

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH-COURT NO. 4**

SERVICE TAX APPEAL NO. 50124 OF 2018

[Arising out of Order in Appeal No. BHO-EXCUS-002-APP-235-17-18 dated 26.09.2017 passed by the Commissioner (Appeals) Central Excise & Customs, Raipur]

M/S BALAJEE STRUCTURAL INDIA LTD APPELLANT
Ring Road No. 2,
Tatibandh, Raipur (C.G.)

Vs.

**COMMISSIONER OF CENTRAL EXCISE & RESPONDENT
SERVICE TAX-RAIPUR (C.G.)**
Central Excise Building
Dhamtari Road, Tikrapara
Raipur, Chhatisgarh-492001

Appearance:
Shri Ankur Upadhyay, Advocate for the Appellant
Shri Aejaz Ahmad, Authorised Representative for the Respondent

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 50815 /2025

DATE OF HEARING : 27/03/2025
DATE OF DECISION: 02/06/2025

P.V. SUBBA RAO

1. M/s. Balajee Structural India Ltd.¹ filed this appeal to assail the Order-in-Appeal dated 26.9.2017² passed by the Commissioner (Appeals), Raipur in which he upheld the order-in-original dated 17.12.2016³ passed by the Assistant Commissioner

1 Appellant
2 Impugned order
3 OIO

and dismissed the appellant's appeal. In the OIO, the Assistant Commissioner confirmed demand of service tax of Rs. 1,12,171/- on the appellant under the proviso to section 73(1) of the Finance Act, 1994⁴ along with interest under section 75 of the Finance Act and imposed penalties under sections 77 and 78 of the Finance Act.

2. The appellant is registered with the service tax department under the category of "Goods Transport Agency Service". Its records for the period 2012-13 and 2013-14 were audited and it was found that the appellant transported goods for Jakodia Minerals, Raipur and it charged them Rs. 200/- per metric ton per trip. It used the services of Bhupesh Kumar Agrawal for the purpose of paying him only Rs. 140/- per metric ton per trip. Since service tax on GTA services were to be paid by the recipient of the service, the appellant paid service tax on the amount which it had paid to its sub-contractor Shri Bhupesh Kumar Agarwal. Audit formed an opinion that the profit of Rs. 60/- (Rs.200- Rs.140) which the appellant had earned is chargeable to service tax as "Business Auxiliary Service" under section 65(19) and as service not under negative list under section 65B (44) after 1.7.2012. Accordingly, a Show Cause Notice dated 21.9.2016⁵ was issued to the appellant demanding service tax on the difference between the amounts which the appellant had collected from its client Jakodia Minerals and the

4 Finance Act
5 SCN

amounts which it had paid to its sub-contractor Bhupesh Kumar Agarwal treating it as consideration for providing 'Business Auxiliary Service' before 1.7.2012 and as a service not under negative list after 1.7.2012. Interest was also proposed to be demanded on the service tax and penalties under section 76,77 and 78 were proposed.

3. The appellant resisted the proposals in the SCN which were, however, confirmed by the Assistant Commissioner in his order dated 17.12.2016 the operative part of which is as follows:

ORDER

"(i) I confirm the demand of service Tax amounting to Rs. 112171/- (S.Tax Rs.108904/- (+) Edu. Cess Rs; 2178/- (+) SHE Cess Rs.1089/-) (Rs. One Lac twelve thousand one hundred and seventy one only) which should be recovered from the noticee under proviso to Section 73(1) read with section 73(2) of the Finance Act, 1994,

(ii) I confirm the demand of interest at appropriate rate which should be charged and recovered from the noticee under the provision of Section 75 of the Finance Act, 1994 on the amount adjudged payable.

(iii) I do not impose any penalty under Section 76 of the Finance Act 1994;

(iv) I impose a penalty of Rs. 10,000/- (Ten thousand only) on the notice under Section 77 of the Finance Act 1994 for contravening the provisions the Finance Act 1994 and

(v) I impose a penalty of Rs. 56,085/- (Rs. Fifty six thousand and eighty five only) on the noticee under the Section 78 of the Finance Act 1994 for having evaded Service Tax by suppressing the facts with intent to evade payment of Service Tax, contravening the provisions of 68 and 69 of the Finance Act, 1994."

4. Learned counsel for the appellant made the following submissions:

(i) What the appellant had provided was GTA service using a sub-contractor;

- (ii) GTA service is chargeable to service tax at the hands of the service recipient as per Notification no. 30/2012-ST dated 20.6.2012;
- (iii) The appellant paid service tax on the service which it received from its sub-contractor;
- (iv) The demand of service tax on the profit which the appellant had earned by charging its client more and paying its sub-contractor less under the head 'business auxiliary service' which demand cannot be sustained;
- (v) Extended period of limitation was wrongly invoked as there is no evidence of fraud, collusion, wilful misstatement or suppression of facts.
- (vi) The demand of service tax with interest and the penalties may be set aside and the appeal may be allowed.

5. Learned authorized representative for the Revenue vehemently supported the impugned order.

6. We have considered the submissions advanced by the learned counsel for the appellant and the learned authorized representative for the Revenue. What is undisputed is the nature of the service for which the appellant received consideration from its client and also the nature of the service which the appellant had received from Shri Bhupesh Kumar Agarwal. Both are essentially the same. The appellant earned a profit by paying Bhupesh Kumar Agarwal less and charging Jakodia Minerals more.

7. Goods were transported to the premises of Jakodia Minerals by the appellant engaging Bhupesh Kumar Agarwal as its sub-contractor for the purpose. The appellant treated this activity as GTA service by the appellant and as the recipient of the services of Bhupesh Kumar Agarwal, it paid service tax under reverse charge. It needs to be remembered that GTA services were chargeable to service tax under reverse charge both before 1.7.2012 and after this date. The service recipient had to pay service tax.

8. The case of the Revenue is that the profit which the appellant earned is chargeable to service tax under the head 'Business Auxiliary service'. In other words, according to the Revenue, the same activity of transporting goods to the premises of Jakodia Minerals was the GTA service insofar as the contract between Bhupesh Kumar Agarwal and the appellant is concerned. It is also not disputed to be the GTA service to the extent of Rs.140 per metric ton per trip which the appellant had received. However, to the extent of Rs. 60 per metric ton per trip which the appellant had received from Jakodia Minerals (which was its profit), according to the Revenue it is "Business Auxiliary service".

9. The audit team, the SCN, the Order in Original and the impugned order all lost sight of what the charge of service tax is on. Service tax is charged on the taxable services provided (in case of forward charge) or taxable services received (in case of

reverse charge) before 1.7.2012 and on all services other than those in the negative list provided (in case of forward charge) or received (in case of reverse charge) after 1.7.2012. The period in dispute covers both before and after 1.7.2012. Service tax is not a tax on profit or income or any amount received. What is important is to see if any service was rendered and if so what was the consideration for the service. The nature of the service can be seen from the contract between the parties (be it written or oral or formal and informal). The activity or service provided in this case was GTA and it is undisputed that it chargeable to service tax under reverse charge and the service recipient has to pay the service tax. It is the same activity which the appellant had received from its sub-contractor and provided to its client. There is no separate activity. If that be so, it can only be called GTA service and the recipient has to pay service tax. For the appellant, its sub-contractor was the service provider and the appellant paid service tax under reverse charge. For Jhakodia Minerals, the appellant was the provider of GTA service. That being so, the demand of service tax, if any could have been only under GTA service on Jhakodia minerals under reverse charge.

10. Revenue's attempt to charge service tax on the profit calling it business auxiliary service cannot be accepted because the service which the appellant provided to Jhakodia Minerals was GTA service. Part of the consideration received cannot be treated

as a separate service because there is no evidence of any other service being provided.

11. The demand of service tax on the profits earned by the appellant is beyond the scope of Finance Act, 1994 and it cannot be sustained. The demand of service tax and interest and imposition of penalties on the appellant therefore, cannot be sustained and need to be set aside.

12. The appeal is allowed and the impugned order is set aside with consequential relief to the appellant.

[Order pronounced on **02/06/2025**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)

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