

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

Service Tax Appeal No.40015 of 2014

(Arising out of Order-in-Appeal No. 239/2013 dated 30.9.2013 passed by the Commissioner of Central Excise (Appeals), Madurai)

M/s. Shrinivasa Roadways Pvt. Ltd.

4/47, C Ettayapuram Road
Mappilaiyurani Junction
Tuticorin – 628 001.

Appellant

Vs.

Commissioner of GST & Central Excise

Central Revenue Building, Tractor Road
NGO 'A' Colony
Tirunelveli 627 007.

Respondent

APPEARANCE:

Shri G.Natarajan, Advocate for the Appellant

Smt. Anandalakshmi Ganeshram, Superintendent (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No.40388/2023

Date of Hearing: 26.05.2023

Date of Decision: 30.05.2023

Per Ms. Sulekha Beevi C.S.

The appellant is aggrieved by the demand of service tax raised under the category of Goods Transport Agency Service.

2. The appellant, namely M/s. Shrinivasa Roadways Pvt. Ltd. is a transporter / transport contractor and undertakes the transport of goods by road. They are also registered for providing transport agency service. On intelligence, it was noticed by the officers of Divisional Preventive Unit, Tuticorin that the appellant has provided GTA services

to M/s. Sterlite Industries (India) Ltd. during the period from 1.6.2006 to 16.8.2006. The service recipient, M/s. Sterlite Industries (India) Ltd., had availed the services of transportation of goods from Tuticorin to Silvasa. During investigation, statement of the Branch Manager Shri K. Subramaniam was recorded on 25.6.2009. Further details of the transportation were obtained vide letter of appellant dated 2.3.2009. It was revealed that the goods on behalf of M/s. Sterlite Industries (India) Ltd. was transported by rail during the period from 10.6.2006 to 16.8.2006. The above mode of rail transportation was done by the appellant during the shortage of lorries. The freight amount for transportation as fixed and mutually agreed for transport by road was collected from M/s. Sterlite Industries (India) Ltd. by the appellant. Since the service recipient is a public limited company, consignor is liable to pay the service tax. Thus, service tax on the amount of freight charges for the period 1.6.2006 to 16.8.2006 was paid by the service recipient namely M/s. Sterlite Industries (India) Ltd. The department was of the view that the goods are transported by rail, the appellant being service provider has to pay service tax on the freight charges. Further, the appellant did not declare the activity of providing the services of transport of goods by rail for M/s. Sterlite Industries (India) Ltd. Show Cause Notice was issued invoking the extended period proposing to demand the service tax for the period 1.6.2006 to 16.8.2006 for which the appellant had transported the goods in containers by rail. After due process of law, the original authority confirmed the demand along with interest and imposed equal penalty under section 78 of the Finance Act, 1994. Aggrieved by such order,

the appellant filed appeal before Commissioner (Appeals), who upheld the same. Hence this appeal.

3. The learned counsel Shri G.Natarajan appeared and argued on behalf of the appellant. It is submitted that the appellant is engaged in providing goods transport service to various companies for transport of their consignment from one location to another. They have their own fleet of trucks and hire in case of requirements. The appellant was providing such transportation services to M/s. Sterlite Industries (India) Ltd., Tuticorin for transportation of copper anode from Tuticorin to Silvasa by road. During the period June 2006 to August 2006, due to unavailability of lorries, the appellant had transported the said goods by using the facility of Railways. For this purpose, the appellant had availed services of transportation of goods by rail by Container Corporation of India. But for a limited number of such transportation, the appellant has undertaken the transportation of goods only by road. The appellant has registered with the department under the category of GTA service and is paying service tax whenever they are required to pay the same as service provider. As per Rule 2(1)(d)(v) of the Service Tax Rules, 1994 whenever the consignor is liable to pay the service tax, the appellant was mentioning the same on the invoice. For the service provided by appellant to M/s. Sterlite Industries (India) Ltd., the consignor (service recipient) is liable to pay service tax and the same was indicated in the invoice.

4. The Show Cause Notice has been issued alleging that the appellant has rendered transport of goods by rail which falls under section 65(105)(zzzp) of the Finance Act, 1994. It is submitted by the

learned counsel that the appellant has not contracted with the service recipient to provide transportation of goods by rail. Only in some occasions, due to unavailability of lorries, the appellant had undertaken the transportation of the goods by rail. The appellant used road transport vehicles upto the railway station from where the goods were carried by rail to the destination. From the destination railway station, the goods were carried again by road transport vehicles to the intended places. The agreement between the appellant and the service recipient was only to provide transportation of goods by way of road and had not entered into any agreement for providing transportation of goods by rail. The appellant has collected only freight charges as applicable for road transportation of goods. Further, on such freight charges, the consignor namely M/s. Sterlite Industries (India) Ltd. has paid the service tax which is not disputed by the department. Wherever the goods are transported by rail, the appellant had availed the services of Container Corporation of India who collected the railway freight from the appellant. Appropriate service tax for such railway freight was also paid. Under such circumstances demand of service tax again on the freight charges alleging that the appellant has undertaken transportation of goods by rail is not sustainable.

5. Without prejudice to the above submission, it is also argued by the learned counsel that the demand of service tax has been made on the entire amount of freight charge without allowing 70% abatement as under Notification No. 1/2006. The appellant has fulfilled the conditions for claiming the abatement as they have not claimed any CENVAT credit on inputs / capital goods / input services which is

established from the copy of ST-3 returns. The quantification of demand without allowing any abatement is also not sustainable.

6. The learned counsel argued on the ground of limitation also. It is submitted that the Show Cause Notice dated 15.9.2011 for the period June 2006 to August 2006 has been issued by invoking the extended period of limitation alleging that the appellant has suppressed facts with intention to evade payment of service tax. The appellant had not entered into any agreement for transportation of goods by rail and therefore was under bonafide belief that they are not liable to pay service tax. The service tax with regard to the freight charges for transport by road, GTA service by road, has already been discharged by the consignor as required under law. The learned counsel prayed that the appeal may be allowed.

7. The learned AR Smt. Anandalakshmi Ganeshram supported the findings in the impugned order.

8. Heard both sides.

9. The issue is whether the appellant is liable to pay service tax for the disputed period on the freight charges for transport of goods by rail.

10. The appellant has collected freight charges only for transportation of goods by road from the service recipient. They had to opt for transportation of goods by rail due to unforeseen circumstances such as unavailability of lorries. The intention between the parties, namely service recipient and service provider, was not to provide transportation of goods by rail. From the invoices issued by the appellant to the service recipient namely M/s. Sterlite Industries

(India) Ltd., it is seen that the appellant has collected only freight charges for transportation by road as agreed between the parties. It is also seen mentioned in the invoices that the service tax is payable by consignor. Undisputedly, the consignor, namely, M/s. Sterlite Industries (India) Ltd. has discharged the service tax on the freight charges for transportation of goods by road. Merely because the appellant had to use the rail transportation in certain occasions, it cannot be said that they have provided services of transportation of goods by rail. Further, the service tax on the rail freight charges also has been discharged. For these reasons, we find that there is no legal basis for the demand raised in the Show Cause Notice. We are of the view that the demand cannot sustain and requires to be set aside.

11. In the result, the impugned order is set aside. The appeal is allowed with consequential relief, if any, as per law.

(Pronounced in open court on 30.5.2023)

(M. AJIT KUMAR)
Member (Technical)

(SULEKHA BEEVI C.S.)
Member (Judicial)