



Dimensions – 85th Edition

Ruling under GST era

M/s Liberty Translines – Appellate Authority for Advance Ruling, Maharashtra¹

Issue for Consideration

Can a person be regarded as a Goods Transport Agency (“GTA”) if they issue a consignment note to the main contractor who also issues a consignment note to its client for the same transportation activity?

Discussion

- The Appellant is registered under GST as a GTA and the tax was being paid by the recipient of service at the rate of 5% in terms of notification no. 11/2017-Central Tax (Rate) dated June 28, 2017 (“the rate notification”) and the Appellant was not availing the input tax credit (ITC) in respect of provision of said service.
- The Appellant proposed to change its current option of 5% payable by the recipient to the option of 12% payable under forward charge as per notification no. 20/2017-Central Tax (Rate) dated August 22, 2017 (“the amended notification”) and would accordingly avail the ITC used for providing the GTA services.
- The Appellant proposed to enter into an arrangement with M/s Posco ISDC Pvt. Ltd. (“Posco”) whereby Posco would subcontract its GTA related work orders to the Appellant.
- The Appellant would issue a consignment note to Posco in capacity of a GTA and Posco would in turn issue a consignment note to their clients. The e-way bill would be issued by Posco only. The client would acknowledge the completion of transportation services by signing / stamping the consignment note issued by Posco as a proof of receipt of goods transported.
- The Appellant approached the Authority for Advance Ruling (“the Authority”) to know whether the Appellant could act as a GTA in the above arrangement and charge GST at the rate of 12% in terms of the amended notification even though there were two consignment notes being issued for the transportation activity of the same goods.
- The Authority vide its order² held that the Appellant cannot be regarded as a GTA in respect of the services provided to Posco and accordingly, cannot charge GST at the rate of 12% to Posco in terms of the amended notification. Further, in respect of the eligibility of ITC by Posco and whether the

¹ 2020 (9) TMI 1104

² 2020 (7) TMI 49



transaction was procedurally correct, these issues were not covered within section 97(2) of the CGST Act, 2017 and accordingly were not answered.

- Being aggrieved by the order the Appellant approached the Appellate Authority for Advance Ruling (“the Appellate Authority”) and contended as follows:
 - The whole work was sub-contracted, and if any other service can be sub-contracted without changing the classification, there is no reason why GTA service cannot be sub-contracted in the same manner.
 - The agreement was interpreted as for ‘hire of vehicle’ when it was for transportation of goods.
 - The Carriage by Road Act, 2007 requires a common carrier to compulsorily issue a goods receipt and the Authority erred by not treating the lorry receipt issued by the Appellant as a consignment note.
 - A GTA has been defined with reference to the entity and not with reference to a transaction. A person who has issued a consignment note even for one transaction must be treated as a GTA for all other transactions.
 - Issue of two consignment notes for the same transportation of goods is perfectly legal and logical.
 - A consignment note which is not defined under the GST law cannot determine the classification and taxability of service.
 - Reliance was also placed upon the advance rulings in the case of *M/s Uttarakhand Forest Development Corporation*³ and *M/s K M Trans Logistics Pvt Ltd.*⁴.
 - The subject transaction is a case of bailment or sub-bailment under the Indian Contract Act, 1872. The Appellant is a bailee and has lien over goods transported.

- The Respondent agreed with the contentions raised by the Appellant that it would be regarded as a GTA in the proposed transaction.
- The Appellate Authority observed as follows:
 - As per the meaning of GTA mentioned in the amended notification, the issuance of consignment note is an essential condition for any person to act as a GTA. Further, on perusal of the term consignment note, defined under rule 4B⁵ of the Service Tax Rules, 1994, it is irrelevant whether the goods are received by the GTA from either the consignor or consignee of the goods.
 - In the present case, the Appellant is not receiving the goods directly from the consignor or consignee but from Posco, who themselves are acting as GTA, when they receive the goods from the consignor / consignee and issue consignment note.
 - The Appellant is a goods transport operator and not a GTA. The issuance of e-way bill by Posco shows that it is the actual transporter of goods in terms of rule 138 of the CGST Rules, 2017.
 - In a single transaction of transportation of goods, as a consignment note is evidence of custody of goods taken from owner of the goods and the privity of contract exists between the owner of goods and the GTA, and thus, it is the GTA which issues the consignment note.
 - The Appellant is simply hiring out their vehicles to Posco and the services should be classified as rental services of transport vehicles (HSN 9966).
 - The lorry receipt issued by the Appellant does not confirm the description of the consignment note which is issued by Posco to its client. The consignment note is stamped / signed by the client.

³ 2020 (6) TMI 520

⁴ 2019 (10) TMI 668

⁵ Consignment note is defined under explanation to rule 4B as follows - 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.



- The draft agreement shows that insurance of goods is to be taken by Posco and in case of loss / damage Posco shall claim such damages. This shows that Posco is acting as a GTA and not the Appellant.
- The contention that when the whole work is subcontracted the classification of the service cannot change is fallacious as the actual transporter is Posco and not the Appellant. The Appellant is merely supporting Posco in their GTA activity by way of renting their motor vehicle.
- The ruling of the Authority does not debar the Appellant from acting as a GTA in other transactions where they enter into a transport contract with the consignor or consignee directly.
- The advance rulings relied upon by the Appellant are not applicable as the facts are different from those in the present case.
- The eligibility of ITC by Posco and whether the proposed transaction is procedurally correct or not is not covered within section 97(2) of the CGST Act, 2017.

Order

The Appellate Authority upheld the order passed by the Authority.

Dhruva Comments:

The term 'consignment note' though not been defined under GST but as commonly understood is a document / note issued by the transporter to the consignor of goods upon handover of goods to the transporter. A consignment note plays a crucial role in execution of in-transit sales by way of endorsement and thus it would be relevant to assess whether there can be multiple consignment notes in a single movement of goods.

Judgment under pre-GST era

*M/s New India Civil Erectors Pvt. Ltd. v. Union of India & Anr.*⁶

Issue for Consideration

Whether recovery proceeding can be initiated without issuance of a show cause notice ("SCN") or an assessment order for determination of tax amount payable?

Discussion

- The Petitioner is engaged in the business of construction works and related contracts. The Petitioner was unable to discharge its Service tax liability for the period April 1, 2015 to June 30, 2017 ("impugned period") due to non-realisation of contractual dues.
- Department issued summons to the Petitioner with a view that Service tax of ₹94.27 lakhs was payable by the Petitioner. Statements of the officers of the Petitioner were recorded.
- In the meantime, the Petitioner also applied for closure of matter under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 ("SVLDR Scheme"), which was rejected by the authorities.
- Post-rejection, letters were issued to the Petitioner for re-opening of inquiry proceedings, and summons were issued, whereby a statement of Petitioner's officer was recorded.
- Thereafter, the Petitioner's bank account was attached for realising the amount of Service tax payable, as per an order received from the CGST Commissioner's office.
- Being aggrieved, the Petitioner filed the Writ Petition before the Hon'ble High Court of Bombay contending that freezing of bank account is invalid and without authority of law. To support the said contention, the Petitioner submitted that:
 - Freezing of bank account is illegal, being in violation of principles of natural justice.

⁶ 2020-VIL-472-BOM-ST



- No SCN was issued under section 73 or 73A of the Finance Act, 1994.
- No assessment order was passed before freezing of bank account.
- Garnishee notice cannot be issued without adjudication or crystallisation of dues.
- The Respondent on the other hand contended as follows:
 - Basis the recorded statements, the officers of the Petitioner had admitted the service tax liability with interest and penalty. Thereafter, the Petitioner had failed to pay the liability. Hence, section 87 of the Finance Act, 1994 is applicable to initiate recovery proceedings.
 - The bank account was frozen to safeguard the interest of revenue.
- After hearing both the sides, the Hon'ble High Court observed as follows:
 - Although the officers admitted to Service tax liability with interest and penalty, they also stated that they would have to check the books and thereafter, a decision would be taken by the management for making payments.
 - Notice under section 87(b)(i) of the Finance Act, 1994 is in the form of garnishee notice. Hence, the terms “any amount payable”, “is not paid” and “shall proceed to recover” used in the said section should be understood and applied in that context.
 - In other words, the amount payable must first be determined and quantified and should be unpaid by the person required to make payment. Only thereafter one can proceed to recover the amount by issuing garnishee notice under section 87(b)(i) of the Finance Act, 1994.
 - The Court has been taking a consistent view in the past in various matters that prior to determination of amount due, invocation of section 87 of the Finance Act, 1994 would be premature⁷. In another case⁸, where an SCN

was issued but no adjudication proceeding had commenced, the Court observed that there was no reason for the authority to hastily freeze and attach the bank account. “Tax due” would mean **an ascertained liability** quantified in accordance with law⁹. Any recovery straightway by coercive measures is not permissible¹⁰.

- Mere making of statements by themselves cannot lead to any conclusion that certain amount has been determined as ‘due’.
- Further, the Finance Act, 1994 provides for various provisions for making assessment to determine the amount of Service tax payable, including best judgment assessment provision where there is failure to furnish return or failure to assess tax. Without assessment, no conclusion can be reached that an amount has become due to be paid.
- In absence of determination of the tax due, recourse to section 87 of the Finance Act, 1994 is premature and cannot be justified.

Judgment

The Hon'ble High Court allowed the Writ Petition and directed for withdrawal of restraint on the Petitioner's bank account.

Dhruva Comments:

The High Court has reiterated the settled position of law that recovery proceedings cannot be initiated before adjudication on matter and determining the tax amount due. Similar provisions do exist under the GST law and the judgment would help assesseees when undergoing such proceedings. Nevertheless, one also needs to take into consideration other provisions dealing with attachment of bank account / property being invoked in the alternate by the departmental authorities.

⁷ *M. P. Enterprises v. Union of India* [2018-VIL-424-BOM-ST]

⁸ *Lawson Tours and Travels (India) P. Ltd. v. Dy. Director* [2014-VIL-416-BOM-ST]

⁹ *ICICI Bank Limited v. Union of India* [2015-VIL-187-BOM-ST]

¹⁰ *Cleartrip Private Ltd. v. Union of India* [2016 (42) S.T.R. 948]





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