CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.
PRINCIPAL BENCH - COURT NO.III

Service Tax Appeal No.51587 of 2017

[Arising out of Order-in-Original No.ALW-EXCUS-000-COM-010-17-18 dated 3.7.2017 passed by the Commissioner, Central Excise and Service Tax, Alwar.]

M/s. Honda Motorcycle and Scooter India Pvt. Ltd. **Appellant**
Plot No.2(D), 2 (E), 2(F) and 2(G),
Tapukara Industrial Area, Bhiwadi District,
Alwar, Rajasthan-301 707.

VERSUS

Commissioner of Service Tax, **Respondent**
'A' Block Surya Nagar,
Alwar, Rajasthan-301 001.

AND

ST/53468/2018, ST/51585/2017 ST/51586/2017

APPEARANCE:

Shri B.L. Narsimhan, Shri Shivam Bansal and Shri Dhruv Anand, Advocates for the appellant.
Ms. Jaya Kumari, Authorised Representative for the respondent.

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NOs.50411-50414/2025

DATE OF HEARING:17.02.2025
DATE OF DECISION: 18.03.2025

BINU TAMTA:

1. M/s. Honda Motorcycle and Scooter India Pvt. Ltd.[1] are engaged in the manufacturing and supply of motorcycle and scooters and also parts thereof. They are registered with the jurisdictional authorities of Central

[1] **The Appellant**

Excise and Service Tax. The appellant had executed a Standard Dealership Agreement with all its dealers whereby they were providing services for delivery of finished goods upto the premises of their buyers or dealers for which they were collecting certain charges at a fixed percentage of the price or value of their finished goods from the buyers or dealers, which was decided on the basis of cost of transportation and insurance. For the same, the appellant was responsible for engaging the services of transporters for transportation of two wheelers till the premises of the dealers and entered into a Standard Transportation Agreement. The appellant was also responsible for obtaining insurance of two wheelers during transit and for which they availed an Open Marine Policy. The appellant recovered the freight and insurance charges from its dealers and disclosed the charges separately on the sale invoices. The appellant made payment to the transporters and insurers from the amount received from the dealers and retained the balance amount with themselves. The excess freight and insurance charges retained by the appellant were treated as 'profit' for the service. On the basis of the enquiry initiated by the Department, details were sought from the appellant with respect to excess receipts of freight and insurance which were duly submitted.

2. Show cause notice dated 16.12.2016 was issued raising the demand of Rs.16,93,14,862/- on the freight and insurance charges realised from the dealers in excess during the period June 2011 to March 2016. In addition, show cause notice sought to impose penalty on Shri Naveen Kumar and Shri Sunil Gupta under Section 78A of the Finance Act, 1994[2]. For the

[2] **The Act**

subsequent period from April 2016, to June 2017, a statement of demand dated 25.04.2018 was also issued proposing to recover service tax amounting to Rs.3,64,76,441/- along with interest and penalty. On adjudication, the entire demand has been confirmed by the impugned order[3]. Being aggrieved, the instant appeals have been filed before this Tribunal.

3. The main issue which arises for our consideration is whether the transportation or insurance related expenses recovered in excess from the buyers is chargeable to service tax.

4. Shri B.L. Narasimhan, learned counsel appearing for the appellant submitted that the issue is no longer res-integra and has been decided by the Tribunal in favour of the assessee holding that no service tax is payable on transportation/insurance expenses recovered in excess. The Tribunal in the case of **Pushpak Steel Industries Pvt. Ltd. Vs. CCE & ST, Pune-III**[4] laid down the test that in the manufacture of excisable goods where central excise duty liability has been discharged on them and there was no separate agreement between the buyer and the appellant for providing any service over and above the supply of goods. The Bench further observed that there is no involvement of a service provider and a service receiver relationship in the sale transaction made between the parties. It was also noticed that where transportation cost was incurred in context with the delivery of goods at the buyers premises then such a facility extended by the appellant cannot be considered as a taxable service leviable to service tax

[3] **Order-in-Original No.ALW-EXCUS-000-COM-010-17-18 dated 3.7.2017**
[4] **2019 (20) GSTL 88 (Tri.-Mumbai)**

under the category of 'business support service'. It was, therefore, concluded that the activities of transportation was just to facilitate delivery of the duty paid excisable goods at the buyers premises and same do not conform to the definition of taxable service. This decision was followed by a later decision in **Gokulanand Texturisers Pvt. Ltd. & Anr. Vs. CCE & ST, Surat-II [5].** The facts in both the cases are identical to the facts of the present case relating to transportation of the goods sold by the appellant and the charges received were in excess of the amount paid to transporters or logistic suppliers who are actually transporting the goods to buyers premises.

5. Considering the facts of the present case, we find that the appellant is involved in the manufacture of excisable goods, which they are supplying to their dealers at their premises by hiring transporters and insurance agents for which they were paying certain amounts to the transporters from their own account and subsequently, the said amount was collected from their buyers or dealers at certain percentage of price or value of goods which was deposited in the account of the appellant. After making payment to transporter and insurance agency, the appellant had retained the remaining excess amount with them. The said excess amount is not any independent amount for which any separate agreement has been entered into between the parties but is in connection with the sale of the two wheelers and formed part of the transaction value on which the appellant had paid the excise duty. The facility of providing transportation of goods to the buyers premises is an activity related directly to the supply of goods manufactured by the

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[5] **Final Order No.10857-10860/2024 dated 9.4.2024-CESTAT-Ahmedabad**

appellant and cannot be linked to any kind of service and, therefore, cannot be made exigible to service tax. The invoice placed on record, clearly reflect the assessable value of the goods, statutory levies and transportation/freight charges.

6. The learned Counsel has also referred to other line of decisions, where it has been held that no service tax can be demanded on profit/mark-up on ocean freight income. In **Tiger Logistics (India) Limited Vs. Commissioner of Service Tax-II, Delhi [6],** where the assessee was buying space on ships from shipping line and selling the space to its customers, it was held that the activity was of business on their account and not service, and, therefore, profit earned from such business was not consideration for service.

7. The learned Counsel for the appellant has also emphasised on the principle that once excise duty has been paid on the said transaction, demand of service tax on the same transaction is untenable and relied on series of decision in that regard as under:-

(1) M/s. K.R. Packaging Vs. CCE & ST, Meerut-I[7]
(2) Allengers Medical Systems Ltd. Vs. CCE, Chandigarh[8]
(3) Commissioner of Central Excise & Service Tax, JSR Vs.M/s. Tata Ryerson Limited AIA Engineering Ltd. Vs. CST, Ahmedabad [9]
(4) Commissioner of Service Tax-V, Mumbai Vs. UFO Moviez India Ltd.[10]
(5) Jivan Jyot Motors Pvt. Ltd. Vs. CCE & ST, Surat [11]

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6 2022 (63) GSTL 337 (Tri.-Del.)
7 2017 (51) STR 438 (Tri.-Del.)
8 2009(14) STR 235 (Tri.-Del.)
9 2019 (19) STR 257 (Tri.-Ahmd.)
10 2022 (61) GSTL 4 (SC)
11 Final Order No.11565/2023 dated 24.07.2023-CESTAT-Ahmedabad.

8. From the records of the case, we find that the appellant discharged the excise duty liability of Rs.10,04,21,540/-, i.e. Rs.7,86,81,141/- and Rs.2, 17,40,399/- on excess freight and insurance charges, respectively, consequently, the levy of service tax is unsustainable.

9. The learned counsel for the appellant has also placed reliance on the decision in their own case of their Manesar unit, where the demand has been dropped by the Order-in-Original No.18/SA/CCE/ST/2014 dated 7.05.2014 and Order-in-Original No. DLI–SVTAX–004–COM–026–16–17 dated 29.07.2016, taking cognizance of the fact that excise duty had already been discharged on the additional freight or insurance recoveries. The learned Authorised Representative for the Revenue has vehemently contested the appeal and also the decision of the Manesar unit on the ground that the issue involved in that case was different and hence is not applicable to the present case. The relevant paragraph of the impugned order is quoted below:-

> "**18.21** I have gone through both the Order-in-Original (1) No.18/SA/CCE/ST/2014 dated 07.05.2014 passed by the Commissioiner, Central Excise Commissionerate, Delhi-III, Gurugaon and (2) No.DLI-SVTAX-004-COM-026-16-17 passed by the Commissioner, Service Tax, Delhi-IV, Gurgaon, submitted and marked as Annexure No.25 and 26 respectively by the notice. I find that in both the said cases issue involved was **"Non-payment of Service Tax on ' transport of goods by road' service under reserves charge method"** among others and both the show cause notices were issued on the basis of an audit objection. However, the issue involved in the instant case is alleged "non-payment service tax amounting to R.16,93,14,862/- on the excess amount/'commission' collected by the notice on account of 'Freight ' and 'Insurance' which is different from the issue involved in their Manesar Unit/said orders-

in-original, hence squarely not applicable to the case in hand."

10. We find that the Adjudicating Authority had merely gone by the heading/title of the discussion in the order-in-original dated July 29, 2016, however, it failed to consider the actual discussion, which is as under:

> ["Non Payment of Service tax on Transport of Goods by Road service under reverse charge mechanism (demand of Rs.2,23,69,534/-)]"
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> 14 The Noticee have availed transportation services for transportation of their goods to various sites and back for which the Noticee have made payments for such transportation. The show cause notice has alleged that no service tax on such transportation charges has been paid by the Noticee in terms of Rule 2(1)(d)(v) of the Service Tax Rules, 1994.
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> 14.1 The Range Superintendent. vide letter dated 7.01.2014(RUD-I), sought information from the Noticee regarding Non Payment of Service Tax on "Transport of Goods by Road" service under reverse charge mechanism for the period 2012-13. The Noticee, vide letter dated 30.04.2014(RUD-II) informed that they had paid service tax on actual payments made to the transporters however they had extra realization of Rs. 18,09.83,288/-from their client in the head of Freight and Insurance, during 2012-13. The Noticee also stated in the said letter (RUD-II) that they had paid Excise duty on that extra realization amounting to Rs. 18,09.83.288/--
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> 14.2 The Noticee, in their reply to the SCN, has stated they collect certain amounts from the buyers of goods for the purpose of freight and insurance and amount of Rs. 18.09.83.288/- was extra realization than the actual amount of transportation charges. The noticee has also submitted that they have discharged service tax on the actual transportation charges paid to the transporter under reverse charge in terms of Rule 2(1)(d)(v) of the Service Tax Rules, 1994 and Excise duty was paid by them on extra realization amounting to Rs. 18,09,83,288/-.
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> 14.3 Further. The Noticee has submitted that the entire amount of freight and insurance for the year 2012-13 have formed part of the assessable value of the goods sold by them on which excise duty has been paid. The noticee has placed on record a detailed chart showing month-wise additional amounts collected towards transportation and insurance for the financial year 2012-13. which have formed part of the assessable value of the

good sold and excise duty on the same has been paid. Details are as below:-

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On perusal of the data/documents submitted by the party it is apparent that the noticee has discharged excise duty on additional amounts recovered under the head of Freight and Insurance. The SCN proposes to demand service tax amounting to Rs. 2.23.69.534/- on extra consideration of Rs.18,09,83,288/- .The total of extra consideration of Rs. 18.09.83.288/- plus service tax on the same of Rs.2,23,69,534/- comes to Rs 20,33.12.459. The Noticee has paid excise duty on Rs. 20,33,12,459/- treating the same cum duty price. Also, the noticee had already paid service tax on GTA service on actual transportation charges paid by them in terms of Rule 2(1)(d)(v) of the Service Tax Rules. 1994. Therefore, the additional amount recovered by the noticee on account of transportation and insurance have been included in the assessable value for payment of central excise duty. Further, having paid excise duty on the additional consideration on the value of goods sold on account of transportation and insurance, the question of taxing the same once again will only amount to double taxation on the same amount one under Excise law and one under Finance Act, 1994. in terms of Rule 2(1)(d)(v) of the Service Tax Rules, 1994."

11. Perusal of the aforesaid order shows that the controversy raised and considered was absolutely same and, therefore, the findings recorded therein are binding in the present case. In view of the said decision which has attained finality as no appeal has been filed by the Revenue challenging the same, the submission of the learned counsel is that if an order attains finality, the Department cannot take a contrary stand in the other pending appeals and has relied on the decisions of the Tribunal in the case of **M/s SRF Ltd. versus Commissioner, Central Excise & Service Tax, LTU, New Delhi[12], Popular Carbonic Pvt. Ltd versus Commissioner, Central Excise, Chennai–I Commissionerate[13]** and **Shri Neeraj Prasad versus**

[12] **Final Order No.51744/2021 dated 11.08.2021 –CESTAT, New Delhi.**
[13] **Final Order No.41717-41731/2021 dated 4.8.2021 –CESTAT-Chennai**

Commissioner of Central Excise & Service Tax, Kanpur [14]. The settled principle observed is that when for a subsequent period in the own case of the appellant, it was held that service tax cannot be levied, which order attained finality, the Department cannot be permitted to take a stand that service tax is leviable. Reliance was also placed on the decision in **Commissioner of C. EX., Hyderabad versus Novapan Industries Ltd.**[15] where the Apex Court observed:-

> **"14.** In view of a catena of decisions of this Court, it is settled law that the department having accepted the principles laid down in the earlier case cannot be permitted to take a contra stand in the subsequent cases [See: *Birla Corporation Ltd.* v. *CCE* [2005 (186) E.L.T. 266 (S.C.)], *Jayaswals Neco Ltd.* v. *CCE, Nagpur* [2006 (195) E.L.T. 142 (S.C.)] etc.]"

12. We, therefore, conclude that the activity of arranging transportation of goods till the dealers premises cannot be classified under 'Business Auxiliary Service' and, therefore, no service tax is payable on transportation related expenses recovered in excess by the appellant from their buyers. It is an activity which is directly related to the supply of goods on which excise duty has been paid by the appellant and once the excise duty has been paid, no service tax is leviable on the said transaction. Although, the learned counsel for the appellant has raised several other contentions, however, since we have decided the issue on merits in favour of the appellant, it is no more relevant to record a finding on them.

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[14] **Final Order No. 71597/2019 dated 17.07.2019 –CESTAT-Allahabad**.
[15] **2007 (209)ELT 161 (S.C.)**

13. The impugned order deserves to be set aside and the appeals (Appeal Nos.ST/51585/2017, 51586/2017) are accordingly allowed.

14. The appeals (Appeal Nos.ST/51585/2017 and ST/51586/2017) filed by Shri Sunil Gupta and Shri Naveen Kumar challenging the imposition of penalty under Section 78 of the Act also needs to be allowed in view of our findings recorded on merits. The impugned order imposing penalty on Shri Sunil Gupta and Shri Naveen Kumar is therefore, set aside. The appeals are, accordingly, allowed.

[Order pronounced on 18th March, 2025]

(Binu Tamta)
Member (Judicial)

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

Ckp.