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

SERVICE TAX APPEAL NO. 50117 OF 2018

[Arising out of Order-in-Appeal No. BHO-EXCUS-002-APP-213-17-18 dated 21.09.2017 passed by the Commissioner (Appeals) Central Excise & Customs, Raipur]

M/S BALAJEE LOHA LTD **……APPELLANT**
239/248, Sector-C, Urla Industrial Area
Raipur(C.G.)

Vs.

COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX-RAIPUR **……RESPONDENT**
Central Excise Building,
Dhamtari Road, Tikrapara,
Raipur, Chhattisgarh-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. 50813 /2025

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

P.V. SUBBA RAO

1. M/s. Balajee Loha Pvt. Ltd.[1] filed this appeal to assail the Order in Appeal dated 21.9.2017[2] passed by the Commissioner (Appeals), Raipur in which he upheld the order in original dated 16.11.2016[3] passed by the Assistant Commissioner and dismissed the appellant's appeal. In the OIO, the Assistant

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1 **Appellant**
2 **Impugned order**
3 **OIO**

Commissioner confirmed demand of service tax of Rs. 2,21,045/- and Rs. 1,75,155/- on the appellant under the proviso to section 73(1) of the Finance Act, 1994[4] 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 and has been providing taxable services of insurance, transportation and weigh bridge. Its records for the period 2012-13 and 2013-14 (upto January 2014) were audited and it was found that the appellant had shown the following earnings in its audited balance sheets

Year	**Income from insurance**	**Income from weigh bridge**	**Income from transportation**
2012-13	Rs. 2,45,314/-	Rs. 1,30,945/-	Rs. 12,30,452/-
2013-14	Rs. 48,776/-	Rs. 1,32,910/-	0

3. It was also found that the appellant had shown 'other income' which was the income from charges on account of delayed payment. It was felt that this income would fall under the category of Declared Service under Section 66E(e)of the Finance Act with effect from 1.7.2012. The amounts received on this count and the service tax which the audit felt was payable on the amounts were as follows:

Year	**Amount received**	**Rate of service tax**	**Amount of Service Tax**
2012-13	Rs. 12,00,042/-	@12.36%	Rs. 1,48,325/-

4 Finance Act

(8/12 to 3/13)			
2013-14 (upto 1/14)	Rs. 2,17,070/-	@12.36%	Rs. 26,830

4. A Show Cause Notice dated 30.8.2016 was issued to the appellant invoking extended period of limitation under the proviso to section 73(1) of the Finance Act demanding service tax with interest and proposing imposition of penalties. These proposals were confirmed by the Assistant Commissioner in the OIO which decision was upheld in the impugned order.

5. We have heard learned counsel for the appellant and the learned authorized representative for the Revenue and perused the records. We proceed to examine the submissions of both sides with respect to each of the issues.

Insurance income

6. The appellant had sold goods to its buyers for delivery at the buyer's premises. It collected charges for transportation of the goods as well as for the transit insurance. The appellant obtained transit insurance for the goods from an insurance company and the premium which it paid to the insurance company was less than the amounts which it had collected towards insurance from its buyers. The difference is recorded in the books of account as 'insurance income'.

7. According to the Revenue, this amount received by the appellant falls under the category of 'Business auxiliary

service' (BAS) till 30.6.2012 and will be a service not being under negative list with effect from 1.7.2012.

8. According to the appellant, the so called insurance income is the difference between what it paid to the insurance companies and what it collected from its buyers towards insurance. This is profit and is not an income on business auxiliary service (before 1.7.2012) or any service (after 1.7.2012). According to the appellant, it had sold goods which it had manufactured to buyers on FOR (buyer's premises) basis. It paid Central Excise duty on the amount including the insurance amount. Therefore, the same amount cannot again be taxed as a service.

9. Learned authorized representative for the Revenue supports the impugned order on this count.

10. We agree with the learned counsel for the appellant that the same amount collected by the appellant (as representing transit insurance) cannot be charged to central excise duty by including this amount in the assessable value and again be treated as a service to charge service tax on it. **The demand of service tax on this amount cannot be sustained.**

Income from Transportation

11. The appellant charged its customers for transportation and delivered the goods which it manufactured at the buyers' premises. Revenue wants to charge service tax on this amount under the category of BAS upto 1.7.2012 and as a service after 1.7.2012.

12. According to the appellant, it had not transported the goods by itself but hired a Goods Transport Agency to do the transportation. On the amounts charged by the GTA, the appellant had paid service tax on GTA services on reverse charge basis. Therefore, no service tax can again be charged on forward charge basis on the transportation charges treating it as BAS.

13. Learned authorized representative for the Revenue supports the impugned order.

14. We agree with the learned counsel that the same activity of transportation cannot be treated as GTA service to charge service tax under reverse charge and also as BAS to charge service tax on forward charge basis. Since the appellant had paid service tax under reverse charge under GTA, no service tax on transportation can be charged treating it as BAS (upto 1.7.2012) and as service (after 1.7.2012). **The demand on this count cannot be sustained.**

Income from weigh bridge

15. The appellant provided weigh bridge and collected amounts for it. The demand of service tax on this amount is on Business Support Service.

16. According to the appellant, providing a weigh bridge cannot be treated as Business Support Service. He places reliance on

CCE Rajkot vs Shivam Marine Services[5]. Learned authorized representative for the Revenue supports the impugned order.

17. We agree with the learned counsel for the appellant that providing a weigh bridge does not amount to providing Business support service as held in **Shivam Marine. The demand on this count cannot be sustained.**

Amounts received on account of delayed payments

18. The appellant received these amounts when its buyers delayed payments. Revenue demanded service tax on these amounts under section 66E (e) of the Finance Act as 'agreeing to refrain from an act or to tolerate an act' which is a declared service.

19. Learned counsel for the appellant submits that the amounts charged were in the nature of interest or a compensation for delay in payment and cannot be charged to service tax under section 66E(e) of the Finance Act. Learned authorized representative for the Revenue supports the impugned order.

20. We have considered the submissions. After 1.7.2012, certain services were named 'Declared Services' under section 66E of the Finance Act. These are certainly to be treated as taxable services and service tax has to be collected. Clause (e) of this section includes 'an agreement to refrain from an act or to tolerate an act'. It has been held by this Tribunal in a catena of

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orders that this clause would apply only if there is an agreement to tolerate an act, i.e., if the purpose of the agreement was to tolerate an act. If the purpose of the agreement is not tolerate an act but any amount is paid as compensation for default (such as delayed payments in this case), such amounts cannot be called as amounts collected to tolerate an act under section 66E (e) of the Finance Act. **Therefore, the demand on this count also cannot be sustained.**

21. In view of the above, the entire demand of service tax in the OIO upheld by the impugned order deserves to be set aside. Consequently, the demand of service tax and the imposition of penalties also need to be set aside.

22. 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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