant was engaged in preparation of Ready Mix Concrete (RMC) and while carrying out such dominant object, other ancillary and incidental activities were also carried out. Noticing that Contract between the parties was to supply ready mix concrete and not to provide any taxable service, Finance Act, 1994, not being a law relating to commodity taxation, but services are declared to be taxable under this law and therefore the adjudication made under mistake of fact and law fails. The said order was affirmed by the Apex Court as reported in **2015 (38) STR J113**. The issue therefore, whether the supply of RMC by the appellant would amount to sale transaction or an activity of service stands decided and following the same we hold that the appellant is not liable to pay service tax on the supply of RMC to M/s L&T and hence the demand of service tax in that regard is not sustainable.

21. The third issue relates to the activity of transportation of concrete from L&T to Delhi airport project site during the period 2008–09 and 2009–10 using their own vehicle. Relying on the Budget Speech of the Hon’ble Finance Minister for the year 2004–05, where it was said, “I may clarify that there is no intention to levy service tax on truck owners or truck operators”, the learned counsel for the appellant submitted that service tax is levied on the activity of transport agency or concerns or transport companies who provide facility for the transportation of goods and issue consignment note but when a producer or manufacturer provides the services for transportation of goods by his own transport and does not issue any consignment note, the same is not covered under the service of Goods Transport Agency (GTA), as defined under section 65 (50b) of the Act. The legal provisions of section 65 (105) (zzp) and section 65(50b) of the Act are as follows:

“Section 65 (105) (zzp) “Taxable Service” means any service provided or to be provided to any person, by a goods, transport agency, in relation to transport of goods by road in a goods carriage.

Section 65(50b). “Goods, transport agency to mean any person who provides service in relation to transport of goods by road and issues. Consignment note, by whatever name called.”

The scope of liability of service tax in the category of Goods Transport Agency has been considered by the Tribunal in **Laxmi Narayan Mining Company vs Commissioner of ST, Bangalore, 2009 (16) STR 691**, where the contention of the appellant therein that the levy under the category of GTA was attracted, only when there was a relationship of Agency between the service provider and owner of the goods, carriage or the operators of the goods carriage was upheld in view of the definition of GTA and also the clarification given by the Finance Minister in the Budget Speech note, service tax is chargeable in respect of services received from individual truck owners. Similar view, has been followed in the subsequent order of the Tribunal in **K.M.B. Granites Pvt. Ltd., vs. Commissioner of Central Excise, Salem, 2010 (19) STR 437**. In the later order by the Tribunal in **South-Eastern Coalfields Ltd. vs. Commissioner of CEX, Raipur, 2017 (47) STR 93**, the Principal Bench examined that in order to be called as “Goods Transport Agency” a person should fulfil two conditions, namely, he should provide service in relation to transport of goods by road, and issue consignment note, by whatever name called and since in the present case, admittedly, there was no consignment note issued, the said transporter cannot be called goods transport agency, and therefore the liability under the goods transport agency service was held to be unsustainable.

21.1 We are in complete agreement with the submissions of the learned counsel for the appellant in view of our discussion above and hence we set aside the service tax liability on the appellant under the category of Goods Transport Agency.

22. Since we have decided the issue both on the preliminary grounds as well as on merits in favour of the apple plant and against the revenue we set aside the impounded order and consequently, the demand of service tax proposed in the show cause notice under commercial or industrial construction services as per section 65 (105) (zzq) defined as per section 65 (25b) and Works Contract Services as per section 65 (105) (zzzza) of the Act nor are they chargeable to service tax under “Supply of Tangible Goods Use of Goods”. Consequently, neither the extended period of limitation is invocable nor the penalty and interest is leviable under the Finance Act.

23. Accordingly, the appeal stands allowed.

(Pronounced on 7th Dec., 2023).

(Binu Tamta) Member (Judicial)

(P. V. Subba Rao) Member (Technical)