

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 51680 of 2022

[Arising out of Order-in-Original No. ALW-EXCUS-O-I-O-COM-49-2021-22 dated 06.01.2022 passed by the Principal Commissioner of Central Goods & Service Tax, Alwar]

M/s. Best Road Carriers

Located at Shop No. 199, RIICO Complex,
Hanuman Mandir, Neemrana,
Alwar, Rajasthan - 301701

...Appellant

VERSUS

Principal Commissioner of CGST, Alwar

A Block, Surya Nagar,
Alwar, Rajasthan - 301001

...Respondent

APPEARANCE:

Shri Kashish Kumar Gupta, Advocate for the Appellant
S.K. Meena, Authorized Representative for the Respondent

CORAM:

HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)

HON'BLE MRS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING: 20.03.2026
DATE OF DECISION: **05.06.2026**

FINAL ORDER NO. 51040/2026

DR. RACHNA GUPTA

M/s Best Road Carrier, the appellant herein is engaged in providing of certain services. The department received details of payments received by the appellant in the financial year 2014-15 after TDS deduction under Section 194C/ 194H/ 194I/ 194J of the Income Tax Act 1994, which shows the transaction against services provided by the service provider. Revenue asked the service provider to submit documents viz. Income Tax Returns/ TDS Return/ Copy of Annual Reports, Balance Sheet alongwith 3CD/ Gross Trial Balance / Services-wise chart showing month wise receipts along with particulars regarding payment of Service Tax

thereof, for necessary verification. But the appellant did not submit the requisite documents/ information, despite Summons which were issued and served upon the appellant.

1.1 It was observed that the gross amount received u/s 194C/194H/194J/194I of Income Tax Act as per TDS data by the appellant is Rs. 16,90,38,430/-. Since Section 194C / 194H / 194J / 194I of the Income Tax Act, 1961 provide for deduction of tax from payment, related to work contracts, made to contractor or sub-contractor commission or brokerage / Fees for professional or technical services / rent income, respectively, it appeared that the Service provider has provided such services other than the services provided in the negative list of Section 66 D of the Finance Act, 1994 and no exemption under any notification was available, it was alleged that the aforesaid payment was received by the appellant for rendering such services, on which the service tax payable is Rs. 2,08,93,150/-, without discharging the Service Tax liability on it.

1.2 With these observations that the Show Cause Notice bearing No. 54/2016 dated 09.09.2019 was served upon the appellant proposing recovery of service tax amounting to Rs. 2,08,93,150/- alongwith interest and the proportionate penalties. The proposal was confirmed vide order-in-original bearing No. 49-2021-22 dated 06.01.2022. Being aggrieved the appellant is before this tribunal.

2. We have heard Shri Kashish Kumar Gupta, learned Advocate for the appellant and Shri S.K. Meena, learned Authorized Representative for the department.

3. Ld. Counsel for the appellant submitted that the appellant is engaged in the activity of mere transportation of goods and his activities are not at all chargeable to services tax in terms of Section 66D(p) of the Act. The appellant is mentioned to be the "Goods Transport Operator" (hereinafter referred to as "GTO") as different from the "Goods Transportation Agency" (hereinafter referred to as "GTA").

3.1 Ld. Counsel further submitted about the chequered history qua taxability of services provided by way of transportation of goods that the service tax was initially imposed on the services provided by GTO w.e.f. 16.11.1997. Later, said taxable service was exempted by Central Government vide Notification No. 49/98-ST dated 02.06.1998. Subsequently vide Finance Act, 1998 tax was levied on services provided by GTA from 01.01.2005 onwards and also for the service tax to be levied on services provided by transport booking agents. However, there was no intention to levy service tax on truck owners or truck operators. Accordingly, amendments were made in the Act wherein definitions of "goods carriage", "goods transportation agency" and "taxable service" was inserted. Therefore, there is emphasized to be the substantial as well as legal difference between GTO and GTA. GTA issues a consignment note which has a legal sanctity under Common Carriers Act, 1865 and Rule 4B of Service Tax Rules. But GTO is a person who merely transports the goods charging mere freight for his activity, as agreed and does not issue a consignment note. It is submitted that appellant falls under the later category of GTO which is covered under negative list i.e. under Section 66D(p) of the

Finance Act. Ld. Counsel has relied upon following decisions and has prayed for order under challenge to be set aside and appeal to be allowed:

(i) Lakshminarayanan Mining Co. Vs Commr. of ST, Bangalore; 2009(9) TMI 71

(ii) K.M.B. Granites (P.) Ltd. Vs CCE; MANU/CC/0058/2010

(iii) M/s SRF Limited Vs CCE, Indore; 2018 (6) TMI 387

(iv) M/s Seaport Logistics Pvt. Ltd. Versus Commissioner of GST & CE, Chennai; 2025 (2) TMI 627.

3.2 Ld. DR on the other hand, reiterated the findings given in impugned order (Order in Original). It is mentioned that the appellant is registered as a provider of 'Goods transport Agency'. The appellant has not submitted sufficient proofs/documents to substantiate their claim of exemption from service tax. They have shown nil turnover in their ST-3 return for the said period and even not claimed any exemption. It is further mentioned that the Appellant never disclosed the facts, about receiving payments for rendering services to the Department, which came to the notice of the Department only after receipt of third party information collected from the Income Tax Department. The Appellant is working under self-assessment system still did not provide any details/documents with its self-assessed service tax returns.

3.3 It is also submitted that circular (dated 10.03.2017), as referred, would show that the pre-consultation Notice is not mandatory for the cases booked under fraud, collusion, wilful mis-statement, suppression of facts, evasion of tax etc. which is further

clarified by the Board vide Circular No. 1079/03/2021-CX dated 11.11.2021. With these submissions, the appeal is prayed to be dismissed.

4. Having heard the parties and perusing the appeal memo as well as the submissions and case law relied upon both the parties, it is observed and held as follows:

4.1 The period in dispute is Financial Year 2014-15 i.e. after the introduction of negative list concept whereafter every activity is a taxable service [Section 66B(44) of the Finance Act, 1944] except it is covered under negative list [Section 66D of the Act] or under any exemption notification. We observe that negative list of Section 66D of the Act, sub clause (p) thereof, as referred by the appellant, exempts the services by way of transportation of goods by road except the services of a Goods Transportation Agency (GTA). The section reads as follows:

"Section 66D. Negative list of services. – The negative list shall comprise of the following services, namely: -

(p) services by way of transportation of goods-

(i) by road except the services of

(A) a goods transportation agency; or

(B) a courier agency

(ii) by an aircraft or a vessel from a place outside India up to the customs station of clearance in India; or

(iii) by inland waterways;"

The Adjudicating Authority has confirmed the demand of service tax holding appellant a GTA whereas appellant has claimed himself to be Goods Transport Operator (GTO) of Section 66D(P)(i) of the Act while denying any tax liability. Thus the moot controversy to be adjudicated in the present appeal is:

“Whether the appellant is a Goods Transport Agency (taxable), as alleged by the department or appellant was just transporting goods by Road (activity covered under negative list)., as asserted by the appellant?”

4.2 For the purpose, foremost, we need to know both the concepts. Section 65(50b) of the Act defines ‘Goods Transport Agency’ as under:

“goods transport agency” means any [person who] provides service in relation to transport of goods by road and issues consignment note by whatever name called;

Section 65(105)(zzp) of the Act defines the said taxable service as under:

(zzp) to any person, by a goods transport agency, in relation to transport of goods by road in a goods carriage;

It is clear that to be called “Goods Transport Agency” a person should fulfill two conditions, namely:

- a) It should provide service in relation to transport of goods by road*
- b) It should issue consignment note, by whatever name called.*

Also that the vehicle used has to be Goods Carriage which is defined under section “65(16) to have same meaning as assigned to it in clause (14) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988) thereby mandating a permit w.r.t. said carriage. “Goods Transport Operator” is defined under section 65 (17) of the Finance Act to mean any commercial concern engaged in the transportation goods but does not include a courier agency. Tribunal in **Nandganj Sihori Sugar Co. Ltd. and others vs. C.C.E. Lucknow – 2014 (34) STR 850 (Tri-Del.)** held that the Goods Transport Agency in terms of its definition under Section 65 (50b) provides services in

relation to transportation of goods and issues consignment note which should have particulars as prescribed in Explanation to Rule 4B Service Tax Rules, 2004.

4.3 In **Commissioner of Central Excise, Guntur vs. Kanaka Durga Agro Oil Products Pvt Ltd [2009 (15) STR 399 (Tri. - Bangg.)]** followed in **Shreesanth Mhaskoba Sakhar Karkhana Ltd. vs Commissioner of Central Excise, Pune-III [2017 (3) GSTL 199 (Tri. - Mumbai)]** and in **Commissioner of Central Excise and Service Tax, Aurangabad vs. Jaikumar Fulchand Ajmera [2017 (48) STR 52 (Tri.-Mumbai)]** the issue stands settled with detailed orders. In **re Jaikumar Fulchand Ajmerai**, it was held that:

"We observe that since GTA definition has used the words, 'in relation to', it means that for being a GTA, it should provide service to a person in relation to transportation of goods by road in a goods carriage. The service provided is a single composite service which may include various intermediary and ancillary services such as loading/unloading, packing/unpacking, transshipment, temporary warehousing. For the service provided, GTA issues a consignment note and the invoice issued by the GTA for providing the said services includes the value of intermediary and ancillary services. In such a case, the intermediary or ancillary activities are to be treated as part of GTA service and the abatement has also to be extended to the charges for such intermediary or ancillary service, as was also clarified vide circular no. 186/5/2015-ST dated 05.10.2015. Whereas GTO is the activity simpliciter for transport of goods by roads without issuance of Consignment Note, irrespective transporter being GTA or not."

We have also perused Rule 4B of Service Tax Rules, 2004. It reads:

4B- Issue of consignment note. –

Any goods transport agency which provides service in relation to transport of goods by road in a goods carriage shall issue a consignment note to the recipient of service:..

Explanation.- For the purposes of this rule and the second proviso to rule 4A, "consignment note" means a document, issued by a goods transport agency against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered, and contains the name of the consignor and consignee, registration number of the goods carriage in which the goods are transported, details of the goods transported, details of the place of origin and destination, person liable for paying service tax whether consignor, consignee or the goods transport agency."

4.4 We also observe that the definition of GTA remained the same even after introduction of negative list regime. Service being determined by issuance of consignment note under the statute, it is not within the ambit of a subordinate legislation to create the class of taxable persons by imposing a condition that would, perforce, bring such persons within the tax net.

4.5 Reverting to the facts of the present case in the light of above discussion, there is observed no apparent denial to the following facts:

(i) Appellant is not registered under Carriage by Road Act, 2007 and hence, is not a GTA; hence, is not at all required to issue a "consignment note";

(ii) Appellant charges "mere freight" , as agreed, but does not charge "gross freight"

(iii) Appellant engages merely in the service of providing transportation of goods by road but does not provide the services "in relation thereof" as is apparent from the reference to the Schedule of Responsibilities of Network Associate provided by the appellant as below:

- a. Loading of the consignment is done by Safexpress personnel in the vehicles.
- b. The delivery must be done within transit time and the appellant shall ensure to maintain the same despite various unavoidable causes of delay.
- c. All waybills as well as transit documents are provided by Safexpress and carried by the appellant
- d. Appellant is not responsible for any damage to the property unless it is caused out of his own negligence like rash driving of the driver.
- e. Appellant will submit the waybills, permits, transit passes etc. at the destination with the due endorsements.
- f. Unloading of the consignment is done by the recipient at destination

5. Since under GTA it is only such of these services which are in relation to transport of goods by road which are taxable and not the actual transport of goods by road itself. And that appellant has not rendered any service in relation to transport of goods by road like loading / unloading nor even for reimbursing for damage and not

issuing the consignment note except mere transport of Goods by road. No evidence to the contrary is produced by the department. Resultantly we hold that appellant's activity is wrongly held to be taxable service of Goods Transport Agency. We draw our support from the decision of this tribunal Bangalore bench in the case of **Lakshmi Narayana Mining company vs. Commissioner of Central Tax, Bengaluru reported as 2019 (7) TMI 917**. The activity is held to be mere transport of goods by road as is covered under negative list, as already mentioned above. It being the activity not subject to tax, the adjudicating authority is held to have wrongly confirmed the demand. The order under challenge is therefore set aside. Consequently, the appeal is hereby allowed.

[Order pronounced in the open court on **05.06.2026**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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